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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS–2022–0004]

RIN 0579–AE70

Horse Protection Amendments; Extension of Postponement of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; extension of postponement of regulations.

SUMMARY: On May 8, 2024, we published a final rule amending the horse protection regulations. The final rule was initially scheduled to go into effect on February 1, 2025, except for § 11.19, which was effective on June 7, 2024. On January 28, 2025, we published a postponement of the effective date of the remaining provisions from February 1, 2025, to April 2, 2025. On March 21, 2025, we published a further delay of the effective date to February 1, 2026, and a request for comment on whether the length of the postponement should be extended. On January 28, 2026, based on developments following the issuance of the March 21, 2025, delay of effective date, we published a document further delaying the effective date of the final rule to December 31, 2026. On November 13, 2026, we published a proposed rule to remove parts of the 2024 Horse Protection final rule that were vacated by Court order from the regulations, as well as proposing to withdraw the non-vacated parts and update the regulations. As a consequence, in this document, we are issuing an extension of the postponement of the effective date of the final rule to December 31, 2027.

DATES: The amendments to 9 CFR 11.1 through 11.18 effective February 1, 2025, (89 FR 39194), delayed until April 2, 2025, (90 FR 8253), further delayed until February 1, 2026 (90 FR 13273), and further delayed until December 31, 2026 (91 FR 3633), are further delayed until December 31, 2027.

FOR FURTHER INFORMATION CONTACT: Martha Keller, DVM, Director of the Center for Animal Welfare, Animal Care, 2150 Centre Ave. Bldg. B, Mailstop 3W11, Fort Collins, CO 80526; (970) 821–5734.

SUPPLEMENTARY INFORMATION:

Background

Under the Horse Protection Act (HPA, or the Act, 15 U.S.C. 1821 *et seq.*), the Secretary of Agriculture is authorized to promulgate regulations to carry out the purposes of the Act, which include eliminating the cruel practice of soring horses and promoting fair competition.

The Secretary has delegated responsibility for administering the Act to the Administrator of the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the Act has been delegated to the Deputy Administrator for Animal Care. Regulations and standards established under the Act are contained in 9 CFR part 11 (referred to below as the regulations), and 9 CFR part 12 lists the rules of practice governing administrative proceedings.

On May 8, 2024, APHIS published in the **Federal Register** (89 FR 39194–39251, APHIS–2022–0004) [1], a final rule titled ''Horse Protection Amendments'' (2024 Horse Protection final rule) that was to be effective on February 1, 2025, except for § 11.19, which had an effective date of June 7, 2024.

On January 28, 2025, APHIS published in the **Federal Register** (90 FR 8253–8254, APHIS–2022–0004),[2] a postponement of the regulations in the 2024 Horse Protection final rule, which delayed the effective date of sections 11.1 through 11.18 of that rule until April 2, 2025. In the postponement, we noted that, on July 1, 2024, a complaint was filed in the U.S. District Court for the Northern District of Texas and amended on September 23, 2024.[3] The amended complaint alleged, in part, that the 2024 Horse Protection final rule exceeded APHIS' statutory authority and would have a significant economic impact on the Tennessee Walking Horse industry altogether. The amended complaint requested vacatur of the final rule. The parties completed briefing on their cross motions for summary judgment on December 20, 2024.

In the postponement, we explained that we were taking the action pursuant to section 705 of the Administrative Procedure Act to temporarily preserve the regulatory status quo during the pendency of the litigation.

On January 31, 2025, the U.S. District Court issued its decision.[4] The Court held that the prohibition on the use of action devices, pads, and substances in the May 2024 Horse Protection final rule had exceeded APHIS' statutory authority; that a ''Dermatologic Conditions Indicative of Soring'' provision intended to replace the ''scar rule'' failed to provide adequate due process; and that the rule's pre- and post-deprivation reviews failed to provide adequate due process. In the order, the Court vacated the above provisions, found in §§ 11.5, 11.6(c), 11.7, and 11.8(h) of the 2024 Horse Protection final rule. However, the Court held that the final rule's replacement of the Designated Qualified Persons (DQP) program with Horse Protection Inspectors (HPIs) did not exceed the USDA's statutory authority, was not arbitrary and capricious, and did not violate the Regulatory Flexibility Act.

Following the Court's decision, on March 21, 2025, APHIS published in the **Federal Register** (90 FR 13273–13276) [5] a document announcing a further delay of the effective date to February 1, 2026, and a request for comment regarding whether the length of the postponement should be extended. In that document, APHIS explained that postponement would allow it the necessary time to identify appropriate next steps regarding the regulations, including whether the length of the postponement

[1] To view the final rule, go to *https://www.regulations.gov/document/APHIS-2022-0004-8793*.

[2] To view the postponement, go to *https://www.regulations.gov/document/APHIS-2022-0004-8797*.

[3] *Tennessee Walking Horse Nat'l Celebration Ass'n,* v. *U.S. Dep't of Agric.,* 2:24–cv–00143 (N.D. Tex.).

[4] 765 F. Supp. 3d 534.

[5] To view the further delay of effective date and request for comment, go to *https://www.regulations.gov/document/APHIS-2022-0004-8798*.

should be further extended. We also stated that allowing the non-vacated portions of the rule to go into effect on April 2, 2025, the previously scheduled effective date, would be untenable for APHIS and disruptive to the industry. We explained that we were taking the action pursuant to 5 U.S.C. 553(b)(B), 553(d)(1) and 553(d)(3).

We solicited comments concerning the length of the postponement for 60 days ending May 20, 2025. We received 6,124 submissions indicative of 93,734 total comments in response to our request. The comments were from members of Congress; State agricultural agencies and farm bureaus; HIOs; equine veterinarians and veterinary associations; animal welfare advocacy organizations; cattle grower associations; horse owners, trainers, and exhibitors; small business owners; and other interested persons.

After the close of the comment period, on June 30, 2025, a new complaint was filed in the U.S. District for the Northern District of Texas [6] challenging aspects of the current regulations and associated guidance. Specifically, the complaint challenged USDA's ''No-Showback Rule,'' (*i.e.,* a policy prohibiting noncompliant horses from participating in any subsequent class of the same show), the scar rule, and the adequacy of the due process protections when management disqualifies a horse based on USDA inspection findings. Plaintiffs sought entry of a preliminary injunction to prevent USDA from enforcing these rules and policies.

On August 19, 2025, the Court granted plaintiffs' motion for a preliminary injunction.[7] In its decision, the Court determined that the No-Showback Rule likely exceeds the USDA's statutory authority because the HPA requires disqualification only when a horse is found sore at the time of inspection. The Court likewise found that the existing scar rule likely goes beyond the scope of the Act by allowing disqualification based solely on indicators of past soring without evidence of current soreness. Additionally, the Court concluded that the inspection procedures in the current regulations likely fail to provide constitutionally required pre-deprivation review because they do not provide the opportunity for a hearing, or for anyone to contest a USDA inspector's decision, prior to a horse being disqualified from an event. Due to the then-pending lawsuit and the uncertainty of how it would affect the existing regulations, APHIS published in the **Federal Register** (91 FR 3633–3635, Docket No. APHIS–2022–0004) [8] a document further delaying the effective date of the non-vacated portions of the 2024 Horse Protection final rule, to December 31, 2026.

Additionally, in a report (H.R. Rep. 118–583) accompanying the FY 2026 Agriculture Appropriations Act, the House Appropriations Committee expressed concern regarding the 2024 Horse Protection final rule, stating the following: ''The Committee has consistently recognized the need for APHIS and the Tennessee Walking Horse industry to communicate and work together to eliminate the soring of horses. The Committee is concerned that the final rule, Horse Protection Amendments, published May 8, 2024 (89 FR 39194), ignores the strong concerns of and comments submitted by industry experts, is based on out-of-date and unreliable data, and exceeds the agency's legal authority under the Horse Protection Act. Further, the cost-benefit analysis accompanying the rule relies on data that is over a decade old and severely underestimates the impact the rule will have on the 20,000 jobs supported by the Tennessee Walking Horse industry. The Committee reiterates that an objective, science-based inspection system would provide assurance for both accuracy and fairness. Therefore, the Committee directs APHIS to withdraw the final rule and work with the industry to eliminate soring using objective, science-based protocols.'' (H.R. Rep. 118–583, at 37.) In our January 28, 2026, document announcing the further delay of effective date, we stated that postponement would also allow APHIS to complete its ongoing review of the Committee's report.

Consistent with the January 2025 U.S. District Court order vacating the 2024 Horse Protection final rule's prohibitions on action devices, pads, and substances on TWHs and racking horses, the DCIS provision, and APHIS' re-inspection and appeals procedures, on November 13, 2026, APHIS published in the **Federal Register** (91 FR 73380–73421; Docket No. APHIS–2026–0067) [9] a proposed rule to remove §§ 11.5, 11.6(c), 11.7, and 11.8(h) of the 2024 Horse Protection final rule from the regulations, as well as proposing to withdraw the remaining parts of the 2024 Horse Protection final rule that were not vacated and to update the current Part 11 regulations to reflect expert recommendations and Congressional direction. We stated in that document that we are soliciting comments on the proposed rule for 30 days, ending on December 14, 2026.

As stated earlier in this document, the 2024 Horse Protection final rule is scheduled to go into effect on December 31, 2026. Because the length of time between the end of the comment period of the November 13, 2026, proposed rule and the effective date of the 2024 Horse Protection final rule does not provide the Agency with enough time to review comments received on the proposed rule, any final rule following the November 13, 2026, proposed rule would be issued after the effective date of the 2024 Horse Protection final rule. Allowing the partially vacated 2024 Horse Protection final rule to go into effect while the Agency is reviewing comments and preparing a final rule following the November 13, 2026, proposed rule, that, among other provisions, proposed withdrawal of the 2024 Horse Protection final rule, would almost certainly have disruptive consequences and result in ''regulatory whiplash'' that could prove costly to the regulated industry.

For these reasons, we are extending the postponement of effective date of the 2024 Horse Protection final rule to December 31, 2027. Further postponing the effective date will allow APHIS the necessary time to review comments received on the November 13, 2026, proposed rule and, if appropriate, subsequently issue a final rule.

APHIS is taking this action, effective immediately, based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). The need for regulatory clarity in this context satisfies the good-cause requirement. Additionally, APHIS has determined that it would be impracticable and contrary to the public interest to provide notice and comment on this action to postpone the effective date of the non-vacated provisions of the 2024 Horse Protection final rule to December 31, 2027, because there is not sufficient time to conduct an additional notice-and-comment process between now and December 31, 2026. Moreover, we are soliciting notice-and-comment until December 14, 2026 on the November 13, 2026, proposed rule to withdraw the non-vacated provisions and update the regulations.

[6] *Gould* v. *U. S. Dep't of Agric.,* 2:25–cv–00147 (N.D. Tex.).

[7] On August 28, 2026, the Court granted summary judgment in Plaintiffs' favor, adopting the reasoning and conclusions from its Preliminary Injunction Order, finding that the No-Showback Rule and Scar Rule exceeds the scope of USDA's statutory authority, and the USDA's horse disqualification process fails to provide adequate due process. *Gould* v. *U.S. Dep't of Agric.,* No. 2:25–CV–147–Z, 2026 WL 2547346 (N.D. Tex. Aug. 28, 2026).

[8] To view the further delay of effective date, go to *https://www.regulations.gov/document/APHIS-2022-0004-14923.*

[9] To view the proposed rule, go to *https://www.regulations.gov/document/APHIS-2026-0067-0001.*

Authority: 5 U.S.C. 705; 15 U.S.C. 1823–1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 18th day of November 2026.

Dudley Hoskins,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2026–23818 Filed 11–20–26; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 5, 13, 15, 16, 17, 21, 23, 25, 26, 27, 29, 31, 33, 34, 35, 38, 39, 43, 48, 61, 63, 65, 67, 71, 73, 77, 91, 95, 97, 99, 101, 103, 105, 110, 117, 120, 125, 133, 137, 150, 151, 152, 153, 155, 156, 157, 158, 161, 169, 170, 171, 183, 185, 187, 189, 193, 198, and 450

[Docket No.: FAA–2026–4853; Amdt. Nos. 1–81, 5–3, 13–41, 15–5, 16–2, 17–2, 21–111, 23–66, 25–154, 26–8, 27–52, 29–60, 31–6, 33–37, 34–8, 35–11, 38–2, 39–20000, 43–65, 48–4, 61–162, 63–49, 65–68, 67–24, 71–59, 73–10, 77–14, 91–386, 95–341, 97–1341, 99–17, 101–12, 103–18, 105–14, 110–4, 117–2, 120–5, 125–79, 133–17, 137–19, 150–5, 151–40, 152–14, 153–2, 155–3, 156–2, 157–8, 158–5, 161–3, 169–4, 170–5, 171–18, 183–19, 185–4, 187–37, 189–5, 193–2, 198–5, 450–5]

RIN 2120–AM11

Miscellaneous Technical Amendments; Technical Amendment

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment contains non-substantive corrections to address typographical errors, editorial errors, and outdated or incorrect references in various parts of FAA regulations.

DATES: Effective November 23, 2026.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jesse Holston, Office of Rulemaking, ARM–200, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591; email: *jesse.c.holston@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority for This Rulemaking and Good Cause for Immediate Adoption

A. Authority for This Rulemaking

FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code (U.S.C.). Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of FAA's authority.

This rulemaking is issued under the authority described in subtitle I, section 106(f), which establishes the Administrator's authority to promulgate and revise regulations and rules related to aviation safety. This regulation is within the scope of that authority.

The Commercial Space Launch Act of 1984, as amended and codified at 51 U.S.C. 50901–50923 (the Act), authorizes the Secretary of Transportation to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites within the United States 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. As codified in 49 CFR 1.83(b), the Secretary has delegated authority to the FAA Administrator to carry out these functions.

B. Good Cause for Immediate Adoption

Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

In addition, the APA requires agencies to delay the effective date of regulations for 30 days after publication, unless the agency finds good cause to make the regulations effective sooner. *See,* 5 U.S.C. 553(d). This rulemaking action makes technical amendments that affect the clarity of existing regulations. These amendments will not impose any additional substantive restrictions or requirements on the persons affected by these regulations. Because this action merely makes technical amendments, FAA finds notice and public comment under 5 U.S.C. 553(b) to be unnecessary. For the same reason, FAA finds good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days.

II. Technical Amendments

FAA is making technical amendments to parts 1, 5, 13, 15, 16, 17, 21, 23, 25, 26, 27, 29, 31, 33, 34, 35, 38, 39, 43, 48, 61, 63, 65, 67, 71, 73, 77, 91, 95, 97, 99, 101, 103, 105, 110, 117, 120, 125, 133, 137, 150, 151, 152, 153, 155, 156, 157, 158, 161, 169, 170, 171, 183, 185, 187, 189, 193, 198, and 450 of those regulations found in title 14, Code of Federal Regulations (14 CFR). All amendments are non-substantive and correct typographical errors, editorial errors, and outdated or incorrect references. The following is a summary of the various amendments to each of the above-listed parts.

Chapter 1

The FAA Reauthorization Act of 2024 amended 49 U.S.C. 106 by removing the language previously within subsection (g), modifying it, and moving the modified text to subsection (f).[1] In addition, the Act designated subsection (g) as reserved.[2] As a result, section 106(g) no longer provides authority for Chapter 1. Prior to the FAA Reauthorization Act of 2024, section 106(g) established the Administrator's authority to promulgate and revise regulations and rules related to aviation safety; this authority is now found in section 106(f). To implement this statutory change, this rule revises the authority citation for parts 13, 15, 16, 26, 31, 33, 34, 38, 39, 77, 95, 99, 103, 105, 117, 133, 137, 150, 151, 152, 153, 155, 156, 157, 158, 161, 169, 170, 171, 185, 189, 193, and 198 by removing the reference to 49 U.S.C. 106(g) and adding a reference to 49 U.S.C. 106(f). In addition, this rule revises the authority citation for parts 5, 23, 25, 27, 29, 35, 48, 71, 73, 97, 101, 110, 125, 183, and 187 by removing the reference to 49 U.S.C. 106(g). No further changes are needed to these authority citations as they already include a reference to 106(f).

Part 1

In § 1.1, *Military operations area,* the word ''theses'' is removed and replaced with ''these'' to correct a typographical error.

Part 13

Sections 13.43(c) and 13.210(c) are amended to remove the addresses for filing a document with the FAA Hearing

[1] See Public Law 118–63, Sec. 204.

[2] See Public Law 118–63, Sec. 204(b).

Docket. The address is replaced with a website where a filer may find the most up to date addresses for filing. These changes allow FAA to provide the most current address information for filing.

Part 17

Sections 17.15(b), 17.27(b), and 17.59(b) are amended to remove the addresses for filing and replace it with a website where a filer may find the most up to date addresses for filing. These changes allow FAA to provide the most current address information for filing.

Part 21

On September 3, 2025, FAA published the final rule titled ''Falsification, Reproduction, Alteration, Omission, or Incorrect Statements.'' This rule amended, restructured, and consolidated the falsification regulations presently located throughout title 14 of the CFR; however, it inadvertently overwrote the authority citation for parts 21 and 61. This amendment changes the authority for parts 21 and 61 back to what was in place prior to publication of the Falsification final rule.

Part 29

Section 29.1337(e)(1), which concerns rotor drive system transmissions and gearboxes that utilize ferromagnetic materials, is amended to remove an incorrect cross reference. Section 29.1305(a)(22), which concerns fuel pump failure indicators, is removed and replaced with § 29.1305(a)(23), which discusses ferromagnetic chip detector devices and indicator respectively.

Part 43

In part 43 appendix A, paragraph (c)(31), the word ''and'' is removed and replaced with ''an'' in the last sentence of the paragraph. This change corrects a typographical error.

Part 61

As previously stated, FAA's final rule, ''Falsification, Reproduction, Alteration, Omission, or Incorrect Statements,'' inadvertently overwrote the authority citation for parts 21 and 61. This amendment changes the authority for part 61 back to what was in place prior to publication of the Falsification final rule.

The phrase ''Aeromedical Certification Branch'' is removed from § 61.29(e) and replaced with ''Aerospace Medical Certification Division'' to reflect organizational changes in FAA.

On July 24, 2025, FAA published the final rule, ''Modernization of Special Airworthiness Certification (MOSAIC),'' which updated regulations governing the manufacture, certification, operation, maintenance, and alteration of light-sport aircraft. To maintain consistency after removing the ''light-sport aircraft'' definition from § 1.1 and its references in subpart J, the rule eliminated related mentions throughout the regulations. Since publication, FAA has identified five remaining instances of the term ''light-sport aircraft'' in parts 61 and 65 that still require replacement. The revisions to part 61 are as follows:

- Section 61.411(b)(2): This revision was omitted from the amendatory instructions inadvertently when publishing the final rule. In this section, the term ''a light-sport aircraft'' is replaced with ''an aircraft meeting the performance limits and design requirements of § 61.316.''
- Section 61.415 introductory text: This revision was omitted from the amendatory instruction inadvertently when publishing the final rule. In this section, the term ''a light-sport aircraft'' is replaced with ''an aircraft meeting the performance limits and design requirements of § 61.316.''
- Section 61.415(f): Although this revision was included in Amendatory Instruction No. 57 in the final rule, the change was not made. In this section, the term ''light-sport aircraft'' is replaced with ''aircraft.''
- Section 61.415(g): Although this revision was included in Amendatory Instruction No. 57 in the final rule, the change was not made. In this section, the term ''light-sport aircraft'' is replaced with ''aircraft.''

Part 63

The phrase ''Aeromedical Certification Branch'' is removed from § 63.16(f) and replaced with ''Aerospace Medical Certification Division'' to reflect organizational changes in FAA.

Part 65

In § 65.16(d), references to ''telegram'' as a way to request a temporary certification confirmation for a lost certificate issued under part 65 or a medical certificate are removed to align with the agency's current practice [3] and modernized systems. Thus, this technical amendment updates all references to ''telegram'' in this paragraph by removing and replacing it with either ''document'' or ''in a form and manner acceptable to the Administrator.''

FAA's final rule, ''Modernization of Special Airworthiness Certification (MOSAIC),'' updated regulations governing the manufacture, certification, operation, maintenance, and alteration of light-sport aircraft. To maintain consistency after removing the ''light-sport aircraft'' definition from § 1.1 and align repairman certificate (light-sport) holder privileges with the expansion of aircraft categories eligible for light-sport category airworthiness certificates, the title of the repairman certificate was revised to repairman certificate (light-sport). Since publication, FAA has identified § 65.101(b) was inadvertently omitted from the amendatory instructions when publishing the final rule. In this section, the term ''light-sport aircraft'' is replaced with ''light-sport.''

Part 67

The phrase ''Aeromedical Certification Division'' is removed from §§ 67.401, 67.407, and 67.409, and is replaced with ''Aerospace Medical Certification Division'' to reflect organizational changes in FAA.

Part 73

In § 73.19(a), ''Airspace Policy Group'' is replaced with ''Rules and Regulations Group'' to reflect organizational changes in FAA.

Part 91

In §§ 91.225 (d)(5) and 91.511(f), ''Gulf of Mexico'' is replaced with ''Gulf of America'' to align with Executive Order 14172, ''Restoring Names that Honor American Greatness.''

Part 120

Part 120 has multiple references to ''Antidrug and Alcohol Misuse Prevention Program,'' which is outdated terminology in the Operations Specification that is no longer used by industry or FAA. All instances of this term are replaced with ''Drug and Alcohol Testing Program.''

Part 450

In § 450.117 (d)(4), a comma is added between ''position'' and ''velocity'' to separate the terms. This corrects a typographical error.

III. Regulatory Notices and Analyses

A. Regulatory Impact Analysis

Executive Order (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 has

[3] See FAA Order 8900.1, Vol. 5, Ch. 5, Sec. 1, Chg. 1013.

determined this rule is not a significant regulatory action as defined in E.O. 12866. This rule involves non-substantive technical amendments. FAA does not expect there will be any additional costs conferred on the public or the Federal Government because none of the technical and editorial changes included in this rule will change existing regulatory requirements. FAA anticipates minor administrative cost savings due to efficiencies for both industry and FAA by eliminating outdated language.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking.

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, that they be the basis for U.S. standards.

FAA has assessed the potential effect of this rule and determined it is in accord with the Trade Agreements Act as the rule applies equally to domestic and foreign persons engaged in aviation activities under 14 CFR. As previously discussed, this rulemaking corrects several technical errors that affect the clarity of the regulatory text. These corrections do not impose any additional restrictions or requirements on the persons affected by these regulations.

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 rule will not result in the expenditure of $187,000,000 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 to consider the impact of paperwork and other information collection burdens imposed on the public. FAA has determined there is no new requirement for information collection associated with this final rule.

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 regulations.

G. Environmental Analysis

FAA has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*). FAA has determined 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). 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. This rulemaking, which contains technical amendments meant to address typographical errors, editorial errors, and outdated or incorrect references in various parts of FAA regulations, 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.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

FAA has analyzed this final rule under the principles and criteria of E.O. 13132, Federalism. FAA has determined that this action will 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, will 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,[4] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[5] FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes; or to affect uniquely or significantly their respective Tribes. At this point, FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this final rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

FAA analyzed this final rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FAA has determined it is not a ''significant energy action'' under the E.O. and is not 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

[4] 65 FR 67249 (Nov. 6, 2000).

[5] FAA Order No. 1210.20 (Jan. 28, 2004), available at: *www.faa.gov/documentLibrary/media/1210.pdf.*

international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and 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 will have no effect on international regulatory cooperation.

E. Executive Order 14192, Unleashing Prosperity Through Deregulation

This rule is an E.O. 14192 deregulatory action because it has total costs less than zero as it removes outdated language and removes related minor administrative burdens.

V. Additional Information

A. Electronic Access and Filing

A copy of this 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. Requesters must identify the docket or notice number of this rulemaking.

All documents FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121) 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 1

Air transportation.

14 CFR Part 5

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 13

Administrative practice and procedure, Air transportation, Aviation safety, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

14 CFR Part 15

Claims.

14 CFR Part 16

Administrative practice and procedure, Airports, Investigations.

14 CFR Part 17

Administrative practice and procedure, Authority delegations (Government agencies), Government contracts.

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

14 CFR Part 25

Aircraft, Aviation safety, Navigation (air), Reporting and recordkeeping requirements.

14 CFR Part 26

Aircraft, Aviation safety.

14 CFR Part 27

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 29

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 31

Aircraft, Aviation safety.

14 CFR Part 33

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 34

Air pollution control, Aircraft.

14 CFR Part 35

Aircraft, Aviation safety.

14 CFR Part 38

Air pollution control, Aircraft.

14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 48

Aircraft, Reporting and recordkeeping requirements, Signs and symbols.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and record keeping requirements, Security measures, Teachers.

14 CFR Part 63

Aircraft, Airmen, 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 67

Airmen, Authority delegations (Government agencies), Health, Reporting and recordkeeping requirements.

14 CFR Part 71

Airspace, Navigation (air).

14 CFR Part 73

Airspace, Navigation (air), Security measures.

14 CFR Part 77

Administrative practice and procedure, Airports, Airspace, Aviation safety, Navigation (air), Reporting and recordkeeping requirements.

14 CFR Part 91

Afghanistan, Agriculture, Air carriers, Air taxis, Air traffic control, Aircraft, Airmen, Airports, Alaska, Aviation safety, Canada, Charter flights, Cuba, Drug traffic control, Ethiopia, Freight, Iran, Iraq, Libya, Mexico, Noise control, North Korea, Political candidates, Reporting and recordkeeping requirements, Security measures, Somalia, Syria, Transportation, Yemen, Yugoslavia.

14 CFR Part 95

Airspace, Navigation (air).

14 CFR Part 97

Air traffic control, Airports, Navigation (air), Weather.

14 CFR Part 99

Air traffic control, Airspace, National defense, Navigation (air), Security measures.

14 CFR Part 101

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 103

Aircraft, Aviation safety, Recreation and recreation areas.

14 CFR Part 105

Aircraft, Aviation safety, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 110

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 117

Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 120

Air carriers, Air traffic controllers, Airmen, Alcohol abuse, Alcoholism, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 133

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 137

Agriculture, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 150

Airports, Noise control.

14 CFR Part 151

Airports, Grant programs—transportation, Reporting and recordkeeping requirements.

14 CFR Part 152

Accounting, Airports, Civil rights, Energy conservation, Equal employment opportunity, Grant programs—transportation, Reporting and recordkeeping requirements.

14 CFR Part 153

Airports, Aviation safety.

14 CFR Part 155

Airports, Surplus Government property.

14 CFR Part 156

Airports, Grant programs—transportation.

14 CFR Part 157

Airports, Reporting and recordkeeping requirements.

14 CFR Part 158

Administrative practice and procedure, Air carriers, Airports. Reporting and recordkeeping requirements.

14 CFR Part 161

Administrative practice and procedure, Aircraft, Airports, Noise control, Reporting and recordkeeping requirements.

14 CFR Part 169

Airports, Navigation (air).

14 CFR Part 170

Air traffic control, Airports.

14 CFR Part 171

Air traffic control, Navigation (air), Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Airmen, Authority delegations (Government agencies), Health professions, Reporting and recordkeeping requirements.

14 CFR Part 185

Administrative practice and procedure, Authority delegations (Government agencies), Courts, Government employees.

14 CFR Part 187

Administrative practice and procedure, Air transportation.

14 CFR Part 189

Air transportation, Telecommunications.

14 CFR Part 193

Air transportation, Aviation safety, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 198

Aircraft, Freight, Reporting and recordkeeping requirements, War risk insurance.

14 CFR Part 450

Aircraft, Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Space transportation and exploration.

The Amendments

■ 1. In consideration of the foregoing, the Federal Aviation Administration amends chapter I and III of title 14, Code of Federal Regulations (CFR) parts 1, 5, 13, 15, 16, 17, 21, 23, 25, 26, 27, 29, 31, 33, 34, 35, 38, 39, 43, 48, 61, 63, 65, 67, 71, 73, 77, 91, 95, 97, 99, 101, 103, 105, 110, 117, 120, 125, 133, 137, 150, 151, 152, 153, 155, 156, 157, 158, 161, 169, 170, 171, 183, 185, 187, 189, 193, 198, and 450 as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

Authority: 49 U.S.C. 106(f), 40113, 44701.

§ 1.1 [Amended]

■ 3. Amend § 1.1 by removing the word ''theses'' and adding in its place the word ''these''.

PART 5—SAFETY MANAGEMENT SYSTEMS

■ 4. The authority citation for part 5 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105; Sec. 102, Pub. L. 116–260, 134 Stat. 2309; Sec 215, Pub. L. 111–216, 124 Stat. 2366.

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 5. The authority citation for part 13 is revised to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 note; 49 U.S.C. 106(f), 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.

Subpart D—Rules of Practice for FAA Hearing

■ 6. Amend § 13.43 by revising paragraph (c) to read as follows:

§ 13.43 Service and filing of pleadings, motions, and documents.

* * * * *

(c) *Where to file.* For information on where to send your filing, visit our website at *https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication* or if you do not have access to the internet, call the

FAA Office of Adjudication at (202) 267–3290.

* * * * *

Subpart G—Rules of Practice in FAA Civil Penatly Actions

■ 7. Amend § 13.210 by revising paragraph (c) to read as follows:

§ 13.210 Filing of documents.

* * * * *

(c) *Where to file.* For information on where to send your filing, visit our website at *https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication* or if you do not have access to the internet, call the FAA Office of Adjudication at (202) 267–3290.

* * * * *

PART 15—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

■ 8. The authority citation for part 15 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2672, 2675; 49 U.S.C. 106(f), 40113, 44721.

PART 16—RULES OF PRACTICE FOR FEDERALLY-ASSISTED AIRPORT ENFORCEMENT PROCEEDINGS

■ 9. The authority citation for part 16 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 322, 1110, 1111, 1115, 1116, 1718(a) and (b), 1719, 1723, 1726, 1727, 40103(e), 40113, 40116, 44502(b), 46101, 46104, 46110, 47104, 47106(e), 47107, 47108, 47111(d), 47122, 47123–47125, 47133, 47151–47153, 48103.

PART 17—PROCEDURES FOR PROTESTS AND CONTRACT DISPUTES

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

Authority: 5 U.S.C. 570–581, 49 U.S.C. 106(f)(2), 40110, 40111, 40112, 46102, 46014, 46105, 46109, and 46110.

Subpart B—Protests

■ 11. Amend § 17.15 by revising paragraph (b) introductory text to read as follows:

§ 17.15 Filing a protest.

* * * * *

(b) Protests shall be filed with the ODRA, AGC–70, Federal Aviation Administration. For information on where to send your filing, visit our website at *https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication* or if you do not have access to the internet, call the FAA Office of Adjudication at (202) 267–3290.

* * * * *

Subpart C—Contract Disputes

§ 17.27 Filing a contract dispute.

■ 12. Amend § 17.27 by revising paragraph (b) to read as follows:

* * * * *

(b) Contract Disputes shall be filed with the ODRA, AGC–70, Federal Aviation Administration. For information on where to send your filing, visit our website at *https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication* or if you do not have access to the internet, call the FAA Office of Adjudication at (202) 267–3290.

* * * * *

Subpart G—Pre-Disputes

§ 17.59 Filing a Pre-dispute.

■ 13. Amend § 17.59 by revising paragraph (b) to read as follows:

* * * * *

(b) Pre-disputes shall be filed with the ODRA, AGC–70, Federal Aviation Administration. For information on where to send your filing, visit our website at *https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication* or if you do not have access to the internet, call the FAA Office of Adjudication at (202) 267–3290.

* * * * *

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND ARTICLES

■ 14. The authority citation for part 21 is revised to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303; sec. 102, Pub. L. 116–260, 134 Stat. 2309 (49 U.S.C. 44701 note).

PART 23—AIRWORTHINESS STANDARDS: NORMAL CATEGORY AIRPLANES

■ 15. The authority citation for part 23 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44702, 44704, Pub. L. 113–53, 127 Stat. 584 (49 U.S.C. 44704) note.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 16. The authority citation for part 25 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44702, 44704, Pub. L. 113–53, 127 Stat. 584 (49 U.S.C. 44703) note.

PART 26—CONTINUED AIRWORTHINESS AND SAFETY IMPROVEMENTS FOR TRANSPORT CATEGORY AIRPLANES

■ 17. The authority citation for part 26 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701, 44702 and 44704.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 18. The authority citation for part 27 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44702, 44704.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTOCRAFT

■ 19. The authority citation for part 29 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44702, 44704.

§ 29.1337 [Amended]

■ 20. Amend § 29.1337 in paragraph (e)(1) by removing the reference ''§ 29.1305(a)(22)'' and adding in its place the reference ''§ 29.1305(a)(23)''.

PART 31—AIRWORTHINESS STANDARDS: MANNED FREE BALLOONS

■ 21. The authority citation for part 31 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44702, 44704.

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

■ 22. The authority citation for part 33 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701, 44702, 44704.

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

■ 23. The authority citation for part 34 is revised to read as follows:

Authority: 42 U.S.C. 4321, *et seq.,* 7572; 49 U.S.C. 106(f), 40113, 44701–44702, 44704, 44714.

PART 35—AIRWORTHINESS STANDARDS: PROPELLERS

■ 24. The authority citation for part 35 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44702, 44704.

PART 38—AIRPLANE FUEL EFFICIENCY CERTIFICATION

■ 25. The authority citation for part 38 is revised to read as follows:

Authority: 42 U.S.C. 4321, *et seq.,* 7572; 49 U.S.C. 106(f), 40113, 44701–44702, 44704; 49 CFR 1.83(c).

PART 39—AIRWORTHINESS DIRECTIVES

■ 26. The authority citation for part 39 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701.

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

■ 27. The authority citation for part 43 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

Appendix A to Part 43 [Amended]

■ 28. Amend paragraph (c)(31) of appendix A to part 43 by removing the word ''and'' and adding in its place the word ''an'' in the last sentence of the paragraph.

PART 48—REGISTRATION AND MARKING REQUIREMENTS FOR SMALL UNMANNED AIRCRAFT

■ 29. The authority citation for part 48 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40113–40114, 41703, 44101–44103, 44105–44106, 44110–44113, 44809(f), 45302, 45305, 46104, 46301, 46306.

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 30. The authority section for part 61 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302; sec. 2307, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); sec. 318, Pub. L. 115–254, 132 Stat. 3186 (49 U.S.C. 44703 note); sec. 820, Pub. L. 118–63, 138 Stat. 1330 (49 U.S.C. 44939 note); secs. 815 and 828, Pub. L. 118–63, 138 Stat. 1328, 1336 (49 U.S.C. 44703 note).

Subpart A—General

§ 61.29 [Amended]

■ 31. Amend § 61.29 in paragraph (e) by removing the term ''Aeromedical Certification Branch'' and adding in its place the term ''Aerospace Medical Certification Division''.

Subpart K—Flight Instructors With a Sport Pilot Rating

§ 61.411 [Amended]

■ 32. Amend § 61.411 in paragraph (b)(2) by removing the term ''a light-sport aircraft'' and adding in its place the phrase ''an aircraft meeting the performance limits and design requirements of § 61.316.''

§ 61.415 [Amended]

■ 33. Amend § 61.415 by
■ a. In the introductory text, removing the term ''a light-sport aircraft'' from the introductory text and adding in its place the phrase ''an aircraft meeting the performance limits and design requirements of § 61.316.''
■ b. In paragraphs (f) and (g) removing the term ''light-sport aircraft'' and adding in its place the term ''aircraft.''

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

■ 34. 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.

Subpart A—General

§ 63.16 [Amended]

■ 35. Amend § 63.16 in paragraph (f) by removing the term ''Aeromedical Certification Branch'' and adding in its place the term ''Aerospace Medical Certification Division''.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 36. 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.

Subpart A—General

§ 65.16 Change of name: Replacement of lost or destroyed certificate.

■ 37. Revise § 65.16(d) to read as follows:

* * * * *

(d) A person whose certificate issued under this part or medical certificate, or both, has been lost may obtain a document conveying temporary authority from the FAA confirming that it was issued. The document may be carried as a certificate for a period not to exceed 60 days pending his receiving a duplicate certificate under paragraph (b) or (c) of this section, unless he has been notified that the certificate has been suspended or revoked. The request for such a document may be made in a form and manner approved by the Administrator.

Subpart E—Repairmen

§ 65.101 [Amended]

■ 38. Amend § 65.101 in paragraph (b) by removing the term ''light-sport aircraft'' and adding in its place the term ''light-sport.''

PART 67—MEDICAL STANDARDS AND CERTIFICATION

■ 39. The authority citation for part 67 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45303.

Subpart E—Certification Procedures

§ 67.401 [Amended]

■ 40. Amend § 67.401 in paragraph (h) by removing the term ''Aeromedical Certification Division'' and add in its place the term ''Aerospace Medical Certification Division''.

§ 67. 407 [Amended]

■ 41. Amend § 67.407 in paragraph (c) by removing the term ''Aeromedical Certification Division'' and add in its place the term ''Aerospace Medical Certification Division''.

§ 67.409 [Amended]

■ 42. Amend § 67.409 in paragraphs (a), (b)(3), and (d) by removing the term ''Aeromedical Certification Division'' and add in its place the term ''Aerospace Medical Certification Division''.

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

■ 43. The authority citation for part 71 is revised to read as follows:

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

PART 73—SPECIAL USE AIRSPACE

■ 44. The authority citation for part 73 is revised to read as follows:

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

Subpart B—Restricted Areas

§ 73.19 [Amended]

■ 45. Amend § 73.19 in paragraph (a) by removing the term ''Airspace Policy

Group'' and adding in its place the term ''Rules and Regulations Group''.

PART 77—SAFE, EFFICIENT USE, AND PRESERVATION OF THE NAVIGABLE AIRSPACE

■ 46. The authority citation for part 77 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40103, 40113–40114, 44502, 44701, 44718, 46101–46102, 46104.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 47. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 44740, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534; Pub. L. 112–95, 126 Stat. 11; Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); sec. 828, Pub. L. 118–63, 138 Stat. 1330 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation, 61 Stat. 1180.

Subpart C—Equipment, Instrument, and Certificate Requirements

§ 91.225 [Amended]

■ 48. Amend § 91.225 in paragraph (d)(5) by removing the term ''Gulf of Mexico'' and adding in its place the term ''Gulf of America''.

Subpart F—Large and Turbine-Powered Multiengine Airplanes and Fractional Ownership Program Aircraft

§ 91.511 [Amended]

■ 49. Amend § 91.511 in paragraph (f) by removing the phrase ''Gulf of Mexico'' and adding in its place the phrase ''Gulf of America.''

PART 95—IFR ALTITUDES

■ 50. The authority citation for part 95 is revised to read as follows:

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

PART 97—STANDARD INSTRUMENT PROCEDURES

■ 51. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, and 44721–44722.

PART 99—SECURITY CONTROL OF AIR TRAFFIC

■ 52. The authority citation for part 99 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40106, 40113, 40120, 44502, 44721.

PART 101—MOORED BALLOONS, KITES, AMATEUR ROCKETS, AND UNMANNED FREE BALLOONS

■ 53. The authority citation for part 101 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101 note, 40103, 40113–40114, 45302, 44502, 44514, 44701–44702, 44721, 46308.

PART 103—ULTRALIGHT VEHICLES

■ 54. The authority citation for part 103 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40103–40104, 40113, 44701.

PART 105—PARACHUTE OPERATIONS

■ 55. The authority citation for part 105 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113–40114, 44701–44702, 44721.

PART 110—GENERAL REQUIREMENTS

■ 56. The authority citation for part 110 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

PART 117—FLIGHT AND DUTY LIMITATIONS AND REST REQUIREMENTS: FLIGHTCREW MEMBERS

■ 57. The authority citation for part 117 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46901, 44903–44904, 44912, 46105.

PART 120—DRUG AND ALCOHOL TESTING PROGRAM

■ 58. The authority citation for part 120 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101–40103, 40113, 40120, 41706, 41721, 44106, 44701, 44702, 44703, 44709, 44710, 44711, 45101–45105, 46105, 46306.

Subpart E—Drug Testing Program Requirements

§ 120.117 Implementing a drug testing program.

■ 59. Amend § 120.117 by:
■ a. In paragraphs (a) through (d) removing the term ''an Antidrug and Alcohol Misuse Prevention Program'' and adding in its place the term ''a Drug and Alcohol Testing Program''; and
■ b. in paragraphs (d)(2) through (4) by removing the term ''Antidrug and Alcohol Misuse Prevention Program'' and adding in its place the term ''Drug and Alcohol Testing Program''.

Subpart F—Alcohol Testing Program Requirements

§ 120.225 [Amended]

■ 60. Amend § 120.225 by
■ a. In paragraphs (a) through (d) removing the term ''an Antidrug and Alcohol Misuse Prevention Program'' and adding in its place the term ''a Drug and Alcohol Testing Program''; and
■ b. In paragraphs (d)(2) through (4) removing the term ''Antidrug and Alcohol Misuse Prevention Program'' and adding in its place the term ''Drug and Alcohol Testing Program''.

PART 125—CERTIFICATION AND OPERATIONS: AIRCRAFT HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 61. The authority citation for part 125 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

■ 62. The authority citation for part 133 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44702.

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

■ 63. The authority citation for part 137 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40103, 40113, 44701–44702.

PART 150—AIRPORT NOISE COMPATIBILITY PLANNING

■ 64. The authority citation for part 150 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44715, 47101, 47501–47504.

PART 151—FEDERAL AID TO AIRPORTS

■ 65. The authority citation for part 151 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 47151, 47153.

PART 152—AIRPORT AID PROGRAM

■ 66. The authority citation for part 152 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 47106, 47127.

PART 153—AIRPORT OPERATIONS

■ 67. The authority citation for part 153 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, and 44701.

PART 155—RELEASE OF AIRPORT PROPERTY FROM SURPLUS PROPERTY DISPOSAL RESTRICTIONS

■ 68. The authority citation for part 155 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 47151–47153.

PART 156—STATE BLOCK GRANT PILOT PROGRAM

■ 69. The authority citation for part 156 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 47101, 47128; 49 CFR 1.47(f), (k).

PART 157—NOTICE OF CONSTRUCTION, ALTERATION, ACTIVATION, AND DEACTIVATION OF AIRPORTS

■ 70. The authority citation of part 157 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40103, 40113, 44502.

PART 158—PASSENGER FACILITY CHARGES (PFC'S)

■ 71. The authority citation of part 158 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40116–40117, 47106, 47111, 47114–47116, 47524, 47526.

PART 161—NOTICE AND APPROVAL OF AIRPORT NOISE AND ACCESS RESTRICTIONS

■ 72. The authority citation of part 161 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 47523–47527, 47533.

PART 169—EXPENDITURE OF FEDERAL FUNDS FOR NONMILITARY AIRPORTS OR AIR NAVIGATION FACILITIES THEREON

■ 73. The authority citation of part 169 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101–40107, 40113–40114, 44501–44502, 46104, 47122, 47151–47153, 47302–47306.

PART 170—ESTABLISHMENT AND DISCONTINUANCE CRITERIA FOR AIR TRAFFIC CONTROL SERVICES AND NAVIGATIONAL FACILITIES

■ 74. The authority citation of part 170 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40103–40107, 40113, 44502, 44701–44702, 44708–44709, 44719, 44721–44722, 46308.

PART 171—NON-FEDERAL NAVIGATION FACILITIES

■ 75. The authority citation of part 171 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40103–40107, 40109, 40113, 44502, 44701–44702, 44708–44709, 44711, 44719–44721, 45303, 46308.

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

■ 76. The authority citation of part 183 is revised to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(f), 40113, 44702, 45303.

PART 185—TESTIMONY BY EMPLOYEES AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS, AND SERVICE OF LEGAL PROCESS AND PLEADINGS

■ 77. The authority citation of part 185 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113–40114, 46104; 49 CFR part 9.

PART 187—FEES

■ 78. The authority citation of part 187 is revised to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(f), 106(l)(6), 40104–40105, 40109, 40113–40114, 44702, 45301.

PART 189—USE OF FEDERAL AVIATION ADMINISTRATION COMMUNICATIONS SYSTEM

■ 79. The authority citation of part 189 is revised to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(f), 40104, 40113, 44502, 45303.

PART 193—PROTECTION OF VOLUNTARILY SUBMITTED INFORMATION

■ 80.The authority citation of part 193 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 40123.

PART 198—AVIATION INSURANCE

■ 81. The authority citation of part 198 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44301–44310; 49 CFR 1.47(b).

PART 450—LAUNCH AND REENTRY LICENSE REQUIREMENTS

■ 82. The authority citation for part 450 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

Subpart C—Safety Requirements

§ 450.117 [Amended]

■ 83. Amend § 450.117 in paragraph (d)(4) by adding a comma after the word ''position''.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Bryan K. Bedford,

Administrator.

[FR Doc. 2026–23786 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–12310; Airspace Docket No. 26–ASW–15]

RIN 2120–AA66

Amendment of Class E Airspace; Del Rio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Del Rio, TX. This action is the result of a biennial review of the airspace associated with Laughlin Air Force Base (AFB), Del Rio, TX. This proposal also updates the name and geographic coordinates of Laughlin AFB to coincide with the FAA's aeronautical database. This action brings the airspace into compliance with FAA orders and supports instrument flight rule (IFR) procedures and operations.

DATES: Effective 0901 UTC, February 18, 2027. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FAA Order JO 7400.11M, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Airspace Regulation Group, Operational

Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA–2026–12310 in the **Federal Register** (91 FR 60909; September 25, 2026) proposing to amend the Class E airspace at Del Rio, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraphs 6003 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11M, dated July 30, 2026, and effective September 15, 2026. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11M, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Rule

This action amends 14 CFR part 71 by modifying the Class E airspace designated as an extension to a Class C surface area and the Class E airspace extending upward from 700 ft. above the surface at Del Rio, Texas due to a biennial review of the airspace associated with Laughlin AFB, Del Rio, Texas.

For the Laughlin AFB Class E airspace designated as an extension to a Class C surface area, this action: (1) removes the extension north of the airport from the airport legal description as it is no longer required; (2) removes the extension from the 060° radial of the Laughlin VORTAC clockwise to the 195° radial, extending from the 5-mile radius of Laughlin AFB to the 5.5-mile radius as it is no longer required; (3) amends the extension southeast of the airport to extending southeast from the 5-mile radius of Laughlin AFB within 1-mile each side of the line from SWANT to MINNM and 1-mile each side of the 150° bearing from MINNM to 8 miles southeast of MINNM, excluding Mexican airspace (previously, 2.6 miles each side of the 145° radial of the Laughlin VORTAC extending from the 5.5-mile radius of Laughlin AFB to 6.6 miles southeast of the airport); (4) amends the extension northwest of Laughlin AFB to within 2 miles (previously 2.6 miles) each side of the 305° bearing (previously radial) from the Laughlin VORTAC extending from the 5-mile radius of Laughlin AFB to 10.5 miles (previously 6.6 miles) northwest of Laughlin AFB; (4) adds an extension within 1.8 miles each side of the 315° bearing from Laughlin AFB: RWY 13C–LOC extending from the 5-mile radius of Laughlin AFB to 11.5 miles northwest of Laughlin AFB; (5) removes the extension from the 333° radial of Laughlin VORTAC as it is no longer required; (6) removes the city associated with the airport to comply with changes to FAA Order JO 7400.2R, Procedures for Handling Airspace Matters; (7) updates the geographic coordinates of Laughlin AFB to coincide with the FAA's aeronautical database; and (8) updates the outdated term ''Airport/Facility Directory'' with ''Chart Supplement.''

For the Laughlin AFB Class E airspace extending upward from 700 ft. above the surface, this action: (1) reduces the radius to within a 7.4-mile (previously 20 miles) radius of Laughlin AFB, excluding Mexican airspace; (2) adds an extension within 2 miles each side of the 135° bearing from the Laughlin AFB: RWY 31C–LOC extending from the 7.4-mile radius of Laughlin AFB to 11.4 miles southeast of Laughlin AFB; (3) adds an extension within 1.9 miles each side of the 149° bearing from the Laughlin VORTAC extending from the 7.4-mile radius of Laughlin AFB to 11.4 miles southeast of Laughlin AFB; (4) adds an extension extending southeast from the 7.4-mile radius of Laughlin AFB within 1 mile each side of line from SWANT to MINNM to OTULE, excluding Mexican airspace; (5) adds an extension within 2 miles each side of the 305° bearing from the Laughlin VORTAC extending from the 7.4-mile radius of Laughlin AFB to 11.5 miles northwest of Laughlin AFB; (6) adds an extension within 2 miles each side of the 315° bearing from the Laughlin AFB: RWY 13C–LOC extending from the 7.4-mile radius to 11.5 miles northwest of Laughlin AFB; (7) removes the city associated with the airport in the header to comply with changes to FAA Order JO 7400.2R; and (8) updates the name of the airport to Laughlin AFB (previously Laughlin ABF) to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026, and effective September 15, 2026, is amended as follows:

Paragraph 6003 Class E Airspace Areas Designated as an Extension.

* * * * *

ASW TX E3 Del Rio, TX [Amended]

Laughlin AFB, TX
(Lat. 29°21′34″ N, long. 100°46′41″ W)
SWANT Waypoint
(Lat. 29°17′23″ N, long. 100°45′37″ W)
MINNM Waypoint
(Lat. 29°12′30″ N, long. 100°44′20″ W)
Laughlin VORTAC
(Lat. 29°21′39″ N, long. 100°46′18″ W)
Laughlin AFB: RWY 13C–LOC
(Lat. 29°20′52″ N, long. 100°45′57″ W)

That airspace extending upward from the surface extending southeast from the 5-mile radius of Laughlin AFB within 1 mile each side of line from SWANT to MINNM and 1 mile each side of the 150° bearing from MINNM to 8 miles southeast of MINNM, excluding Mexican airspace; and within 2 miles each side of the 305° bearing from the Laughlin VORTAC extending from the 5-mile radius of Laughlin AFB to 10.5 miles northwest of Laughlin AFB; and within 1.8 miles each side of the 315° bearing from Laughlin AFB: RWY 13C–LOC extending from the 5-mile radius of Laughlin AFB to 11.5 miles northwest of Laughlin AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

ASW TX E5 Del Rio, TX [Amended]

Laughlin AFB, TX
(Lat. 29°21′34″ N, long. 100°46′41″ W)
Laughlin AFB: RWY 31C–LOC
(Lat. 29°22′10″ N, long. 100°47′25″ W)
Laughlin VORTAC
(Lat. 29°21′39″ N, long. 100°46′18″ W)
SWANT Waypoint
(Lat. 29°17′23″ N, long. 100°45′37″ W)
MINNM Waypoint
(Lat. 29°12′30″ N, long. 100°44′20″ W)
OTULE Waypoint
(Lat. 29°04′42″ N, long. 100°39′17″ W)
Laughlin AFB: RWY 13C–LOC
(Lat. 29°20′52″ N, long. 100°45′57″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Laughlin AFB, excluding Mexican airspace; and within 2 miles each side of the 135° bearing from the Laughlin AFB: RWY 31C–LOC extending from the 7.4-mile radius of Laughlin AFB to 11.4 miles southeast of Laughlin AFB; and within 1.9 miles each side of the 149° bearing from the Laughlin VORTAC extending from the 7.4-mile radius of Laughlin AFB to 11.4 miles southeast of Laughlin AFB; and extending southeast from the 7.4-mile radius of Laughlin AFB within 1 mile each side of line from SWANT to MINNM to OTULE, excluding Mexican airspace; and withing 2 miles each side of the 305° bearing from the Laughlin VORTAC extending from the 7.4-mile radius of Laughlin AFB to 11.5 miles northwest of Laughlin AFB; and within 2 miles each side of the 315° bearing from the Laughlin AFB: RWY 13C–LOC extending from the 7.4-mile radius to 11.5 miles northwest of Laughlin AFB.

* * * * *

Issued in Fort Worth, Texas, on November 19, 2026.

Jerry J. Creecy,

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

[FR Doc. 2026–23836 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 12

[CBP Dec. 26–21]

RIN 1685–AA50

Extension of Import Restrictions Imposed on Archaeological and Ethnological Material of Egypt

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

ACTION: Final rule.

SUMMARY: This document amends U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain categories of archaeological and ethnological material from the Arab Republic of Egypt (Egypt), which were originally published in CBP Decision (CBP Dec.) 16–23, and subsequently extended and amended in CBP Dec. 21–17. The CBP regulations are being amended to reflect this further extension through November 30, 2031.

DATES: Effective on November 30, 2026.

FOR FURTHER INFORMATION CONTACT: For legal aspects, W. Richmond Beevers, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0084, *ototrrculturalproperty@cbp.dhs.gov.* For operational aspects, Christopher Mabelitini, Director, Intellectual Property Rights Policy & Programs, Trade Programs Directorate, Office of Trade, (571) 296–1269, *1USGBranch@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (CPIA), which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)) (the Convention), allows for the conclusion of an agreement between the United States and another party to the Convention to impose import restrictions on eligible archaeological and ethnological material. Under the CPIA and the applicable U.S. Customs and Border Protection (CBP) regulations, found in § 12.104 of title 19 of the Code of Federal Regulations (19 CFR 12.104), the restrictions are effective for no more than five years beginning on the date on which an agreement enters into force with respect to the United States (19 U.S.C. 2602(b)). This period may be extended for additional periods, each extension not to exceed five years, if it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); 19 CFR 12.104g(a)).

On November 30, 2016, the United States and the Arab Republic of Egypt (Egypt) entered into a Memorandum of Understanding (MOU) entitled ''Memorandum of Understanding between the Government of the United States of America and the Government of the Arab Republic of Egypt Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of the Arab Republic of Egypt'' (2016 MOU). The 2016 MOU reflected an agreement to impose import restrictions on certain archaeological material representing Egypt's cultural heritage ranging from

approximately 5,200 B.C. to A.D. 1517. On December 6, 2016, CBP published CBP Decision (CBP Dec.) 16–23 in the **Federal Register** (81 FR 87805), which amended 19 CFR 12.104g(a) to indicate the imposition of these restrictions and included a list designating the types of archaeological material covered by the restrictions.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists. Since the initial notice was published on December 6, 2016, the import restrictions have been extended once. On November 30, 2021, the Governments of the United States and Egypt entered into a new MOU, superseding the 2016 MOU, agreeing to amend the existing import restrictions on archaeological material and impose additional import restrictions on certain categories of ethnological material. Subsequently, CBP published a final rule (CBP Dec. 21–17) in the **Federal Register** (86 FR 68546) to reflect the 2021 MOU and extend the restrictions until November 30, 2026. To fulfill the terms of the new MOU, the Designated List of cultural property was amended in this document to reflect the addition and revision of categories of archaeological material of Egypt ranging in date from approximately 300,000 B.C. to A.D. 1750, and to include certain ethnological material ranging from A.D. 1517 to 1914.

On January 26, 2026, the United States Department of State proposed in the **Federal Register** (91 FR 3294), to extend the 2021 MOU between the United States and Egypt concerning the import restrictions on certain categories of archeological and ethnological material of Egypt. On August 6, 2026, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendations by the Cultural Property Advisory Committee, made the necessary determinations to extend the 2021 Agreement for an additional five years.

Subsequently, on November 9, 2026, the Governments of the United States and Egypt entered into a new bilateral agreement to extend the import restrictions on archaeological and ethnological material of Egypt. Pursuant to the new agreement, the import restrictions will remain in effect for an additional five-year period through November 30, 2031.

Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of these import restrictions. The restrictions on the importation of certain archaeological and ethnological material from Egypt are to continue in effect until November 30, 2031. Importation of such material from Egypt continues to be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

The Designated List, which includes archaeological material from Egypt ranging in date from approximately 300,000 B.C. to A.D. 1750, and certain ethnological material from Egypt ranging in date from A.D. 1517 to 1914, is set forth in CBP Dec. 21–17. The Designated List of restricted material and additional information may also be found at the following website address: *https://www.state.gov/current-agreements-and-import-restrictions,* by selecting the material for ''Egypt.''

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Executive Order 12866

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, disruptive impacts, and equity). CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Because a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Signing Authority

In accordance with Treasury Order 100–20, the Secretary of the Treasury has delegated to the Secretary of Homeland Security the authority related to the customs revenue functions vested in the Secretary of the Treasury as set forth in 6 U.S.C. 212 and 215, subject to certain exceptions. This regulation is being issued in accordance with Department of Homeland Security Delegation 07010.3, Revision 03.2, which delegates to the Commissioner of CBP the authority to prescribe and approve regulations related to cultural property import restrictions.

Rodney S. Scott, Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to Susan S. Thomas, the Executive Assistant Commissioner, Office of Trade, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, and Reporting and recordkeeping requirements.

Amendment to the CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific citation authority for

§ 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, amend the table in paragraph (a) by revising the entry for Egypt to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
* * * * * * *		
Egypt	Archaeological material representing Egypt's cultural heritage ranging approximately from 300,000 B.C. to A.D. 1750, and ethnological material ranging from A.D. 1517 to 1914.	CBP Dec. 21–17, extended by CBP Dec. 26–21.
* * * * * * *		

* * * * *

Susan S. Thomas,

Executive Assistant Commissioner, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2026–23795 Filed 11–20–26; 8:45 am]

BILLING CODE 9111–14–P

Proposed Rules

Federal Register
Vol. 91, No. 224
Monday, November 23, 2026

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–13823; Project Identifier MCAI–2026–00203–T]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes. This proposed AD was prompted by reports of two in-service events during takeoff where an internal failure of the integrated air system control (IASC) software analog-to-digital converter generated erroneous pressure digital values, leading to uncommanded full-speed closure of the outflow valve and a high negative cabin altitude rate. This proposed AD would require installing improved IASC software. This proposed AD would also prohibit the installation of affected software under certain conditions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 7, 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–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–13823; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2026–13823.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Jonathan Duong, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7362; email: *9-AVS-AIR-BACO-COS@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include ''Docket No. FAA–2026–13823; Project Identifier MCAI–2026–00203–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Jonathan Duong, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7362; email: *9-AVS-AIR-BACO-COS@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2026–0038, dated February 26, 2026 (EASA AD 2026–0038) (also referred to as the MCAI), to correct an unsafe condition for all ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes. The MCAI states that two in-service events revealed abnormal cabin pressure increase associated with a high negative cabin altitude rate during takeoff. The MCAI also states that subsequent investigations determined that an internal failure of the IASC analog-to-digital converter could generate erroneous pressure-sensor digital values and potentially trigger an uncommanded full-speed closure of the outflow valve (OFV). This condition, if not corrected, could cause excessive cabin altitude rate with potential

adverse physiological effects on passengers and crew.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–13823.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2026–0038 specifies procedures for installing improved IASC SW 5.0, part number (P/N) 71236A010401 or later-approved software, to replace IASC SW 3.1, P/N 71236A010201, on certain ATR72–212A airplanes, and to replace IASC SW 4.0, P/N 71236A010301, on certain ATR42–500 and certain other ATR72–212A airplanes. EASA AD 2026–0038 also prohibits the installation of affected IASC SW under certain conditions.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2026–0038 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2026–0038 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2026–0038 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2026–0038 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2026–0038. Material required by EASA AD 2026–0038 for compliance will be available at *regulations.gov* under Docket No. FAA–2026–13823 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 20 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 2 work-hours × $85 per hour = $170.	Up to $50,000	Up to $50,170	Up to $1,003,400.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

ATR–GIE Avions de Transport Régional:
Docket No. FAA–2026–13823; Project Identifier MCAI–2026–00203–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 7, 2027.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning system.

(e) Unsafe Condition

This AD was prompted by reports of two in-service events during takeoff where the integrated air system control (IASC) software analog-to-digital converter generated erroneous pressure digital values, leading to uncommanded full-speed closure of the outflow valve (OFV) and a high negative cabin pressurization rate. The FAA is issuing this AD to address uncommanded full-speed closure of the OFV caused by erroneous pressure-sensor digital values. The unsafe condition, if not addressed, could result in excessive cabin altitude rate with potential adverse physiological effects on passengers and crew.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2026–0038, dated February 26, 2026 (EASA AD 2026–0038).

(h) Exceptions to EASA AD 2026–0038

(1) Where EASA AD 2026–0038 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2026–0038 specifies ''in accordance with applicable ATR approved instructions'', this AD requires replacing that text with ''using a method approved by the Manager, International Validation Branch, FAA; or EASA; or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA) and, if approved by the DOA, the approval must include the DOA-authorized signature''.

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2026–0038.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2026–0038 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: *AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Additional Information

For more information about this AD, contact Jonathan Duong, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7362; email: *9-AVS-AIR-BACO-COS@faa.gov*.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2026–0038, dated February 26, 2026.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Issued on November 18, 2026.

Steven W. Thompson,

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

[FR Doc. 2026–23749 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–13826; Project Identifier MCAI–2025–01613–T]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all ATR–GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes. This proposed AD was prompted by a review of mooring loads that revealed that winds within the currently defined wind profiles could lead to loads exceeding the certification limits on the nose landing gear (NLG) and main landing gear (MLG) while the airplane is moored. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate a revised maintenance procedure (MP) for mooring the airplane. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 7, 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–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–13826; 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 ATR–GIE Avions de Transport Régional material identified in this proposed AD, contact ATR–GIE Avions de Transport Régional, 1 Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; email *continued.airworthiness@atr-aircraft.com*; website *atr-aircraft.com*. It is also available at *regulations.gov* under Docket No. FAA–2026–13826.

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: John Massey, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7320; email: *9-AVS-AIR-BACO-COS@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include ''Docket No. FAA–2026–13826; Project Identifier MCAI–2025–01613–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to John Massey, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7320; email: *9-AVS-AIR-BACO-COS@faa.gov*. 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 European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2025–0223R1, dated October 28, 2025 (EASA AD 2025–0223R1) (also referred to as the MCAI), to correct an unsafe condition on all ATR–GIE Avions de Transport Régional Model ATR 42–200, –300, –320, –400, and –500 airplanes and Model ATR 72–101, –102, –201, –202, –211, –212, and –212A airplanes. Model ATR 42–400 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that a review of mooring loads revealed that winds within the currently defined wind profiles could lead to loads exceeding the certification limits on the NLG and MLG while the airplane is moored. This condition, if not addressed, could lead to damage to the NLG steering and retraction systems, which could result in loss of control of the airplane on the ground; and damage to the forward and aft MLG mooring lugs, which could result in MLG mooring lug failure and injury to maintenance personnel during jacking or de-bogging procedures. The MCAI prohibits accomplishing any maintenance action on aircraft using any ATR42 MP task dated earlier than March 18, 2025; or ATR72 MP task dated earlier than August 20, 2025, as applicable.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–13826.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed ATR Job Card Package Title ATR42 MP ATR–A–10–2X–XX–00001–17AA–A, ''Mooring,'' Issue Number 003, dated July 1, 2025, and ATR Job Card Package Title ATR72 MP ATR–A–10–2X–XX–00001–17AA–A, ''Mooring,'' Issue Number 004, dated January 1, 2026. This material specifies procedures for mooring the airplane and contains the updated wind speed limit of more than 65 knots in any direction. These documents are distinct because they apply to different airplane models.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI and material referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate a revised MP for mooring the airplane.

Interim Action

The FAA considers that this proposed AD would be an interim action. If final action is later identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 45 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

ATR–GIE Avions de Transport Régional: Docket No. FAA–2026–13826; Project Identifier MCAI–2025–01613–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 7, 2027.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all ATR–GIE Avions de Transport Régional airplanes, certificated in any category, as identified in paragraphs (c)(1) and (2) of this AD.

(1) Model ATR42–200, –300, –320, and –500 airplanes.

(2) Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 10, Parking, mooring, and storage.

(e) Unsafe Condition

This AD was prompted by a review of mooring loads that revealed that winds within the currently defined wind profiles could lead to loads exceeding the certification limits on the nose landing gear (NLG) and main landing gear (MLG) while the airplane is moored. The FAA is issuing this AD to address loads exceeding the certification limits on the NLG and MLG while the airplane is moored. The unsafe condition, if not addressed, could lead to damage to the NLG steering and retraction systems, which could result in loss of control of the airplane on the ground; and damage to the forward and aft MLG mooring lugs, which could result in MLG mooring lug failure and injury to maintenance personnel during jacking or de-bogging procedures.

(f) Compliance

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

(g) Revision of Existing Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the material identified in paragraphs (g)(1) and (2) of this AD, as applicable.

(1) ATR Job Card Package Title ATR42 MP ATR–A–10–2X–XX–00001–17AA–A, ''Mooring,'' Issue Number 003, dated July 1, 2025.

(2) ATR Job Card Package Title ATR72 MP ATR–A–10–2X–XX–00001–17AA–A, ''Mooring,'' Issue Number 004, dated January 1, 2026.

(h) Provisions for Alternative Actions

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions are allowed unless they are approved as specified in paragraph (i)(1) of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: *AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

For more information about this AD, contact John Massey, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7320; email: *9-AVS-AIR-BACO-COS@faa.gov*.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) ATR Job Card Package Title ATR42 MP ATR–A–10–2X–XX–00001–17AA–A, ''Mooring,'' Issue Number 003, dated July 1, 2025.

(ii) ATR Job Card Package Title ATR72 MP ATR–A–10–2X–XX–00001–17AA–A, ''Mooring,'' Issue Number 004, dated January 1, 2026.

(3) For ATR–GIE Avions de Transport Régional material identified in this AD, contact ATR–GIE Avions de Transport Régional, 1 Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; email *continued.airworthiness@atr-aircraft.com*; website *atr-aircraft.com*.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Issued on November 18, 2026.

Steven W. Thompson,

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

[FR Doc. 2026–23752 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–15115; Airspace Docket No. 26–ASW–18]

RIN 2120–AA66

Establishment of Class E Airspace; Columbus, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Columbus Community Hospital Heliport, Columbus, TX. The FAA is proposing this action to support new instrument procedures and instrument flight rule (IFR) operations.

DATES: Comments must be received on or before January 7, 2027.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2026–15115 and Airspace Docket No. 26–ASW–18 using any of the following methods:

* *Federal eRulemaking Portal*: Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W58–213, West Building, 5th Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W58–213 of the West Building, 5th Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W58–213 of the West Building, 5th Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11M, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Airspace Regulation Group, Operational Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Raul Garza Jr, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Columbus Community Hospital Heliport, Columbus, TX, to support IFR operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice (DOT/ALL–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operation). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11M, dated July 30, 2026, and effective September 15, 2026. These updates would be published subsequently in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11M, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would establish Class E airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Columbus Community Hospital Heliport, Columbus, TX.

This action is the result of instrument procedures being developed for this airport to support IFR operations.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1G, ''FAA National Environmental Policy Act Implementing Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026, and effective September 15, 2026, is amended as follows:

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

* * * * *

ASW TX E5 Columbus, TX [Establish]

Columbus Community Hospital Heliport, TX
(Lat. 29°41′43″ N, long. 96°32′38″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Columbus Community Hospital Heliport.

* * * * *

Issued in Fort Worth, Texas, on November 18, 2026.

Jerry J. Creecy,

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

[FR Doc. 2026–23838 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–14224; Airspace Docket No. 26–ANE–8]

RIN 2120–AA66

Amendment of Class D and E Airspace and Removal of Class E Airspace Over Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D and Class E airspace over Lebanon, NH. This action would increase the lateral dimensions of the Lebanon, NH, Class D airspace to appropriately contain Instrument Flight Rules (IFR) operations at the Lebanon Municipal Airport. This action would also update verbiage in the Class D airspace legal description to comply with current FAA guidance. This action would also update the geographic coordinates for the airport in both the Class D and Class E5 airspace legal descriptions. This action would also remove the exclusions for adjacent Class E5 airspace from the Lebanon, NH, Class E5 airspace legal description. This action would also remove the Lebanon, NH, Class E4 airspace, which is no longer necessary for IFR operations at the airport.

DATES: Comments must be received on or before January 7, 2027.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2026–14224 and Airspace Docket No. 26–ANE–8 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:* Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W58–213, West Building, 5th Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W58–213 of the West Building, 5th Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.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, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

FAA Order JO 7400.11M, Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Airspace Regulation Group, Operational Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Marc Ellerbee, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5589.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edits, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during regular business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA, 30337.

Incorporation by Reference

Class D and Class E airspace designations are published in paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11M, dated July 30, 2026, and effective September 15, 2026. These updates would be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11M, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Proposal

This action proposes to amend 14 CFR part 71 by modifying Class D and Class E airspace over Lebanon, NH. An evaluation of the Lebanon, NH, Class D and Class E airspace revealed a need for an increase to the dimensions of the Class D airspace as well as a removal of the associated Class E4 airspace in order to appropriately contain IFR operations at Lebanon Municipal Airport. This action would increase the lateral dimensions of the Lebanon, NH, Class D airspace to within a 4.8-mile radius of Lebanon Municipal Airport; and within 1.3 miles each side of the 349° bearing from the airport extending from the 4.8-mile radius to 6.4 miles north of the airport; and within 1.1 miles each side of the 058° bearing from the airport extending from the 4.8-mile radius to 6.5 miles northeast of the airport; and within 1.1 miles each side of the 182° bearing from the airport extending from the 4.8-mile radius to 5.6 miles south of the airport; and within 1.2 miles each side of the 225° bearing from the airport extending from the 4.8-mile radius to 5.3 miles southwest of the airport.

This action would also remove the Lebanon, NH, Class E4 airspace. This action would also update the superseded term ''Airport/Facility Directory'' to ''Chart Supplement'' in the Lebanon, NH Class D airspace legal description. This action would also update the geographic coordinates of the airport in the Class D and Class E5 airspace legal descriptions from (lat. 43°37′35″ N, long. 72°18′15″ W) to (lat. 43°37′34″ N, long. 72°18′15″ W), which is one second of latitude. This action would also remove the exclusions for the adjacent Class E5 airspace from the Class E5 airspace legal description to comply with current FAA guidance.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1G, ''FAA National Environmental Policy Act Implementing Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026, and effective September 15, 2026, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANE NH D Lebanon, NH [Amended]

Lebanon Municipal Airport, NH
(Lat. 43°37′34″ N, long. 72°18′15″ W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.8 mile radius of Lebanon Municipal Airport; and within 1.3 miles each side of the 349° bearing from the airport extending from the 4.8-mile radius to 6.4 miles north of the airport; and within 1.1 miles each side of the 058° bearing from the airport extending from the 4.8-mile radius to 6.5 miles northeast of the airport; and within 1.1 miles each side of the 182° bearing from the airport extending from the 4.8-mile radius to 5.6 miles south of the airport; and within 1.2 miles each side of the 225° bearing from the airport extending from the 4.8-mile radius to 5.3 miles southwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

ANE NH E4 Lebanon, NH [Remove]

* * * * *

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

* * * * *

ANE NH E5 Lebanon, NH [Amended]

Lebanon Municipal Airport, NH
(Lat. 43°37′34″ N, long. 72°18′15″ W)

That airspace extending upward from 700 feet above the surface within a 17-mile radius of Lebanon Municipal Airport and extending to 19.5 miles clockwise between the 034° bearing and the 134° bearing from the Lebanon Municipal Airport.

* * * * *

Issued in College Park, Georgia, on November 19, 2026.

Gregory R. Garmon,

Acting Manager, Airspace and Procedures North Team, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2026–23824 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–13–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2400

Regulations Implementing the Privacy Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Review Commission (OSHRC) is proposing revisions to its regulations implementing the Privacy Act of 1974. The proposed amendments to the Privacy Act regulations provide additional information on how to submit a Privacy Act request and revise the requirements for verifying a requester's identity.

DATES: Comments must be received by OSHRC on or before December 23, 2026.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: OSHRC_Privacy@oshrc.gov*. Include ''Notice of proposed rulemaking, 29 CFR part 2400'' in the subject line of the message.
- *Mail:* Occupational Safety and Health Review Commission, ATTN: Privacy Officer, One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457.
- *Hand Delivery/Courier:* same as mailing address.

Instructions: All submissions must include your name, return address, and email address, if applicable. Please clearly label submissions as ''Notice of proposed rulemaking, 29 CFR part 2400.''

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Senior Attorney Advisor, Office of General Counsel, by telephone at (202) 606–5410 or by email at *OSHRC_Privacy@oshrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Revisions to Part 2400

OSHRC's regulations, 29 CFR part 2400, that implement the Privacy Act of 1974, 5 U.S.C. 552a, were promulgated on January 19, 1979, 44 FR 3968, and revised on April 30, 1993, 58 FR 26065, September 29, 2006, 71 FR 57421, and October 15, 2020, 85 FR 65221.

OSHRC proposes revising paragraph (a)(1) of 29 CFR 2400.4 to include the use of email as an option for requesting access to Privacy Act records. The purpose of this proposed revision is to increase the ease with which a Privacy Act request can be submitted.

OSHRC proposes revising paragraph (a)(2) to correct a minor proofreading mistake.

OSHRC proposes revising paragraphs (c) and (d) to (1) require the same type of verification materials for Privacy Act requesters who seek access to records in person and those who seek access to records via mail; and (2) require that each Privacy Act requester provide a declaration in accordance with 28 U.S.C. 1746, affirming to his or her identity and to the fact that he or she understands the penalties for false statements pursuant to 18 U.S.C. 1001. The purpose of these proposed revisions is to ensure consistency and accountability in the verification process.

II. Statutory and Executive Order Reviews

Executive Order 12866: This proposed action is not a significant regulatory action subject to review by the Office of Management and Budget under E.O. 12866.

Executive Order 14192: This proposed action is not a regulatory action under E.O. 14192 because this action is not significant under E.O. 12866.

Executive Order 13132 and the Unfunded Mandates Reform Act of 1995: This proposed action does not have federalism implications as specified under E.O. 13132, nor does it contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act: The Chairman of OSHRC certifies under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed revisions to these rules would not have a significant economic impact on a substantial number of small entities. The only provision in part 2400 that could economically impact a small entity pertains to how OSHRC charges its Privacy Act fees, and the proposed revisions do not concern that provision. Moreover, when fees are assessed, the amounts are generally minimal; and it is not anticipated that the proposed amendments to other provisions within part 2400 would have any impact on the number of entities responsible for paying Privacy Act fees or the amounts of those fees. Finally, the Privacy Act's protections apply to ''individuals,'' which typically would not include ''small entities.'' For these reasons, a regulatory flexibility analysis is not required.

Paperwork Reduction Act of 1995: OSHRC has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because these proposed rules do not contain any information collection requirements that require the approval of OMB.

Congressional Review Act: These proposed revisions do not constitute a ''rule,'' as defined by the Congressional Review Act, 5 U.S.C. 804(3)(C), because they involve changes to agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

List of Subjects

Privacy.

Nadine N. Mancini,

Senior Agency Official for Privacy.

For the reasons stated in the preamble, OSHRC proposes to amend 29 CFR part 2400 as set forth below:

PART 2400—REGULATIONS IMPLEMENTING THE PRIVACY ACT

■ 1. The authority citation for part 2400 continues to read as follows:

Authority: 5 U.S.C. 552a(f); 5 U.S.C. 553.

§ 2400.4 [Amended]

■ 2. Amend § 2400.4 as follows:

■ a. Revise paragraph (a)(1) to read as follows:

§ 2400.4 Procedures for requesting notification of and access to personal records.

* * * * *

(a) *Submission of requests*—(1) *Manner.* An individual seeking information regarding the content of a system of records or access to a personal record in a system of records should submit a written request either in person or by mail to the Privacy Officer, OSHRC, One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457, or by email to the Privacy Officer at *OSHRC_Privacy@oshrc.gov*. A request may also be submitted to the FOIA Disclosure Officer in accordance with the procedures set forth at 29 CFR 2201.5(a). Such a request, however, must be identified as a ''Privacy Act Request.'' The FOIA Disclosure Officer will forward any request identified in this manner to the Privacy Officer for processing.

* * * * *

■ b. Add the word ''the'' before the words ''**Federal Register**'' in paragraph (a)(2).

■ c. Delete the words ''a signature, address, date of birth, place of birth, and'' in paragraph (c)(2).

■ d. Revise paragraphs (c)(3) and (d) to read as follows:

§ 2400.4 Procedures for requesting notification of and access to personal records.

* * * * *

(c) * * *

(3) Any individual seeking access to a record by mail or in person must also provide a declaration in accordance with 28 U.S.C. 1746, affirming to his or her identity and to the fact that he or she understands the penalties for false statements pursuant to 18 U.S.C. 1001.

(d) *Verification of guardianship.* The parent or guardian of a minor or an individual judicially determined to be incompetent and seeking to act on behalf of such minor or incompetent shall, in addition to establishing his or her own identity in accordance with the requirements of paragraph (c), establish the identity of the minor or other individual he or she represents and his or her own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

* * * * *

[FR Doc. 2026–23762 Filed 11–20–26; 8:45 am]

BILLING CODE 7600–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 8

[PS Docket No. 23–239, DA 26–1162; FR ID 377778]

Cybersecurity Labeling for Internet of Things

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Public Safety and Homeland Security Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) seeks comment on recommendations for the U.S. Cyber Trust Mark (USCTM) program, a voluntary cybersecurity labeling program for wireless consumer Internet of Things (IoT) products. The Bureau seeks comment on the design and placement of the FCC IoT Label, display of product registry information, certification renewal, post-market surveillance, and procedures for complaints, noncompliant products, and program administrators that withdraw or whose authority is terminated. These actions would support the establishment and effective administration of the USCTM program and provide consumers with accessible cybersecurity information about certified IoT products.

DATES: Comments are due on or before December 23, 2026; reply comments are due on or before January 7, 2027.

ADDRESSES: Interested parties may submit comments, identified by PS Docket No. 23–239, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Confidential Treatment. Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in § 0.459 of the Commission's rules. Casual claims of confidentiality are not accepted. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary's Office following the procedures set forth in 47 CFR 0.459. Redacted versions of confidential submissions may be filed via ECFS. Parties are advised that the FCC looks with disfavor on claims of confidentiality for entire documents. When a claim of confidentiality is made, a public, redacted version of the document should also be filed.

FOR FURTHER INFORMATION CONTACT: Tara B. Shostek, Attorney Advisor, (202) 418–8130, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau at *CyberTrustMark@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document (*Public Notice*) in PS Docket No. 23–239, DA 26–1162, released on October 27, 2026. The full text of this document is available at the following internet address: *https://docs.fcc.gov/public/attachments/DA-26-1162A1.docx.*

Providing Accountability Through Transparency Act. Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a

summary of this document will be available on *https://www.fcc.gov/proposed-rulemakings.*

Paperwork Reduction Act Analysis. This document may contain proposed new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on any information collections contained in this document, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Ex Parte Rules—Permit but Disclose. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

USCTM Label Requirements

The Lead Administrator's *Label Standard Cover Letter* introduces and describes the reasoning behind certain recommendations contained in the *Label Standard,* which provides stakeholder recommendations to inform the FCC IoT Label requirements for USCTM-certified products. In general, the *Label Standard* recommends definitions for key terms relevant to the label requirements, ''General Requirements for Display'' (including physical label design and dimensions and displaying the label online, in a catalog, via display collateral, and in product documentation), ''Marketing and Advertising,'' requirements, and proposals for the format and content for the QR code's ''Linked Information.'' Among other points, it recommends that the physical label shall be at least 1 inch by 2 inches and include the QR code and the Cyber Trust Mark, and have a minimum font size of 4 point font. It also specifies that the online cyber nutrition label should be presented in both English and Spanish. The *Label Standard Cover Letter* also explains that the *Label Standard* leverages CTA–2120, *Design Requirements for a Label for IoT Device Cybersecurity* (CTA–2120), finding ''that CTA 2120 provides for a straightforward, clear, flexible (*i.e.,* vertical or horizontal layout) label design, including the necessary considerations to ensure a resolvable QR code (*i.e.,* proper white space and sizing).'' A user must follow a process similar to purchasing a product to view this standard, but we note it is available at zero cost. We propose to adopt the Lead Administrator's recommendations, with modifications as discussed below, and seek comment on this proposal. In addition to the proposed label requirements, CLAs and manufacturers must also agree to abide by a Trademark Use Agreement and accompanying branding guidance. The *IoT Labeling Order* and this Public Notice interchangeably refer to entities authorized to use the FCC IoT Label as manufacturers and grantees and, at times, as applicants. The *Label Standard* and *Renewal and Surveillance Document* refer to manufacturers as ''grantees.''

General Requirements for Label Display

The *Label Standard* recommends USCTM-certified products include the label on their packaging, either printed directly on the packaging or applied as an adhesive sticker. The *Label Standard* also recommends ''[t]o build consumer trust in the Label and the registry content, the URL access via the QR code should be government hosted.'' We seek comment on these recommendations and generally on any actions we should consider regarding how the label is displayed. What steps should we take to protect the integrity of and consumer confidence in the FCC IoT Label and to discourage counterfeit usage and unauthorized reproduction beyond trademark infringement enforcement (*e.g.,* watermarking)?

On-Package Label Design (2.1.1) (We include these numbers to help readers find the corresponding sections in the *Label Standard* and *Renewal and Surveillance Document*). The *Label Standard* provides recommendations regarding the design of the on-package (''physical'') label. It proposes that we base the label design requirements on CTA–2120 and incorporate CTA–2120 by reference into the USCTM Program requirements. The *Label Standard Cover Letter* notes that the Office of Management and Budget (OMB) encourages the federal government to adopt private sector-developed consensus standards, where those standards meet the government's purposes. Thus, we propose to adopt the *Label Standard* recommendations that the physical label design contain the QR code and ''Bounding Box'' as specified in CTA–2120. We also propose to adopt the *Label Standard* recommendation that the label's minimum font size should be 4 point font to provide flexibility to manufacturers displaying the physical label on their products. However, we note that CTA–2120's description of the physical label references a minimum font size of 5 point for legibility. We seek comment on this proposal and, specifically, whether the minimum font size for the label should be 4 point or 5 point font. Further, CTA–2120 specifies two potential orientations of the physical label: a ''Horizontal Layout'' and a ''Vertical Layout,'' and includes technical QR Code specifications, which rely on international standards for QR codes and related printed symbols. We believe it promotes flexibility for both orientations to be permissible and propose to adopt this recommendation accordingly. To see a visual of these proposed orientations, we recommend commenters review CTA–2120.

The *Label Standard* recommends that, if an adhesive label is used, a URL, in addition to the QR code, should be printed on the label. We note that this recommendation is based on the assumption that the domain will be a ''.gov'' and thus, including the URL on the adhesive label furthers the goal of building consumer trust in the label and the registry content. CTA–2120 also specifies a ''URL Zone'' on the label with related content, scaling, and constraint parameters, which the *Label Standard* also recommends we adopt. CTA–2120 provides a graphic of its proposed ''URL Zone,'' which we encourage commenters to review. While the *IoT Labeling NPRM* sought comment on whether to include both a non-internet connected QR code and an internet-connected URL on the label, the *IoT Labeling Order* ultimately concluded that a QR code-embedded URL (one that links to a dynamic database of information) provides a simple way for consumers to access additional and current security information about the IoT product than what the label itself signifies. We seek comment on whether allowing for a printed URL in certain circumstances would conflict with the Commission's conclusion in the *IoT Labeling Order.* If not, under what circumstances should manufacturers also include a printed URL on the label (in addition to the QR code). For example, if adopted, should this requirement apply only to adhesive labels? If so, why? Should any such requirement apply to smaller IoT products that may be unable to accommodate a 1-inch by 2-inch label or in situations where there is no flat surface to support the scanning of a QR code? Should the inclusion of a URL be at the discretion of the entity authorized to use the FCC IoT Label? Is there a risk of consumer confusion if certain packages include a URL while others do not?

We also seek comment generally on whether CTA–2120 sufficiently addresses the FCC IoT Label requirements (*e.g.,* QR code design and label design (*e.g.,* size, white spaces), label placement (*e.g.,* products where consumers may not see product packaging and products that do not have sufficient flat space to support a readable QR code)) and why. We note that some ''stakeholders expressed concern about adopting a private sector developed consensus standard, noting that paid membership is required for participating on the CTA technical committee, and that that may be infeasible for some stakeholders.'' We seek comment on these concerns. We also do not propose to incorporate CTA–2120 by reference in its entirety at this time.

On-Package Label Dimensions (2.1.2). The *Label Standard* recommends the FCC IoT Label be at least 1-inch by 2-inches, noting that ''[l]abel size is a critical consideration'' and emphasizing that the label must be practical, flexible, recognizable, and legible. To allow additional flexibility for manufacturers to choose the label design and configuration that best fits their packaging and distributor needs, the *Label Standard* recommends three alternative options for smaller products that may be unable to accommodate a 1-inch by 2-inch label, which they believe will not impact consumer recognition of the label or decrease its utility in educating consumers about the program and the IoT product:

- 1-inch by 1-inch label with the U.S. Cyber Trust Mark stylized shield logo and without the ''U.S. Cyber Trust Mark'' text; or
- 5/8-inch by 5/8-inch label with U.S. Cyber Trust Mark stylized shield logo included within a QR Code frame; or
- Where a product package has no single flat surface to accommodate the above options, the on-package label may consist of only the U.S. Cyber Trust Mark stylized shield logo and URL.

We seek comment on these recommendations and the proposed space-saving alternatives, particularly concerning options that do not include a QR code. We note that the *IoT Labeling Order* conditioned approval to use the Cyber Trust Mark on the label also bearing the QR Code. The *IoT Labeling Order* also specified that the QR code should be ''scannable,'' and we acknowledge the potential for a QR code to be too small to be technically scannable. The *IoT Labeling Order* also noted that ''some types of products might be customarily displayed in ways that make a one-size-fits-all approach inappropriate'' and agreed that ''we must consider how the label may be placed in ways that will be helpful to a consumer.'' While the *IoT Labeling Order* was focused on larger-sized appliances in this context, we recognize that this flexibility may be equally appropriate for smaller-sized IoT products. However, given the *IoT Labeling Order* requires that products bearing the FCC IoT Label, which includes the Cyber Trust Mark, must also include the corresponding QR Code, we seek comment on whether the space-saving alternatives that propose to omit the QR code conflict with the Commission's rules. Should small products instead be required to display the full FCC IoT Label (including both the Cyber Trust Mark and the QR code) elsewhere alongside the product, either via display collateral, if sold in stores or online, as discussed below? Would doing so lead to consumer confusion or erosion of consumer trust? We encourage commenters to offer proposed visual examples of label design and configuration(s), which may include alternatives to the proposals recommended above.

Online or Catalog Display of Label (2.1.3). The *Label Standard* recommends that the web page displaying a USCTM-certified product sold directly to the consumer via an online retail platform or through a catalog (whether via the manufacturer or third party retailers), may include the Cyber Trust Mark or the text ''U.S. Cyber Trust Mark Certified'' with linked navigation to the product's cyber nutrition label. The recommendation also proposes that the cyber nutrition label should be accessed via a hypertext link, a clickable QR code, or a hyperlinked Cyber Trust Mark. As above, we seek comment on whether the proposed alternatives that do not include the full FCC IoT Label (Cyber Trust Mark and QR code) conflict with the Commission's rules.

(Alternatives to) On Product Display of Label (2.1.4). The *Label Standard* recommends that the FCC IoT Label can be attached separately via display collateral (such as a hangtag or placard) to an IoT product, either in addition to the label's inclusion on product packaging, or in lieu of product packaging where products are displayed for sale without it. We propose to include this option in the program's branding guidance and seek comment on this recommendation.

Label Included in Product Documentation (2.1.5). We seek comment on the *Label Standard* recommendation that the FCC IoT Label should be included within the product's online *or* physical documentation (*e.g.,* user guide), in anticipation of packaging disposal and the need for consumer access to the cyber nutrition label across the product's lifespan. We believe that this requirement should apply to both online *and* physical documentation in the event the physical documentation is lost or the information is updated. We propose to adopt this requirement, as modified, and seek comment.

Marketing and Advertising

The Label Standard recommends that where an IoT product has met the program's labeling requirements, the manufacturer should be permitted to also use the Cyber Trust Mark (with or without the QR code) in the marketing

and advertising of the USCTM-certified product (*e.g.,* point of sale display, booth displays at trade shows, or a box front/back) in line with the label requirements and other branding guidelines developed by the Bureau. We agree that displaying the Cyber Trust Mark in marketing and advertising would contribute to consumer recognition and public education about the program. However, as above, we seek comment on whether allowing display of the Cyber Trust Mark without the QR code might lead to confusion about the baseline cybersecurity of the USCTM-certified product. If so, should we require that manufacturers engaging in marketing or advertising include the scannable QR code? We note that because manufacturers are precluded from construing, claiming, or implying that the U.S. Cyber Trust Mark constitutes an FCC or U.S. government endorsement of the product displaying the label or QR code, the Trademark Use Agreement and branding guidance will also note those limitations.

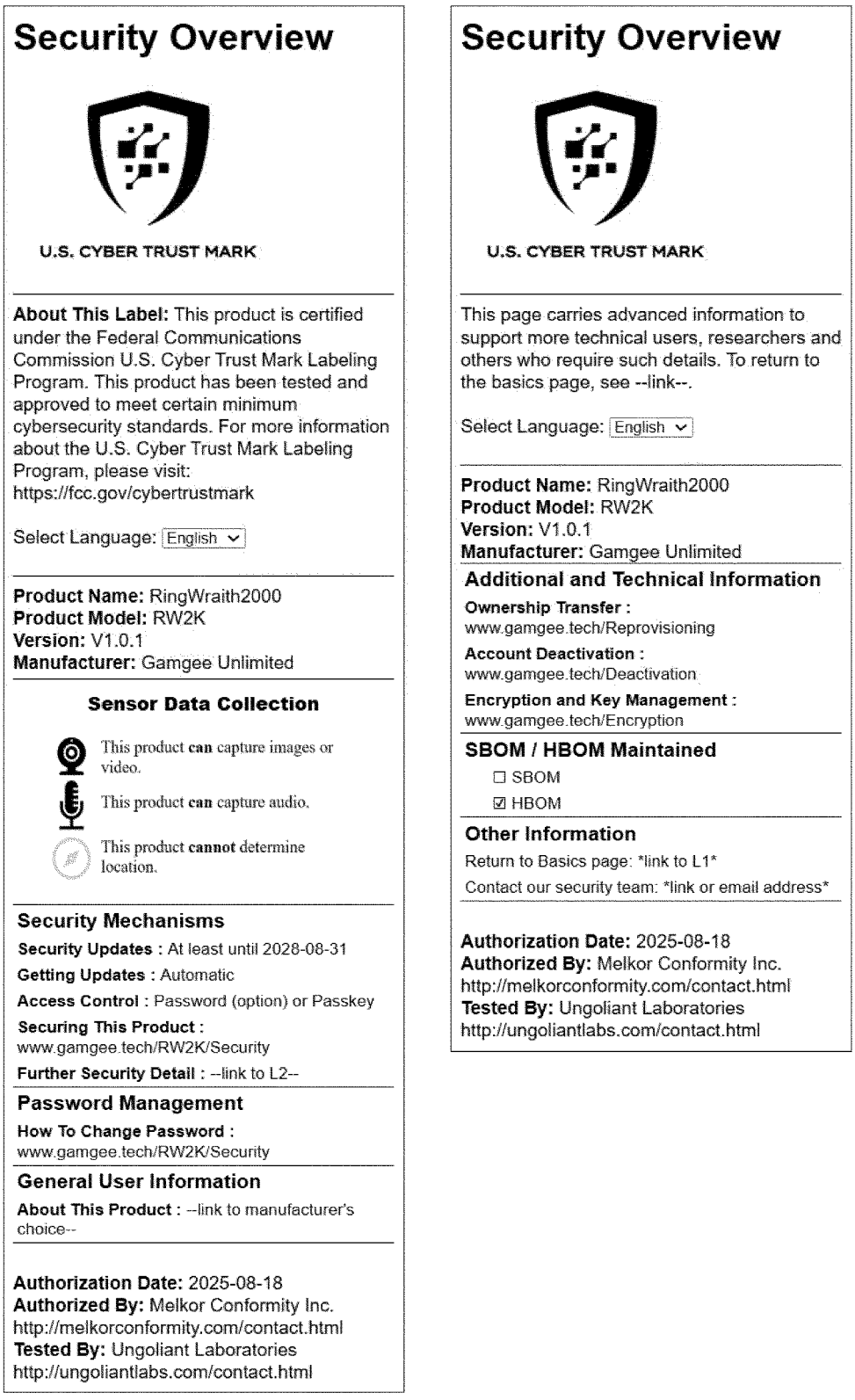
Linked Information

The *Label Standard* further leverages CTA–2120 in outlining a multi-layered label. The Stakeholder Committee found that ''in CTA 2120, the QR-code linked information required for the registry is presented in a 'nutrition label'-like format, which will be familiar to many consumers . . . and the format is also friendly for display on mobile devices.'' It explains that the label is comprised of the on-package design (''Layer 0'' or physical label) that links to the registry information presented to the consumer as the online cyber nutrition label. The nutrition label, in turn, consists of two layers in CTA–2120: ''Layer 1'' for consumer focused security information, and ''Layer 2'' for more technical users and researchers. ''Linked Information'' is defined as ''[t]he standardized information fields presented on pages for the Layers L1 and L2 of the Label. The *IoT Labeling Order* required that the QR code-linked product information for consumers include eleven ''essential'' security-related data elements and provided that the information be displayed to the consumer in a simple, uniform way. CTA–2120 defines how data fields are to be presented in Layers 1 and 2, along with a standardized Application Programming Interface (API) communication format. We seek comment on CTA–2120's proposed cyber nutrition label format as presented in Figure 2 of the *Label Standard,* and included below. We point out that Layer 1 of the CTA–2120 cyber nutrition label includes all of the elements required by the *IoT Labeling Order* except the requirement that the manufacturer disclose whether it maintains a Hardware Bill of Materials (HBOM) and/or a Software Bill of Materials (SBOM), which CTA–2120 presents on Layer 2. While many consumers may not understand the purpose of an HBOM/SBOM, we believe the *IoT Labeling Order* intended for all of the required data elements to appear on page one, or Layer 1 of the cyber nutrition label to ''reduce potential burdens and focus on essential information.'' As such, we propose to decline to remove this data element (whether the manufacturer maintains an HBOM/SBOM) from Layer 1. Further, the *IoT Labeling Order,* while noting that ''uniform registry elements will provide greater consistency for consumers and adoption of uniform registry elements is supported in the record'' also acknowledged ''the value in allowing manufacturers to include a second . . . page (following the consumer focused page) to enable manufacturers to provide additional technical details designed for researchers, enterprise purchasers, and other expert consumers of the label.'' We seek comment on whether the *IoT Labeling Order* intended to allow for a Layer 2 and on the additional proposed revisions detailed below.

The *Label Standard* provides the following graphic of the cyber nutrition label that includes Layer 1 and Layer 2 as the consumer would view the information:

BILLING CODE 6712–01–P

Figure 1: Cyber Nutrition Label with Layer 1 and Layer 2



BILLING CODE 6712–01–C

First, we note that the ''About This Label'' content states that ''[t]his product has been tested and approved to meet certain minimum cybersecurity standards.'' We seek comment on whether this statement should instead use the term ''*baseline* cybersecurity standards'' as that term is consistently used throughout the *IoT Labeling Order* and aligns with NISTIR 8425. NIST notes the core baseline is ''a starting point for manufacturers to use in identifying the cybersecurity capabilities their customers may expect from the IoT devices they create.'' In

this same section, Figure 2 provides a drop-down menu for the selected language. In this regard, the *IoT Labeling Order* tasked the Lead Administrator with submitting recommendations as to whether the registry information should be available in additional languages, and if so, to recommend specific languages for inclusion. The *Label Standard* notes that the Stakeholder Committee recommended that the relevant information should be presented in both English and Spanish to encourage use and adoption of the program. Where the cyber nutrition label links to external websites maintained by the manufacturer, the *Label Standard* recommends that the manufacturer must provide the translated text on those sites. Further, the recommendation indicates that providing the information in both languages ''should not pose a burden on manufacturers/label grantees because the HTML template for the linked information need only be translated into multiple languages once by the U.S. Cyber Trust Mark Program to ensure a consistent list of valid responses for each field, as specified in CTA 2120.'' We seek comment on these recommendations and on how best to ensure multilingual adaptability for the registry information and nutrition label.

Next, in response to the *IoT Labeling Order's* guidance that stakeholders consider the inclusion of certain security and privacy information on the cyber nutrition label (*e.g.,* sensor data collection), Figure 2 includes a ''Sensor Data Collection'' section. The majority of the Stakeholder Committee members concluded that three sensors—camera/video capability, audio capability, and location determination—would be of greatest interest to consumers and recommended that they be disclosed by the manufacturer, as provided on Layer 1. We agree that camera/video capability, audio capability, and location determination sensors should be disclosed and propose to adopt these disclosures, as recommended. We seek comment on this proposal and related symbols. Should these symbols comprise a standardized iconography set (consistent graphical icons) to indicate key features? If so, what standardized iconography set should be adopted? We also note that the icon for each of the three sensors are either bolded (if collected) or not bolded (if not collected) with a statement as to whether the IoT product ''can'' or ''cannot'' capture images/video/audio or determine location. We think these details are sufficiently descriptive to clearly identify to consumers the type of data the IoT product does or does not collect and seek comment on that determination.

Figure 2 next lists ''Security Mechanisms'' which includes the requirement that the cyber nutrition label include information about the product support end date under the heading ''Security Updates'' with the end date listed as: ''At least until [Year-Month-Day].'' We propose to modify the heading ''Security Updates'' to ''Support Period'' to clarify that the information includes (1) ''the support period and end date for the support period,'' as required by the *IoT Labeling Order,* and (2) updates beyond security updates. We seek comment on this proposal. We also do not propose to allow for links to external websites maintained by the manufacturer except where it is necessary to provide additional information on how to configure the device securely in this section (''Securing This Product'') of the cyber nutrition label. The Commission's rules require all essential registry data elements to be displayed in a ''simple, uniform way,'' and we believe allowing additional external links beyond this unique case where additional information may be required would conflict with the program's intent. We seek comment on this determination.

Additionally, when a certification has lapsed due to the failure to renew, program compliance issues, withdrawal, or inclusion of the IoT product on the FCC Covered List, the *Label Standard* recommends that the cyber nutrition label be replaced with the following notice: ''This product does not have a valid certification. If you would like to view information from when it was certified, please click here.'' We agree that it is important for consumers to know if an IoT product bearing the FCC IoT Label is no longer authorized to do so. To minimize consumer confusion and burdens on manufacturers, we propose that the notice should read: ''This product does not have a valid U.S. Cyber Trust Mark certification'' and include the reason (*e.g.,* failure to renew, withdrawal, inclusion on the FCC Covered List etc.). We seek comment on this proposal modification or an alternative statement for this purpose.

We also note that ''Security Mechanisms'' in Figure 2 includes the heading ''Getting Updates'' to comply with the *IoT Labeling Order* requirements, to include ''[i]nformation as to whether software updates and patches are automatic and how to access security updates/patches if they are not automatic.'' We believe ''Getting Updates'' is accurate, but we seek comment on any changes to the wording to more clearly reflect the details of this requirement. Similarly, we believe the headings ''Password Management,'' and ''How To Change Password,'' accurately reflect the *IoT Labeling Order* requirement to include ''[i]nstructions on how to change the default password [and] specifically state if the default password cannot be changed,'' but seek comment on whether the heading should be modified to more accurately describe instances where the password cannot be changed.

We ask commenters to provide feedback on whether any additional disclosures should be required for the cyber nutrition label, including whether physiological data will be collected, such as personally identifiable information, biometric, facial recognition, voice, fingerprints, or other behavioral data, and what icons or symbols should be required for those additional sensors, if any. We note that according to UL, a minority of the Stakeholder Committee members advocated for including radio frequency sensors and sensors that can collect physiological data, and recommended that, if physiological sensor information is required, then the relevant symbol provided in the Carnegie Mellon University Specification for CMU IoT Security and Privacy Label should be considered. Should these additional icons or symbols also be included in a standardized iconography set? If so, what standardized iconography set should be adopted? We ask commenters to address other changes that should be made to the cyber nutrition label format to promote consumer understanding and ease of use, including the appropriate visual hierarchy of essential elements on the cyber nutrition label.

FCC Trademark Use Agreement and Branding Guidance

Conditionally approved CLAs will only be approved to accept and process applications and authorize use of the FCC IoT Label after the CLA has satisfied certain conditions, including executing a Trademark Use Agreement with the Commission, among others. The Trademark Use Agreement outlines the rights and expectations of CLAs related to granting authorization to use the USCTM, including sub-licensing to authorized manufacturers or other agents, such as advertising agencies, sales agents, and retailers. CLAs and sub-licensees will also be required to abide by certain Cyber Trust Mark branding guidance that governs the format of the FCC IoT Label and nutrition label, among other requirements. To inform the branding

guidance, we seek comment on accessibility best practices for the nutrition label, including font readability, contrast ratios, and screen-reader compatibility for digital formats to ensure users with visual or other disabilities can access the nutrition label content. We also ask commenters to address alternative display formats for when the nutrition label is displayed on space-constrained or accessibility devices (*i.e.,* smart watches, smart glasses, earbuds with text-to-speech, devices with small screens) such as digital labels or text-to-speech available via setup apps or companion software. We also seek comment on permitting alternative orientations or color schemes of the physical label to fit with existing product branding or design constraints, as well as co-branding or co-display with other certification marks (*e.g.,* ETL Listed Mark, ISO Certified Mark) to reduce space usage and consumer confusion. We seek comment because we believe that these aspects of the brand guidance would benefit from public input and note that the Bureau may update that guidance from time to time without seeking comment unless doing so is required under the Administrative Procedure Act. Similarly, the Trademark Use Agreement itself is a living agreement that may be periodically and unilaterally amended by the FCC (with written notice to the signing parties). We find that this approach gives the USCTM Program flexibility to adapt to changing market needs.

Certification Renewal and Post-Market Surveillance Requirements

The Lead Administrator's *Renewal and Surveillance Document* offers recommendations to enable effective program oversight and accountability and to ensure grantees continually comply with all program requirements and updates thereto. It defines relevant key terms and recommends requirements for four processes: Certification Renewal, Post-Market Surveillance, Ad-Hoc Surveillance, and Complaint Handling. Among other points, it recommends how often grantees should be required to renew their authorization to bear the Mark and the processes required to do so (including a ''Qualified Professional'' role), post-market surveillance activities CLAs must conduct and grantees must participate in, follow-up actions following instances of non-compliance, random audits after certain precipitating events, and processes to receive and respond to complaints. We seek comment on these recommendations in general, and with proposed changes detailed below, including related definitions.

Initial Application and Certification Renewal

Initial and Renewal Applications. The *IoT Labeling Order* delegated authority to the Bureau to develop the application that manufacturers will use to request initial authority from a CLA to use the FCC IoT Label. We expect that the information manufacturers will include in their initial application for authority to use the FCC IoT Label will be similar to the information in their renewal application. As such, we first propose that, in addition to the information currently required by § 8.208, each initial application to use the FCC IoT Label shall include, at a minimum: the applicant's name, address, telephone number(s), email address(es), and website(s); contact information for personnel responsible for the application; the name and address of the agent located in the United States designated by the applicant to receive service of process in the U.S.; the product name and type; the signed technical test report provided by an accredited and recognized CyberLAB. We anticipate each CLA will have its own electronic application submission processes and that adopting a required application format could interfere with CLA's established electronic processes. As such, we believe that describing the data elements that are required to be submitted to support the application satisfies this delegation of authority and we seek comment on this belief.

Although the *Renewal and Surveillance Document* does not describe what information applicants must provide to the CLA to initiate a renewal certification process, we propose that applicants filing for renewal certification should additionally provide the following: the date(s) on which each grantee received each authorization to use the Cyber Trust Mark; the authorizing CLA (if different); a description of changes to the IoT product since it was last evaluated; and a copy of all document(s) related to the granting of authorization to the grantee to use the Cyber Trust Mark, including the original application and all CyberLAB report(s). Below, we propose to require manufacturers to submit a test report conducted by a CyberLAB, as part of its renewal, that demonstrates that the product was tested against any new or revised USCTM Program requirements and 70% of the remaining requirements as part of their renewal application. We seek comment on whether this information provides CLAs sufficient data to manage and evaluate applications for initial and renewal applications for authorization to use the Cyber Trust Mark. If not, what additional information should be provided? As an alternative to certification renewal, would a term agreement on how long the Cyber Trust Mark may be used (subject to Commission renewal) in the Trademark Use Agreement and mechanisms for compliance with existing rules suffice? What are the related costs and benefits versus requiring a renewal?

Renewal Period. As recommended, the certification renewal process would confirm that the product continues to comply with the requirements applicable at the time of the initial authorization, as well as any new or revised requirements adopted since the initial certification or previously conducted renewal. The *Renewal and Surveillance Document* recommends that grantees renew their certification every five years with an approved CLA. The *Renewal and Surveillance Cover Letter* explains that the Stakeholder Committee's preference for a five-year renewal period reflected concerns that a lesser period (*e.g.,* three years) ''would be overly burdensome on manufacturers and negatively impact program participation.'' Nevertheless, the *Renewal and Surveillance Cover Letter* separately recommends the Bureau consider whether a three-year renewal cycle is ''*more* appropriate for a new program that is targeting evolving cybersecurity risks and seeking to build consumer trust,'' noting that three years is the typical timeframe for many cybersecurity certification programs currently in use globally.

We are concerned that a five-year renewal period does not adequately align with the fast-paced nature of IoT threat evolution, potentially leaving consumers with outdated cybersecurity protections. As such, we propose to adopt a three-year renewal cycle, which we believe strikes a balance between the Stakeholder Committee's recommended five-year renewal cycle and the annual renewal cycle the Commission initially proposed. We believe that ensuring consumers receive up-to-date information about the cybersecurity of the IoT product is more critical than the added, yet manageable, burden of more frequent manufacturer certification renewals. We seek comment on this belief. Are there other modifications to the recommended certification renewal process, including streamlined processes that might reduce burdens on manufacturers (*e.g.,* automated reporting/patching, reduced scope/targeted review for stable products, leveraging existing certifications etc.)?

We note that the *IoT Labeling Order* recognized ''that certain IoT products, depending on their lifespan and risk level, may need different standards for renewal to achieve the FCC IoT Label,'' and tasked the Lead Administrator with considering such distinctions in recommending appropriate renewal timeframes. We seek comment on whether there are certain products or product classes for which a different renewal timeframe is appropriate. If so, what products and/or product classes and what timeframes would be appropriate? We also seek comment on the cost implications (in terms of renewal fees) of particular renewal timeframes.

Certification Renewal Process (2.1.1). The *Renewal and Surveillance Document* recommends six steps that a CLA must follow to conduct a product's certification renewal. In brief, the recommendations would require the CLA to: (1) perform an evaluation of the product against all new and/or revised program requirements since the product's certification or previous renewal; (2) perform a reevaluation of at least 50% of all applicable program requirements, excluding Security Documentation requirements; (3) verify certification for each Backend component for the product is current/valid; (4) conduct an in-person or remote audit to confirm grantee maintains required security documents and review implementation proofs performed within the last three months and information regarding the latest security/path updates; (5) confirm grantee maintains a USCTM Qualified Professional for the earlier of either the certification period or date of last renewal; and (6) withdraw the certification from the product registry with the required notice for products for which the certification renewal is due, but the grantee does not seek renewal. We propose to adopt the first five steps as recommended, with proposed changes to step two, and seek comment. We do not propose to adopt step six at this time, as details related to the program registry are still pending, but seek comment below on steps to take to withdraw a certification from the registry.

First, we agree with and propose to adopt the recommendation that the renewal should include an evaluation of the IoT product against any new or revised program requirements adopted since the product's certification or previous renewal. However, we are concerned that the recommended minimum ''50% sampling of all applicable [USCTM Program technical] requirements'' for each product, excluding Security Documentation, is unclear and may not detect a sufficient number of products with only one instance of non-compliance. Since the recommendation requires the CLA to first perform an evaluation of the product against all new and/or revised requirements in the first instance, we propose to require reevaluation of at least 70% of all *remaining* requirements (those that are not new and/or revised since the product's last evaluation), as the next step, followed by reevaluation of 100% of these remaining requirements if at least one instance of non-compliance is found. We also propose to require manufacturers to submit a test report conducted by a CyberLAB, as part of its renewal, testing the product against any new or revised USCTM Program requirements and 70% of the remaining requirements (those that are not new or revised) as part of their renewal application. We believe that doing so will result in more effectively identifying instances of non-compliance and we seek comment on this determination. We note that while requiring an even higher sampling percentage (greater than 70%) would offer more protection in detecting instances of non-compliance, the difference may not be significant enough to warrant the increased burden on participants. Moreover, we anticipate adjusting the renewal testing strategy as informed by the certification testing experience over multiple years. We also seek comment on who would identify the 70% of all remaining requirements that should be evaluated (*e.g.,* the CLA). If renewal applicants could identify the 70% of requirements to be evaluated themselves, we are concerned that would create an incentive to only evaluate the requirements that are least costly to retest. In the alternative, or in addition, should we establish a subset of testing that would identify critical security requirements that should always be evaluated for renewal? If so, what should those critical security requirements be? Would testing the same 70% of requirements for renewal each time risk creating a blind spot where renewal applicants do not consistently maintain compliance with our rules? We seek comment on these renewal proposals and any other alternatives that may be more effective. Will it be necessary for us to define how an individual, discrete requirement is measured, for the purposes of this sampling percentage, when the technical requirements are adopted? If so, what should be considered ''one'' requirement? Would a complete recertification process, in lieu of maintaining a distinct renewal procedure, offer a more straightforward and less burdensome approach for grantees and CLAs?

U.S. Cyber Trust Mark Qualified Professional (2.1.2). The *Renewal and Surveillance Document* recommends that the grantee appoint and maintain a USCTM ''Qualified Professional'' to reinforce ongoing conformity with the USCTM Program's requirements and provide consistent identification of compliance-relevant changes to certified IoT products. Grantees must notify the CLA that conducted the original application assessment of any changes to the product or relevant documentation that may impact compliance to the USCTM Program, as identified by the Qualified Professional. The *Renewal and Surveillance Cover Letter* indicates that precedent exists for this requirement, stating that ''relying on knowledgeable and specially qualified staff to identify changes that could impact compliance is used in other certification programs.'' We agree that having dedicated personnel to monitor product changes and changes to program requirements would contribute to ongoing conformity and propose to adopt the Qualified Professional requirement as recommended and seek comment as outlined below.

The *Renewal and Surveillance Document* recommends that to be designated as a USCTM Qualified Professional, a staff member (including a contractor, vendor, or similar agent) must obtain certain qualifications, including completing an ''approved course'' and passing an exam on the USCTM Program requirements and confirming receipt of major changes to the USCTM Program from the Lead Administrator and the FCC. The *Renewal and Surveillance Cover Letter* further notes that USCTM Qualified Professional training and assessments (the ''approved course'') could be developed by the Lead Administrator and/or the CLAs. To maintain status as a Qualified Professional, the *Renewal and Surveillance Document* recommends the staff member must confirm receipt of major changes to the USCTM Program from the Lead Administrator and the FCC, that impact its role and activities, and repeat the approved course and exam requirements every three years. If the designated USCTM Qualified Professional leaves the grantee's organization or is no longer serving in the role, the *Renewal and Surveillance Document* recommends that the grantee must notify the relevant CLA(s) and fill the vacancy within six months.

We seek comment on these recommendations generally, including whether the Lead Administrator or CLA should be responsible for administering the approved course or whether the training may be conducted in-house to each grantee. What aspects of the program's requirements should be included in the approved training and assessment course? Should the content of the approved course change every three years? Is three years the appropriate cadence for regular exams? How should ''major'' changes be defined for purposes of the Qualified Professional role? How often should the Qualified Professional confirm receipt of information regarding major changes to the USCTM Program once designated? Should these major changes be relayed to the grantee and Qualified Professional from the Lead Administrator or the CLA? Would CLAs be required to communicate these changes to grantees already (*e.g.,* through their ISO/IEC 17065 accreditation requirements)? Are there other qualifications that the Qualified Professional should meet? We presume that if a USCTM Qualified Professional were to move from one grantee organization to another, they may carry their status over to another organization since the same approved training and exam will be used across grantees. We seek comment on this presumption. We propose to adopt the *Renewal and Surveillance Document*'s recommendation that if a Qualified Professional leaves an organization, the grantee must notify the CLA that granted the product's certification of the vacancy. We seek comment on the timeframe within which the position must be filed. Are there other ways for grantees to ensure CLAs are kept informed regarding any relevant product changes that may impact compliance with the USCTM Program? Do the expected benefits of such a role outweigh the costs of maintaining a certification program, and applying for, obtaining, and maintaining the certification, or should we decline to adopt this recommendation? We seek comment on these questions and on any gaps or alternatives to the Qualified Professional recommendation.

Certification Renewal Timing (2.1.3). The *Renewal and Surveillance Document* recommends that certification renewals be due at least six months prior to expiration. It recommends allowing grantees a ''grace period'' to continue using the Mark for an additional six months after the original expiration date while their renewal request is under review by a CLA. We seek comment on this recommendation, which essentially provides for a combined one-year renewal application period before a grantee's certification lapses: a six-month period for the grantee to apply and an additional six month period for the CLA to evaluate the renewal application. We are concerned that this one-year period extends the timeframe for completing renewal evaluations beyond what may be necessary to provide flexibility to grantees and CLAs. Indeed, allowing a cumulative one-year renewal period risks diminishing the integrity of the certification process as a whole. As such, to ensure continued compliance and allow grantees to renew an existing certification rather than reapply for certification, we propose to require that grantees apply for renewal at least 90 calendar days before the product's certification expiration date and we require CLAs to complete their renewal evaluation within 90 calendar days of receiving the grantee's application. We think this timeframe can ensure timely review and renewal of active USCTM certifications and seek comment on this proposal. In cases where CLAs fail to complete their evaluation within 90 calendar days, what process should grantees follow to protect the integrity of the USCTM Program? What impact, if any, should this have on the product's certification expiration date? As noted above, we propose that the manufacturer would apply for certification renewal via an application with required information.

In addition to the grantee being responsible for filing for renewal, we believe it is the responsibility of each CLA to track the renewal due dates of the products they certify; notify the grantee of renewal deadlines; and subsequently, notify the Lead Administrator and the Bureau of any failure of the grantee to timely file for renewal. We seek comment on these requirements, including comments on a structured, uniform process for how and when each CLA should notify grantees and, separately, the Lead Administrator and the Bureau. If the grantee chooses to renew with a new CLA, the grantee is required to notify the original CLA. We propose that while the CLA is required to remind grantees of upcoming renewal deadlines, the failure of the CLA to do so does not excuse the grantee from filing a timely renewal application and seek comment on this proposal. We further propose that these CLA responsibilities will follow the CLA who assumes the responsibilities of a withdrawn or terminated CLA. We propose that the product's certification should automatically terminate on the expiration date if the grantee fails to timely apply for renewal. We seek comment on this proposal. What additional steps should be taken, and by whom, to ensure that the product certification is withdrawn from the registry as a result of an untimely renewal? We want to encourage timely renewal to protect the integrity of the USCTM Program and ensure consumers have current information about their IoT products and seek comment generally on processes and timing to ensure such integrity.

Post-Market Surveillance Requirements (2.2). The *Renewal and Surveillance Document* recommends requiring all CLAs to perform post-market surveillance activities in accordance with ISO/IEC 17065 and the additional requirements outlined in the *Renewal and Surveillance Document.* The *Renewal and Surveillance Document* provides a multi-step process that CLAs would be required to follow to fulfill their post-market surveillance obligations. The process includes the following: Sample Test Plan; Sample Selection; Sample Rate, Selection Timeframe, and Report; Obtain Sample; Evaluation; and Follow-up Actions. We seek comment on this recommended process generally and as detailed below.

Sample Test Plan. The *Renewal and Surveillance Document* recommends CLAs have a written Sample Test (surveillance) Plan describing how they will ensure that the proper percentage of representative certificated products are tested. The *Renewal and Surveillance Document* provides a list of information that CLAs would be required to provide in writing to the grantee. In brief, it recommends that the CLA must notify the grantee in writing that: (1) CLAs must conduct post-market surveillance sampling; (2) the grantee must ensure the availability of production samples at least until the longer of either the end of the support period communicated on the product registry or no less than one year after the last production dates, whichever period is longer; (3) the grantee may be required to submit the product for post-market surveillance testing and that these samples may be requested at any time by the FCC or the CLA; and (4) the failure to provide samples within 30 days of the request could result in certification withdrawal. We seek comment on these requirements.

In particular, given that there are no recommended minimum parameters provided for the Sample Test Plan, we propose to require CLAs to submit these plans to the Lead Administrator and to the Bureau, upon request, to review and

approve to ensure greater consistency among CLAs. We think the Lead Administrator (subject to Bureau oversight) is in the best position to determine whether a CLA's surveillance plan is sufficiently robust to identify and mitigate evolving vulnerabilities throughout an IoT product's life cycle and seek comment on that determination. We also seek comment on what minimum elements should be required for the Lead Administrator to determine that a Sample Test Plan is sufficiently robust. We also note that the *Renewal and Surveillance Document* includes a recommendation that CLAs submit an annual sampling plan specific for a given 12-month period to the FCC in September. We do not believe this requirement is necessary, as drafted. Instead, we propose requiring CLAs to submit an annual Sample Test Plan to the Lead Administrator in September and provide their grantees a copy of the Lead Administrator approved Sample Test Plan. These plans should be provided by the Lead Administrator to the Bureau upon request. We note that the *Renewal and Surveillance Document* assumes that the CLA is required to provide grantees with a Sample Test Plan but does not provide a definitive requirement. We also propose to require the Lead Administrator, in its role as a CLA, to submit its Sample Test Plan to the Bureau for review and seek comment on these proposals. Should we further require that all Sample Test Plans be treated as presumptively confidential and require CLAs to maintain this confidentiality? Alternatively, should we refrain from requiring CLAs to provide grantees a copy of their Sample Test Plan to discourage attempts to escape sampling and surveillance?

Sample Selection. The *Renewal and Surveillance Document* recommends samples audited by a CLA be selected from ''the products certified or renewed by that CLA over the current year or the 4-year period directly preceding submission of the sampling plan to the FCC,'' and that a product may only be selected once for surveillance within its certification renewal period unless requested by the FCC. When selecting the product samples to be audited, the *Renewal and Surveillance Document* provides a list of seven criteria that CLAs shall use to prioritize selection, including: (a) broad grantee and laboratory representation; (b) representation of the full range of product types certified; (c) recent security events; (d) representation across previous years of certifications issues, (e) new grantee; (f) grantees with a history of non-compliance; and (g) requests from the FCC for an audit to be performed on specific product or a group of products. We seek comment on these recommended requirements and related priorities for sample selection.

Consistent with our proposals above, we seek comment on modifying the recommended requirement that samples be selected from ''the products certified or renewed by that CLA over the current year or the 4-year period directly preceding submission of the sampling plan to the FCC'' in two ways. First, as noted above, we are concerned that a five-year renewal period may leave consumers vulnerable to cyber threats resulting from outdated product security. Similarly, we believe that requiring a product to be audited only once every five years (within the certification period) may be insufficient to ensure ongoing compliance, given the rapid evolution of cybersecurity threats. As such, consistent with our proposal to require a three-year cycle for certification renewal, we propose to require a sample be selected from the products certified or renewed by a CLA over the current year or the two-year period directly preceding submission of the sampling plan and that a product should only be selected once for audit within its three-year certification period, unless otherwise requested by the Bureau. We seek comment on this determination. Second, we propose to modify the language ''preceding submission of the sampling plan to the FCC'' to ''preceding submission of the sampling plan to the Lead Administrator'' consistent with our proposal above to require CLAs to submit their Sample Test Plans to the Lead Administrator. We seek comment on these changes. Commenters should also address whether IoT products with ''higher risks'' to consumers if they are exploited (*e.g.,* remote monitoring/home security cameras, baby monitors, products marketed to children) should be subject to more frequent surveillance. Do the seven proposed criteria effectively prioritize the IoT products most likely to negatively impact consumers if their security flaws are exploited (*e.g.,* smart home devices, children's products)? Are there additional criteria that should be mandated for audit selection?

Sample Rate, Selection Timeframe, and Report. The *Renewal and Surveillance Document* recommends that CLAs adhere to several sampling, selection, and report requirements. We propose to adopt these requirements, with changes discussed below, and seek comment. We propose to adopt the recommendation that the total number of products selected for surveillance by a CLA be at least three percent of the total number of products certified or renewed by the CLA during the prior calendar year. Nevertheless, we seek comment on whether this percentage strikes the right balance between minimizing the burden on grantees and CLAs, while maintaining consumer trust that non-compliant products are identified. If not, what percentage of the total products certified or renewed by the CLA during the prior calendar year would yield a more effective sample rate? Why? Further, we propose that, as described above, ''products selected for surveillance by the CLA shall be selected from the devices certified or renewed by the CLA over the current calendar year *or previous 2 calendar years*'' for consistency with our proposal for a three-year renewal certification cycle. We note that using a fixed calendar year baseline for surveillance (rather than a rolling window of time) provides CLAs with a fixed, unchanging target sample size and greater predictability, and it potentially prevents redundant oversight of recently approved devices. We seek comment on this determination. We also seek comment on the format and content of the annual post-market surveillance reports the *Renewal and Surveillance Document* recommends CLAs submit to the Commission on June 30. We propose that these annual CLA reports be submitted to the Lead Administrator rather than the FCC. We further propose to require the Lead Administrator to submit an annual report to the Bureau of the CLAs' post-market surveillance activities and findings and we now seek comment on the format and date upon which this report should be filed.

Obtain Sample. As described above, failure of the grantee to submit a product sample within 30 days of the request may result in withdrawal of the product's authorization to use the Mark. The *Renewal and Surveillance Document* recommends the CLA be required to ''notify the FCC if a grantee refuses, or fails to comply with, a request for a sample.'' We believe the Lead Administrator is in the best position to receive these notifications and address them in the first instance, and thus we propose to require that the CLA should notify the Lead Administrator if a grantee refuses or fails to comply with a sample request. We further propose that the Lead Administrator must notify the Bureau if it is unable to resolve the failure to comply in a reasonable period of time. We seek comment on these proposals, including what constitutes a reasonable

period of time for manufacturers to comply with a request for a sample, and the structure and format in which the Bureau should be notified of failures to comply.

The *Renewal and Surveillance Document* recommends, and we propose to adopt, that CLAs should obtain a product sample by requesting that the grantee either submit a product sample from their production stock or purchasing a product sample from the marketplace and deliver it to the CLA. The *Renewal and Surveillance Document* also recommends the applicant provide justification in its application if it would be overly burdensome to keep a production sample on hand or if the production run for the product is limited, which we propose to adopt. We also propose to adopt the recommendation that the CLA will determine whether the applicant's justification is acceptable and retain this determination within the application record. The *Renewal and Surveillance Document* further recommends that a grantee's statement that a product is no longer manufactured or will not be marketed in the United States should not serve as sufficient justification for failing to provide a product sample to a CLA or the FCC. We propose to adopt this recommendation, but replace ''or the FCC'' with ''or to the Bureau upon request'' for this requirement, as we do not expect the Commission will be handling product samples directly. We seek comment on these proposals and related details.

To ensure that grantees are not submitting the same unit used during initial certification testing, we propose to require that grantees submit a sample from their latest production line and seek comment on this proposal. Are there other risks associated with having the grantee submit its own product sample to the CLA for post-market surveillance? How should we ensure that grantees submit ''representative'' samples for surveillance testing? Alternatively, should we require CLAs to specify a random or otherwise objective method for selecting a sample from production stock? Or should we require independent marketplace acquisition in certain circumstances? If a CLA or the Bureau is made aware through consumer complaints or otherwise that a grantee's sample was not representative, should such a determination potentially be grounds for withdrawal of a product's certification? We seek comment on this proposal, including what constitutes a reasonable period of time for manufacturers to comply with a request for a representative sample, which may require a different or longer timeframe to obtain and compile than a standard physical product sample.

Evaluation. The *Renewal and Surveillance Document* recommends certain procedures and requirements by which the product sample shall be evaluated by the CLA to determine compliance with the USCTM Program requirements, including parameters for how a CLA should perform product testing and compare the test data, and where the CLA must perform the testing. The requirements include the obligation of the CLA to review implementation proofs, verify backend component certifications, examine the sample packaging for compliance, and final review and signature by appropriate personnel. We seek comment on each of the evaluation procedures and requirements. In particular, we seek comment on the recommendation that CLAs perform ''sufficient testing to provide a high level of confidence'' that the product sample complies with program requirements. Under this requirement, complete testing to all program requirements is not required; however, testing is required for those requirements most likely to be in non-compliance. We find this recommendation vague. While we understand that the CLAs are likely in the best position to determine the degree of testing necessary, we seek comment on whether this can be quantified into a statistical standard (*e.g.,* a low probability of certifying a product such that the percentage of non-compliant units is no more than X%)? If so, what statistical standard should be used? Alternatively, should sample selection for surveillance trigger a certification renewal? We seek comment on how this would impact costs to manufacturers, if so. We also seek comment on any additional ways to provide greater specificity while prioritizing efficient and targeted risk-based surveillance testing.

The *Renewal and Surveillance Document* also recommends requiring the CLA to perform post-market surveillance ''testing at either a CLA-run lab or another CyberLAB but not at a manufacturer's in-house lab.'' We note that the *IoT Labeling Order* defined ''in-house labs'' as those in-house to the manufacturer. We find this recommendation consistent with the intent of the *IoT Labeling Order* and propose to adopt it with modifications. Specifically, we propose to clarify that the testing could be completed *through* a CLA-run lab or recognized CyberLAB, but not a manufacturer's in-house lab. We seek comment on this assessment. The *Renewal and Surveillance Document* also recommends that post-market surveillance testing should be performed by the same lab that performed the original evaluation whenever possible. We seek comment on this requirement, particularly whether there are any specific considerations the CLA should account for when selecting the product's post-market surveillance testing lab (*e.g.,* the same lab that conducted the original testing, which may result in cost savings due to the lab's prior knowledge of the IoT product, or a different lab to provide an additional level of oversight). The *Renewal and Surveillance Document* further recommends that the CLA ''shall confirm that the grantee has made no changes to the device, applications, or backend/cloud services that impact compliance'' to the program requirements. We seek comment on whether there are certain permissive changes that may not impact the product's compliance, but should still be verified since they may pose a potential risk if improperly implemented (*e.g.,* moving backend cloud services from one provider to another, adding new functional features that interact with the device).

Follow-up Actions. The *Renewal and Surveillance Document* recommends several actions CLAs must take based on the findings of the post-market surveillance evaluation. In particular, it provides the steps the CLA must take if a sample product fails to comply with program requirements, which includes notifying the grantee and providing the details of the non-compliance to the FCC by either submitting an inquiry to *CyberTrustMark@fcc.gov* or via another process designated by the Commission. We note that these recommendations differ from the *IoT Labeling Order's* general parameters for post-market surveillance reporting that CLAs should follow, which include: immediately providing written notice to the grantee, the Lead Administrator, and the Commission when the CLA determines that a product fails to comply with the technical regulations for that product; providing the grantee 20 days to cure the deficiency or lose authority to use the IoT Label; and providing periodic reports to the Lead Administrator and the Bureau, upon request, of their post-market surveillance activities and findings in the format and by the date specified by the Bureau. The *IoT Labeling Order* also required the stakeholder recommendations to include procedures to be followed if a grantee's approval to display the USCTM is terminated ''based on post-

market surveillance or notice from the public, including disqualification from the IoT Labeling Program and potential further investigation into other products related to the manufacturer or the CyberLAB.''

Given the guidance provided in the *IoT Labeling Order,* and to the extent the recommended follow-up actions deviate from the Commission's direction, we seek comment on what additional follow up actions (*e.g.* notifications, reporting, resolution processes) or termination procedures should be followed as a result of a product's failure to comply with program requirements or disqualification from participating in the USCTM Program. In particular, we note that the Bureau previously sought comment on the recommended procedures to follow when a product loses its authority to use the FCC IoT Label (*e.g.,* expiration or revocation). The record generally supported implementation of product control measures similar to the disqualification procedures adopted for the ENERGY STAR program. We seek comment on whether similar disqualification procedures should be implemented for this program and whether there are additional actions the CLA must take beyond those already enumerated in our rules to effectuate the disqualification of the product (*e.g.,* tracking and recording the manufacturer's implementation of product control measures).

We do propose that CLAs shall assist the Bureau in policing unauthorized use of the U.S. Cyber Trust Mark through post-market surveillance and auditing activities, and by notifying the Lead Administrator and FCC as soon as it becomes aware of any use by any other person of a name, trade name, trademark, domain name, email address, metatag, AdWords (or similar search term), mode of advertising, or anything that may reasonably constitute (i) infringement of, (ii) unfair competition with, or (iii) passing off as, any of the Cyber Trust Marks. In addition to promptly reporting the improper usage, the CLAs shall provide relevant material, if available, to the Lead Administrator.

Finally, we note that the *IoT Labeling Order* delegated authority to the Bureau, in connection with the Office of the Managing Director, to consider issues related to fees charged by CLAs and the Lead Administrator to cover the costs of performing their duties and to ensure that these fees do not become onerous and deter participation in the program. While we agree with the Commission that market competition will prevent fees from become overly burdensome, we seek comment on any additional steps, if any, we should take to ensure fees are reasonable, competitive, and accessible while covering the administrators' costs. For example, should the Commission require CLAs to publicize the fees they charge to manufacturers? Does the number of CLAs ensure sufficient competition to avoid onerous fees to manufacturers applying for authorization to use the Mark?

Ad-Hoc Surveillance

The *Renewal and Surveillance Document* recommends that, in addition to annual post-market surveillance, CLAs be required to perform ad-hoc surveillance evaluations, which they recommend the FCC initiate, in response to large cyber events impacting consumer IoT products. As part of this recommendation, a committee consisting of representatives from each CLA must convene within 30 days of the FCC initiation to determine if the surveillance audit is justified, create a decision tree as an objective basis for its decision (scope, logistics, limitations, and risk model), and either provide a surveillance plan to the FCC if an audit is deemed necessary, or provide the FCC a justification, if it is not. Further, following Commission approval of the surveillance plan, the recommendation states that product sampling will be obtained and evaluation testing will be conducted consistent with post-market surveillance requirements, and that reporting outcomes must be communicated to the FCC as defined by the surveillance plan. It also proposes that the FCC communicate ad-hoc surveillance plans to approved accreditation bodies. We seek comment on these recommendations and related details.

We propose that the Bureau, rather than only the full Commission, may initiate an ad-hoc surveillance evaluation where there is a ''large cyber event'' and we seek comment on whether there are other events or circumstances that may necessitate such an evaluation. We also clarify that if we adopt this ad-hoc surveillance process, the Lead Administrator would be responsible for convening representatives of the CLAs to make the required submissions to the Bureau, and we seek comment on these clarifications. We also seek comment on requiring each CLA to make a representative available for this purpose as a condition of its final CLA approval. Further, should the Lead Administrator and/or a CLA committee be empowered to initiate certain ad-hoc surveillance activities on their own without Bureau initiation? If so, under what circumstances and processes? Additionally, we believe that the requirement that the CLA committee develop either a surveillance plan or a justification for no ad-hoc audit should include a firm timeframe for submission to the Bureau and seek comment on the appropriate timeframe. Given the potential security issues that may be involved with the investigation of a large cyber event, should these submissions be presumed confidential and be submitted via paper marked confidential through the FCC, Office of the Secretary? We also propose that the Bureau would be the final arbiter of whether an ad-hoc surveillance evaluation is justified. Are there foreseeable circumstances when no ad-hoc audit will be justified following a large cyber incident? We believe that ad-hoc surveillance following large cyber incidents with known impacts to consumer IoT products will likely be justified and seek comment on this belief.

We propose the Lead Administrator separately, or in conjunction with the ''reporting outcomes'' from the surveillance plan, submit a post-audit report identifying and addressing (including remediation timelines) any gaps in surveillance evaluation processes or other systemic breakdowns in product security as a result of the cyber event. We seek comment on this requirement.

Handling of Complaints

The *IoT Labeling Order* determined the Commission and the CLAs will receive complaints regarding noncompliant displays of the Cyber Trust Mark and delegated authority to the Bureau, in coordination with the Consumer and Governmental Affairs Bureau, to determine the process for receiving and responding to complaints. The *IoT Labeling Order* also required CLAs to refer these complaints to the Lead Administrator who would then notify the Bureau. The Bureau previously sought comment on the processes for receiving and responding to complaints and received several comments addressing the issue.

The *Renewal and Surveillance Document* recommends that complaints be submitted against USCTM-certified products to any CLA through their standard complaints management process, includes the steps the CLA must take after receiving a complaint, and recommends a 30-day timeframe for the CLA to file a follow-up report on the actions taken. In brief, the recommendations require the CLA receiving the complaint to determine if

the complaint is within the scope of the USCTM Program requirements, confirm the certification status of the product, notify the Bureau of any misuse or misrepresentation of the trademark, and transfer the complaint to the certifying CLA if the product is properly certified. Thereafter, the certifying CLA must determine if the product is compliant or non-compliant, and if non-compliant, immediately notify the grantee and the FCC, and provide the FCC with follow up reports on the actions to be taken to correct the non-compliance. We seek comment on what additional procedures should be required in handling complaints. We propose that the CLA must notify the grantee and the Lead Administrator regarding the determined compliance or non-compliance (rather than the Commission). In turn, the Lead Administrator must notify the Bureau in the format and by a date specified by the Bureau. We seek comment on the format and structure of these notifications. Finally, we seek comment on whether a standing CLA committee comprised of a representative from each CLA responsible for addressing both complaints and ad-hoc surveillance is appropriate.

Procedures for Administrator Withdrawal or Termination

Lead Administrator Withdrawal. The *IoT Labeling Order* delegated authority to the Bureau to develop the procedures for withdrawal and termination of the Lead Administrator and CLAs. The Bureau previously sought comment on procedures for withdrawal and removal of the Lead Administrator. We propose that a Lead Administrator seeking to withdraw from their position as Lead Administrator of the program, while remaining a CLA, must provide written electronic notice to the Chief, Public Safety and Homeland Security Bureau through the appropriate FCC Docket of its intention to withdraw and include the effective date of the withdrawal. For entities seeking to withdraw as both the Lead Administrator and a CLA, we expect they would take the actions described in this section and the following section regarding CLA withdrawal. We seek comment on whether we should require specified advance notice period for the Lead Administrator to provide its intent to withdrawal. Several parties in the response to the *Delegated Authority Notice* recommend setting term limits for the Lead Administrator or some other form of ongoing reevaluation. We seek comment on these recommendations and what the criteria for reevaluation should include.

We propose that upon receipt of notice of the Lead Administrator's intention to withdraw from the USCTM Program, the Bureau will release a Public Notice opening a filing window for Lead Administrator applications, which is supported by the record. We also propose that the Lead Administrator be required to cooperate with the Bureau to transfer responsibilities to a new Lead Administrator, including the transfer of USCTM Program records, even if such transfer occurs after the effective date of the Lead Administrator's withdrawal. We propose that the records the Lead Administrator would be required to transfer to the new Lead Administrator include, but not be limited to, those associated with the Lead Administrator's recognition of CyberLABs to include approved, denied, and pending requests for CyberLAB recognition; complaints (pending and completed); audits; renewals; and Trademark Use Agreements. We recognize that Lead Administrators may develop data systems to support administration of the Program. As part of the transfer, we seek comment on whether supplementary documentation describing the structure and operation of such database systems should be made available to facilitate a smooth transition. We further seek comment on what format records should be shared. We seek comment on this requirement and any additional information that should be provided by the outgoing Lead Administrator to the new Lead Administrator. What additional actions should the Lead Administrator take for a smooth transition to a new Lead Administrator without interruption to the program?

CLA Withdrawal. We note that the *IoT Labeling Order* set forth several parameters regarding a CLA's voluntary or involuntary withdrawal from the USCTM Program. In addition to those requirements, we propose the CLA be required to provide 30 days advance notice to the Lead Administrator, the manufacturers the CLA has authorized to use the FCC IoT Label, and pending applicants of their intent to withdraw and the effective date of the withdrawal. If the CLA is simultaneously withdrawing as the Lead Administrator, we would expect such entity to provide the advance notice to the Chief, Public Safety and Homeland Security Bureau, and cooperate with the Bureau to transfer responsibilities and records, as outlined above. We seek comment on requiring the notice to the manufacturer to include a reminder that they should choose a new CLA for oversight of its authorized product within 30 days of receipt of the CLA notice of withdrawal and remind the manufacturer that they should notify the Lead Administrator, the withdrawing CLA, and the new CLA, of the new CLA selection.

We also propose that CLAs be required to provide copies of all records relating to applications and authorization to use the FCC IoT Label, the use of the FCC IoT Label, post-market surveillance, and complaints with respect to rules of the USCTM Program to the Lead Administrator upon request by the Lead Administrator, including but not limited to, when they withdraw from the program and which may be requested before or after the effective date of the CLA's withdrawal. We propose to require each CLA to cooperate with the Lead Administrator with transferring responsibilities to the manufacturer's new CLA of choice, including the transfer of USCTM Program records even if such transfer occurs after the effective date of the CLA's withdrawal. We propose that the records the CLA would be required to transfer to the new CLA include (but would not be limited to) those associated with the CLA's processing of manufacturer applications to include approved, denied, and pending applications; complaints (pending and completed); audits; renewals; and Trademark Use Agreements. We propose to require CLAs to retain these records for a minimum of the term of the Trademark Use Agreement, plus five years thereafter. We also propose to require CLAs to provide the Bureau with a copy of the grantee's records no later than five business days after receiving a request to do so. Administrators will also be required to comply with the timeframes applicable for any federal records as to preservation and disposal of such records. What format should these records be provided in and should additional documentation relating to data systems and administration be shared? We seek comment on these requirements and any additional information or actions that a withdrawing CLA take for a smooth transition to a new CLA without interruption to the program? Finally, we seek comment on whether there are compensation issues that should be considered regarding these proposed requirements (*e.g.,* CLA sharing of fees relating to their proportion of renewal or auditing work completed, proportion of CLA cost sharing for Lead Administrator incurred expenses for performing duties on behalf of the program as a whole).

CLA Termination. The *IoT Labeling Order* provided delegated authority to

the Bureau to determine if a CLA's authority should be terminated for failure to uphold the competencies or accreditations required under the USCTM Program and delegated authority to the Bureau to terminate the CLA's authority. The *IoT Labeling Order* also provides that the CLA's authority under the USCTM Program will automatically terminate if the CLA ''becomes owned or controlled by or affiliated with an entity that produces equipment found on the Covered List, or otherwise added to any exclusionary list identified in [the IoT Labeling Order] as precluding authorization as a CLA.'' There may also be circumstances under which the arrangement with a CLA is voluntarily terminated, including but not limited to the CLA's withdrawal, provided there is sufficient notice to arrange a transition. We seek comment on whether there are other areas we should consider for terminating CLA authority, such as, for example, violations of the Trademark Use Agreement, violations of the Act, or if the entity is suspended or debarred from other Commission programs. Noting the importance of CLAs' continued compliance with USCTM Program requirements, we seek comment on imposing an ongoing obligation for CLAs to disclose to the Lead Administrator and the Bureau any law or rule that would preclude it from acting as an administrator of the program. The Commission also determined that due to the public safety importance of a CLA having the requisite qualifications and adhering to the USCTM Program rules, (1) the termination of authority should be expeditious; and (2) the Bureau should provide the CLA with notice of its intention to terminate the CLA's authority and provide the CLA a reasonable opportunity to respond; but (3) no more than 20 days should pass before reaching a decision on the termination. The Bureau may suspend the CLA's ability to issue labeling authorizations during the pendency of such consideration, if appropriate. We propose that if the deficiencies are not satisfactorily corrected within 20 days, two things will happen. First, the Bureau will terminate the CLA's authorization via Public Notice. Second, the Lead Administrator will provide written notice to the CLA's authorized manufacturers about the CLA's termination and direct each manufacturer to select a new CLA. We seek comment on the timeline for manufacturers to make a new CLA election, which we believe should be timely to ensure there is a limited break in CLA oversight of IoT products certified under the USCTM Program. We seek comment on this process. We also seek comment on what, if any, deficiencies may be of sufficient concern to the USCTM Program that the Bureau should not provide 20 days for the CLA to cure. We seek comment on using the same CLA records transfer process here that we adopt when a CLA authority is terminated. We also ask commenters to address the most effective and streamlined way for a grantee to transfer to a new CLA in this context, particularly in those instances where transferring the grantee's data from a terminated CLA to a new CLA is not an option. In general, we believe that the Lead Administrator is in the best position to reassign grantees to an alternate CLA if a CLA is removed and seek comment on the best process details for effectuating such a transfer.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the policies and rules proposed in the *Public Notice* assessing the possible significant economic impact on a substantial number of small entities. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified on the first page of the *Notice.* The Commission will send a copy of the *Notice,* including this IRFA, to the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy. In addition, the *Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules. The *IoT Labeling Order* adopted a voluntary cybersecurity labeling program for consumer Internet of Things (IoT) products (U.S. Cyber Trust Mark (USCTM) Program) that will provide consumers with an easy-to-understand indicator of a product's relative cybersecurity and improve consumer confidence and understanding of IoT product cybersecurity. Under the USCTM Program, authorized products will bear the FCC IoT Label, including the Mark and a QR code that links to easily understandable security-related information about the product. While the Commission retains ultimate control and oversight as the USCTM Program owner, the program is supported by a Lead Administrator and Cybersecurity Label Administrators (CLAs). The Lead Administrator acts as the point of contact between CLAs, which are responsible for certifying use of the FCC IoT Label and the day-to-day management of the program, and the Commission. Further, in collaboration with the CLAs and other stakeholders, the Lead Administrator is required to undertake tasks associated with the launch of the program, including identifying or developing certain recommendations.

In June 2025, the USCTM Lead Administrator, in collaboration with stakeholders (Stakeholder Committee), submitted its recommendations for technical requirements, label requirements, and renewal and surveillance requirements, consistent with the IoT Labeling Order. In April 2026, the Bureau selected the ioXt Alliance (ioXt) to serve as the new Lead Administrator following the prior Lead Administrator's withdrawal. On October 26, 2026, ioXt submitted additional recommendations with respect to technical requirements only, as a result of ongoing stakeholder engagement. The Bureau will seek comment on the technical requirements recommendations in a subsequent Public Notice.

However, in this *Notice,* we seek comment on the *Label Standard* and *Renewal and Surveillance Document.* In particular, we seek comment on the design of the FCC IoT Label, certification renewal processes, and procedures for post-market surveillance and auditing of USCTM-certified products. The Bureau also seeks comment on other related aspects of the program, including procedures to address complaints, non-complying products, and administrator withdrawal or termination. The Commission delegated authority to the Bureau to evaluate the recommendations and, if the Bureau approves of the recommendations, subject to any required public notice and comment, adopt them into the Commission's rules.

Legal Basis. The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(n), 302(a), 303(r), 312, 333, and 503, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(n), 302a, 303(r), 312, 333, 503 and the IoT Cybersecurity Improvement Act of 2020, 15 U.S.C. 278g–3a to 278g–3e.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The rules proposed in the *Notice* will apply to small entities in the industries identified in the chart below by their six-digit North American Industry Classification System (NAICS) codes

and corresponding SBA size standard. Where available, we also provide additional information regarding the number of potentially affected entities in the industries identified 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
Telephone Apparatus Manufacturing	334210	1,250 employees	155	136	87.74
Radio and Television Broadcasting and Wireless Communications Equip Manufacturing.	334220	1,250 employees	155	136	87.74
Other Communications Equipment Manufacturing.	334290	800 employees	310	294	94.84
Audio and Video Equipment Manufacturing.	334310	750 employees	506	492	97.23
Semiconductor and Related Device Manufacturing.	334413	1,250 employees	675	610	90.37
Wireless Telecommunications Carriers (except Satellite).	517112	1,500 employees	1,184	1,081	91.30
Other Services Related to Advertising	541890	$19 million	7,067	4,850	68.63

TABLE 2—TELECOMMUNICATIONS SERVICE PROVIDER DATA

2025 Universal Service Monitoring Report telecommunications service provider data (data as of December 2024)	SBA size standard (1,500 employees)		
Affected Entity	Total number FCC Form 499A filers	Small firms	Percent small entities
Wireless Telecommunications *Carriers* (except Satellite)	608	522	85.86
Wireless Telephony	336	262	77.98

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities. The RFA directs agencies to describe the economic impact of proposed 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 requirements and the type of professional skills necessary for preparation of the report or record.

The USCTM Program will be voluntary, so small entities who do not participate in the program will not be subject to any new or modified reporting, recordkeeping, or other compliance obligations. Small entities that choose to participate in the program will incur recordkeeping, reporting, and other compliance obligations necessary to test their IoT products to demonstrate compliance with the program requirements. Small entities that choose to participate by applying to be a CLA or CyberLAB will also incur recordkeeping, reporting, and other compliance obligations. In this *Notice,* we propose record-related compliance obligations for a Lead Administrator or CLA that intends to withdraw from the program. Specifically, we propose to require CLAs to provide copies of all records relating to applications and authorization to use the FCC IoT Label, the use of the FCC IoT Label, post-market surveillance, and complaints with respect to rules of the USCTM Program to the Lead Administrator upon request by the Lead Administrator, including but not limited to, when they withdraw from the program and which may be requested before or after the effective date of the CLA's withdrawal. We propose to require each CLA to cooperate with the Lead Administrator with transferring responsibilities to the manufacturer's new CLA of choice, including the transfer of USCTM Program records even if such transfer occurs after the effective date of the CLA's withdrawal. We propose that the records the CLA would be required to transfer to the new CLA include (but would not be limited to) those associated with the CLA's processing of manufacturer applications to include approved, denied, and pending applications; complaints (pending and completed); audits; renewals; and Trademark Use Agreements. We propose to require CLAs to retain these records for a minimum of the term of their Trademark Use Agreement, plus five years thereafter. We also propose to require CLAs to provide the Bureau with a copy of the grantee's records no later than five business days after receiving a request to do so. Administrators will also be required to comply with the timeframes applicable for any federal records as to preservation and disposal of such records.

We propose the same for Lead Administrators, in their capacity as a CLA, including cooperating with the Bureau to transfer responsibilities to a new Lead Administrator, including the transfer of USCTM Program records, even if such transfer occurs after the effective date of the Lead Administrator's withdrawal. We seek comment on these requirements and any additional information that should be provided by outgoing CLAs to new CLAs, as well as any additional actions the outgoing CLA should take for a smooth transition, without interruption to the program.

Discussion of Significant Alternatives Considered That Minimize the Significant Economic Impact on Small Entities. The RFA directs agencies to provide a description of any significant alternatives to the proposed rules that would accomplish the stated objectives of applicable statutes, and minimize any

significant economic impact on small entities. The discussion is required to include alternatives such as: ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

For the USCTM Program to be meaningful to consumers, the requirements for an IoT product to be granted authority to use the FCC IoT Label must be uniform for small businesses and other entities. The Bureau maintains the view expressed in the *IoT Labeling Order* that the significance of Mark integrity, and building confidence among consumers that devices and products bearing the FCC IoT Label can be trusted to be cyber secure, necessitates adherence by all entities participating in the program to the same rules, regardless of size. Accordingly, in the *Notice,* the Bureau takes steps to minimize the economic impact on participants in the program of all sizes, including small entities. Specifically, we seek comment on labeling and post-market surveillance requirements, based on recommendations in the *Label Standard* and *Renewal and Surveillance Document.* With respect to the label, we propose to allow manufacturers to print the label directly on product packaging or apply it as an adhesive sticker. We also propose and seek comment on details related to the layout and sizing of the physical label, as well as marketing and advertising of products that bear the label. For each of these proposals, we invite the public, including small businesses, to comment.

Regarding renewal and surveillance, we seek comment on the initial and renewal application information, the renewal period and process, post-market surveillance requirements, and follow-up actions. We propose a three-year renewal cycle to balance consumer protection concerns with the burden on manufacturers and request comment on whether there are modifications or opportunities to streamline the process that might further reduce burdens on manufacturers, including small entities. We also seek comment on the USCTM ''Qualified Professional,'' that the *Renewal and Surveillance Document* recommends. In particular, we ask whether the expected benefits of such a role outweigh the costs and whether there are alternatives to such a role that may be less costly for manufacturers, many of whom may be small businesses, or whether we should decline to adopt this recommendation. We propose a 90 calendar day deadline for manufacturers to complete renewal evaluations, which we believe provides added flexibility to manufacturers and CLAs and seek comment on this proposal. For post-market surveillance, we seek comment on the format and content of annual reports that CLAs must submit to the Lead Administrator. We invite commenters to make recommendations that minimize the economic impact on CLAs that may be small entities. We also seek comment on post-termination or disqualification procedures that may be more or less burdensome for manufacturers, including small businesses, that fail to comply with program requirements or are otherwise disqualified.

In comments, small entities can identify which of the proposals raised in this *Public Notice* are particularly difficult or costly for them and how different, simplified, or consolidated requirements would address those burdens. They can also propose any modifications to the proposals that would minimize their anticipated economic impact. The Bureau expects to consider more fully the economic impact on small entities following its review of any comments filed in response to the *Public Notice,* including any costs and benefits information we receive. The Bureau's evaluation of the comments filed in this proceeding will shape the final alternatives we consider, the final conclusions we reach, and any final actions we ultimately take in this proceeding to minimize any significant economic impact that may occur on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rules. None.

Legal Authority. Sections 1, 2, 4(i), 4(n), 302(a), 303(r), 312, 333, and 503, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(n), 302a, 303(r), 312, 333, 503 and the IoT Cybersecurity Improvement Act of 2020, 15 U.S.C. 278g–3a to 278g–3e.

List of Subjects in 47 CFR Part 8

Communications, Communications equipment, Computer technology, Consumer protection, Cybersecurity, Electronic products, internet, Labeling, Laboratories, Marketing agreements, Packaging and containers, Product testing and certification, Printing, Safety, Science and technology, and Telecommunications.

Federal Communications Commission.

Zenji Nakazawa,

Chief, Public Safety and Homeland Security Bureau.

Proposed Rules

For the reasons discussed in this preamble, the Federal Communications Commission proposes to amend 47 CFR part 8 as follows:

PART 8—INTERNET TRANSPARENCY FOR CONSUMERS

■ 1. The authority citation for part 8 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201(b), 257, 302a, 303(r), 312, 333, 503 and 1753.

■ 2. Amend § 8.201 by adding paragraphs (d) and (e) to read as follows:

§ 8.201 Incorporation by reference.

* * * * *

(d) ISO/IEC 18004:2024, *Information technology—Automatic identification and data capture techniques—QR Code bar code symbology specification,* Fourth Edition, August 2024; IBR approved for § 8.223.

(e) ISO/IEC 15415:2024, *Automatic identification and data capture techniques—Bar code symbol print quality test specification—Two-dimensional symbols,* Third Edition, December 2024; IBR approved for § 8.223.

■ 3. Amend § 8.203 by adding paragraphs (f)(1) and (2) to read as follows:

§ 8.203 Definitions.

* * * * *

(f) * * *

(1) *Cyber nutrition label.* The format and cybersecurity information specific to the IoT product displayed to the consumer when the QR code is scanned.

(2) *Physical label.* The label that is printed on or adhered to the physical packaging of USCTM-certified products.

* * * * *

■ 4. Amend § 8.208 by revising paragraph (e) and adding paragraph (l) to read as follows:

§ 8.208 Application requirements.

* * * * *

(e) Each application, including amendments thereto, and related statements of fact and authorizations required by the Commission, shall be signed by the applicant or their authorized agent and include:

(1) Applicant's name, address, telephone number(s), email address(es), and website(s);

(2) Contact information for personnel responsible for the application;

(3) Name and address of the agent located in the United States designated

by the applicant to receive service of process in the U.S.;

(4) Product name;

(5) Product type; and

(6) The signed technical test report provided by an accredited and recognized CyberLAB.

* * * * *

(l) If an applicant has a pending application with a CLA that is withdrawing or subject to termination, the applicant shall re-file their application with a new CLA of their choice.

■ 5. Amend § 8.216 by revising paragraph (b) to read as follows:

§ 8.216 Termination of authorization to use the FCC IoT Label.

* * * * *

(b) Grant of authorization to use the FCC IoT Label automatically terminates on the certification expiration date for products for which the certification renewal is due, but the grantee does not seek renewal within the timeframe specified in § 8.224(a).

■ 6. Amend § 8.220 by:

■ a. Revising paragraphs (d)(1) and (e)(5),

■ b. Adding paragraphs (e)(7) and (8), and

■ c. Revising paragraph (g)(5).

The revisions and addition read as follows:

§ 8.220 Requirements for CLAs.

* * * * *

(d) * * *

(1) The evaluation of a product, or a portion thereof, may be performed by accredited bodies that meet the applicable requirements of ISO/IEC 17065, in accordance with the applicable provisions of ISO/IEC 17065 for external resources (outsourcing) and other relevant standards. Evaluation is the selection of applicable requirements and the determination that those requirements are met. Evaluation for initial approval to use the FCC IoT Label, renewal certifications, and post-market surveillance may be performed using internal CLA resources or external (outsourced) resources.

(e) * * *

(5) If the Commission withdraws its recognition of a CLA, all grants issued by that CLA will remain valid unless specifically set aside or revoked by the Commission. The Lead Administrator will provide written notice to the CLA's authorized manufacturers about the CLA's termination and direct each manufacturer to select a new CLA.

* * * * *

(7) A CLA shall provide 30 days' advance written electronic notice of its intent to withdraw from the program, and the effective date of the withdrawal, to the Chief, Public Safety and Homeland Security Bureau, the Lead Administrator, and the manufacturers it has authorized to use the FCC IoT Label.

(8) A withdrawing CLA shall be required to provide all records relating to applications and authorization to use the FCC IoT Label, the use of the FCC IoT Label, post-market surveillance, and complaints with respect to rules of the FCC IoT Labeling Program to the Lead Administrator upon request by the Lead Administrator and shall cooperate with the Lead Administrator to transfer responsibilities to pending applicants' new CLA of choice, including the transfer of program records, even if such transfer occurs after the effective date of the CLA's withdrawal. These records shall include those associated with the CLA's processing of manufacturer applications to include approved, denied, and pending applications; complaints (pending and completed); audits; renewals; and Trademark Use Agreements.

* * * * *

(g) * * *

(5) CLAs shall submit periodic reports to the Lead Administrator of their post-market surveillance activities and findings in a format and by a date specified by the Bureau.

* * * * *

■ 7. Amend § 8.221 by revising paragraph (a)(6) and adding paragraph (c) to read as follows:

§ 8.221 Requirements for the Lead Administrator.

(a) * * *

(6) Submit to the Commission annual reports on CLAs' post-market surveillance activities and findings in the format and by the date specified by Public Safety and Homeland Security Bureau;

* * * * *

(c) A Lead Administrator seeking to withdraw from the program as Lead Administrator must provide written electronic notice to the Chief, Public Safety and Homeland Security Bureau, of its intention to withdraw and include the effective date of the withdrawal. The Lead Administrator shall cooperate with the Bureau to transfer responsibilities to a new Lead Administrator, including the transfer of USCTM Program records, even if such transfer occurs after the effective date of the Lead Administrator's withdrawal. These records shall include, but not be limited to, those associated with the Lead Administrator's recognition of CyberLABs to include approved, denied, and pending requests for CyberLAB recognition; complaints (pending and completed); audits; renewals; and Trademark Use Agreements.

■ 8. Amend § 8.222 by revising paragraphs (a) and (b)(10), redesignating paragraph (b)(11) as paragraph (b)(12), and adding new paragraph (b)(11) to read as follows:

§ 8.222 Establishment of an IoT Registry.

(a) A grantee of authority to use the FCC IoT Label shall provide information about the complying Consumer IoT Product to the public in English and Spanish in accordance with industry accessibility best practices. Information supplied by grantees shall be made available in a dynamic, decentralized, publicly accessible registry through a common Application Programming Interface (API) that is secure by design.

(b) * * *

(10) Disclosure of whether the manufacturer maintains a Hardware Bill of Materials (HBOM) and/or a Software Bill of Materials (SBOM);

(11) Disclosure of camera/video capability, audio capability, and location determination sensors; and

(12) Additional data elements that the Bureau deems necessary.

■ 9. Add §§ 8.223 through 8.227 to subpart B to read as follows:

§ 8.223 FCC IoT Label.

(a) Grantees shall include the FCC IoT (USCTM) Label on their packaging, either printed or using an adhesive label, in accordance with the most current edition of the U.S. Cyber Trust Mark Brand Management Guidelines published by the FCC and available at: *www.fcc.gov/CyberTrustMark.*

(b) *Sizing.* The FCC IoT (USCTM) Label consisting of the U.S. Cyber Trust Mark image and QR Code shall be no smaller than 1-inch by 2-inches.

(c) *QR Code.* The QR Code shall be comprised of the encoded character string for the URL or other resource identifier of the cyber nutrition label, according to ISO/IEC 18004 (incorporated by reference, see § 8.201).

(1) The QR Code shall range from 21 x 21 modules to 177 x 177 modules, which excludes micro QR sizes, and shall be comprised of modules at least 0.254mm x 0.254mm, according to ISO/IEC 18004 (incorporated by reference, see § 8.201).

(2) The selected module size should be appropriate to the distance, lighting, and typical devices owned by readers, and the QR Code should be surrounded by four (4) modules on all four sides.

(3) The QR Code Quality should meet one of the following: GSI General Specifications or 1.5/(**)/660 where **

is the aperture size best matching the expected reading distance, as per ISO/IEC 15415 (incorporated by reference, see § 8.201).

(d) The cyber nutrition label shall present the required information found in § 8.222(b) of this part. The cyber nutrition label must be available in English and Spanish and designed in accordance with industry accessibility best practices, including ensuring that all information is available via text-to-speech readers. Where the cyber nutrition label links to external websites maintained by the grantee, the grantee must provide the translated text to English and Spanish on those sites.

(e) The FCC IoT Label must be included within the product's online and physical documentation (*e.g.,* user guide).

§ 8.224 Renewal.

(a) Grantees shall seek renewal of each product's USCTM certification every three years. It is the responsibility of the grantee to apply for certification renewal. Grantees should apply to a CLA for renewal at least 90 calendar days prior to the product's certification expiration date and CLAs are required to complete their renewal evaluation within 90 calendar days of receiving the grantee's application.

(b) CLAs must track the renewal due dates of the products they certify; notify the grantee of upcoming renewal deadlines; and notify the Lead Administrator and the Bureau of any products whose certification has automatically terminated due to a failure to renew. The failure of a CLA to provide notice to a grantee of its upcoming renewal deadline does not excuse the grantee from filing a timely renewal application.

(c) The Grantee's product certification renewal application must include at a minimum:

(1) Grantee's name, address, telephone number(s), email address(es), and website(s);

(2) Contact information for personnel responsible for the renewal application;

(3) Name and address of the agent located in the United States designated by the grantee to receive service of process in the U.S.;

(4) Product name;

(5) Product type;

(6) Date(s) on which each grantee received each authorization to use the Trust Mark;

(7) The authorizing CLA (if different);

(8) A description of changes to the IoT product since it was last evaluated;

(9) A copy of all document(s) related to the granting of authorization to the grantee to use the Trust Mark, including the original application and all CyberLAB report(s); and

(10) A test report conducted by a CyberLAB testing the product against any new or revised USCTM Program requirements and 70% of the remaining requirements (those that are not new or revised).

(d) The CLA shall evaluate the product certification renewal as follows:

(1) Evaluate the product against all new and revised requirements published by the U.S. Cyber Trust Mark program since the product's certification or previous renewal;

(2) Re-evaluate at least 70% of all remaining applicable program requirements (those that are not new or revised) and re-evaluate 100% of all remaining applicable program requirements if at least one instance of non-compliance is found;

(3) Verify that certification for each Backend component that supports the IoT Product is current according to the respective program's validity periods;

(4) Conduct an in-person or remote audit to confirm that the grantee continues to maintain the documents required by § 8.XXX of this part. In addition, review implementation proofs as defined in § 8.XXX of this part performed within the last three months and information regarding the latest security/patch updates shall be provided as verification that processes continue to be implemented.

(5) Confirm the grantee has maintained a U.S. Cyber Trust Mark Qualified Professional for the duration of the grantee's certification period or since the date of last renewal, whichever is more recent.

(d) *USCTM Qualified Professional.* Grantees must notify the CLA who performed the original assessment of any changes to the product or relevant documentation that impact compliance to applicable program requirements. To provide for the consistent identification of compliance-relevant changes, grantee organizations must appoint and maintain a U.S. Cyber Trust Mark Qualified Professional on staff.

(1) The grantee shall appoint the USCTM Qualified Professional(s), ensuring that the designee has obtained, and continues to maintain, appropriate qualifications. If the designated USCTM Qualified Professional leaves the grantee's organizations or is no longer serving in the role, the grantee must notify the CLA(s) that issued the grantee's product certification of the vacancy. The grantee must fill the vacancy for the USCTM Qualified Professional within six months.

(2) To be designated as a grantee organization's USCTM Qualified Professional, the staff member must have:

(i) Completed an approved course on the requirements of the U.S. Cyber Trust Mark Program including the program's scheme requirements;

(ii) Successfully passed the exam associated with the approved course; and

(iii) Confirmed receipt of information from the FCC and the Lead Administrator regarding major changes to the U.S. Cyber Trust Mark program that impact the USCTM Qualified Professional's roles and activities.

(3) To maintain status as a USCTM Qualified Professional an individual shall:

(i) Confirm receipt of information from the FCC and the Lead Administrator regarding major changes to the U.S. Cyber Trust Mark program that impact the USCTM Qualified Professional's role and activities; and

(ii) Repeat course and exam requirements every three years.

Note 1 to paragraph (d)(4): These placeholders are for technical requirements that the Bureau will seek comment on in a subsequent Public Notice.

§ 8.225 Post-Market Surveillance and Ad-Hoc Surveillance.

(a) *Post-Market Surveillance.* CLAs shall apply the following processes to fulfill their post-market surveillance obligations under § 8.220(g).

(1) *Sample Test Plan.* CLAs shall develop a written plan describing how they will ensure that the proper percentage of representative certificated products are tested. CLAs shall submit a Sample Test Plan specific for a given 12-month period to the Lead Administrator annually in September. The Lead Administrator in its role as a CLA will submit its Sample Test Plan to the Bureau annually in September. The Lead Administrator, and the Bureau for the Lead Administrator's Sample Test Plan, will review the Sample Test Plan to ensure it is sufficiently robust to identify and mitigate evolving vulnerabilities throughout a product's life cycle and to ensure consistency among test plans. Lead Administrator will provide CLAs' Sample Test Plan to the Bureau upon request.

(2) *CLA Notification to Grantees.* CLAs shall provide their grantees with a copy of the Lead Administrator approved Sample Test Plan. CLA will also notify grantees in writing that:

(i) CLAs must conduct post-market surveillance sampling.

(ii) The grantee must ensure the availability of production samples at least until the longer of either the end

date of the support period communicated on the product registry or no less than one year after the last production date, whichever period is longer.

(iii) The grantee may be required to submit the product for post-market surveillance testing, and that these samples may be requested, at any time, by either the CLA or the Bureau.

(iv) The failure to provide samples within 30 days of the request may result in withdrawal of certification.

(3) *Sample Selection.* Samples audited by a CLA shall be selected from the products certified or renewed by that CLA over the current year or the two-year period directly preceding submission of the sampling plan to the Lead Administrator. A specific product shall only be selected once for audit within its three-year certification period unless requested by the Bureau. When selecting the samples to be audited, a CLA shall prioritize the following:

(i) Broad grantee and laboratory representation;

(ii) Representation of the full range of product types certified;

(iii) Recent security events;

(iv) Representation across the previous four years of certificates issued;

(v) New grantees;

(vi) Grantees with a history of non-compliance; and

(vii) Requests from the Bureau for an audit to be performed on specific product or a group of products.

(4) *Sample Rate, Selection Timeframe, and Report.* A CLA shall adhere to the following sampling, selection, and report requirements:

(i) The total number of products selected for surveillance by a CLA shall be at least three percent of the total number of products certified or renewed by the CLA during the prior calendar year. A ''product'' is each grant of certification issued.

(ii) When calculating the total number of products to be selected for surveillance, the number of products shall be rounded up to the nearest whole number.

(iii) Products selected for surveillance by the CLA shall be selected from the devices certified or renewed by the CLA over the current calendar year or previous 2 calendar years.

(iv) A product certified in a prior surveillance year, but tested in the present surveillance year, will be credited as surveillance in the present surveillance year.

(v) A CLA must submit an annual report of their post-market surveillance activities for the surveillance year to the Lead Administrator by June 30th of the year following submission of the sampling plan. The post-market surveillance report is for all audits performed by the CLA in the previous calendar year.

(vi) The Bureau may request a specific product or products be subject to post-market surveillance. The CLA may count any such surveillance conducted under a Bureau request toward their annual sampling requirement.

(5) *Obtain Sample.* The CLA shall obtain a sample by the following method:

(i) Request the grantee submit a sample of the certified product either from their latest production line stock or by purchasing a sample of the product from the marketplace for delivery to the CLA or the CLA's designated CyberLAB.

(ii) The CLA shall notify the Lead Administrator if a grantee refuses, or fails to comply with, a request for a sample within 30 days of the CLA request. The Lead Administrator shall notify the Bureau if it is unable to resolve the failure to comply in a reasonable period of time. All grantees shall have received a copy of the Sample Test Plan from the CLA and should be aware that stating that a product is no longer manufactured or that the product will not be marketed in the United States will not serve as sufficient justification for failing to provide a product sample upon request of the CLA or to the Bureau upon request.

(iii) The grantee shall provide justification to the CLA if it would be overly burdensome for it to keep a production sample on hand or if the production run for the product is limited (*i.e.,* 10 items or fewer). The CLA will determine whether this justification is acceptable and retain this determination within the grantee's record.

(6) *Evaluation.* The sample shall be evaluated by the CLA to determine compliance with the U.S. Cyber Trust Mark program requirements in accordance with the following procedures and requirements:

(i) The CLA shall perform sufficient testing to a provide a high level of confidence that the sample complies with the FCC IoT Labeling Program requirements. Complete testing to all program requirements is not required; however, testing shall be performed on those requirements most likely to be in non-compliance.

(ii) The CLA may perform the testing through either a CLA-run lab or another recognized CyberLAB. In-house manufacturer labs may not be used. Post market surveillance testing should be performed by the same CLA-run lab or CyberLAB that performed the original evaluation whenever possible. The CLA shall inform the grantee of the name of the CLA-run lab or CyberLAB when the sample is obtained.

(iii) The CLA shall compare the test data and sample specifications obtained in the post-market surveillance evaluation with the information submitted in the application filing, verifying consistency. The CLA shall confirm that the grantee has made no changes to the device, applications, or backend/cloud services that impact compliance to the grantee's existing certification to the applicable program requirements. All information shall be consistent.

(iv) [Reserved]

(v) [Reserved]

(vi) The CLA shall examine the sample packaging to determine compliance with the U.S. Cyber Trust Mark program's Labeling requirements.

(vii) The test report documenting surveillance shall be signed by the person(s) performing the tests.

(viii) A review by the certification body personnel shall be made after completion of the evaluation, as to whether the sample complies with the applicable FCC requirements.

(b) *Ad-Hoc Surveillance.* Each CLA shall participate in the ad-hoc surveillance evaluation when initiated by the FCC.

(1) Within 30 days of Bureau initiation, the Lead Administrator will convene a committee consisting of representatives from each CLA, which shall:

(i) Create a decision tree as an objective basis for determining if an ad-hoc surveillance audit is justified (Scope, Logistics Limitations & Risk Model);

(ii) If the Committee determines an audit is not justified, the Lead Administrator will submit the decision tree and its associated justification to the Bureau; and

(iii) If the Committee determines an audit is justified, the Lead Administrator will submit a surveillance plan to the Bureau detailing the types of products to be sampled, the sample rate by CLA, testing to be performed, timeline, and reporting details.

(iv) The Bureau shall be the final arbiter of whether an ad-hoc surveillance audit is conducted.

(2) Once the surveillance plan is approved by Bureau:

(i) Samples shall be obtained as defined in paragraph (a) of this section;

(ii) Evaluation shall be performed in testing facilities as defined in paragraph (a) of this section;

(iii) Reporting shall be created and communicated to the Bureau as described in the Bureau-approved ad-hoc surveillance plan; and

(iv) The Bureau will communicate the ad-hoc surveillance plans to all approved accreditation bodies.

(3) [Reserved]

(c) *Lead Administrator.* The Lead Administrator shall manage post-market surveillance and ad-hoc surveillance for the UCSTM program and carry out the following responsibilities:

(1) Receive annual CLA Sample Test Plans and review them for consistency and compliance with the USCTM program rules and submit its own Sample Test Plan to the Bureau for review;

(2) Convey updates on requirements to the CLAs;

(3) Organize committee of CLA representatives to conduct ad-hoc surveillance;

(4) Reassign post-market surveillance responsibilities in response to changes to CLAs (*e.g.,* CLA withdraws from USCTM Program, conflict of interest);

(5) Monitor and review CLA performance and develop recommendations to the FCC to improve CLA performance (*e.g.,* delays and time to process evaluations, excessive complaints against products tested);

(6) Create and administer the Qualified Professional training and certification, in collaboration with CLAs; and

(7) File annual post-market surveillance, ad hoc and post-audit surveillance reports with the Bureau.

§ 8.226 Complaints.

Complaints can be submitted against U.S. Cyber Trust Mark labeled products to any CLA through their standard complaints management process.

(a) In response to the complaint, the receiving CLA shall notify the Lead Administrator, who will notify the Bureau of the complaint.

(b) The Lead Administrator will determine if the complaint is within the scope of the U.S. Cyber Trust Mark program requirements pursuant to rules adopted by the Commission; confirm the certification status of the product; and assign the complaint to the certifying CLA. The Lead Administrator will notify the Bureau of any product that bears the U.S. Cyber Trust Mark but is not certified. The Commission, via its Public Safety and Homeland Security Bureau, shall resolve any disputes that exceed the functions of the administrator.

(c) The certifying CLA shall follow the procedures outlined in § 8.225(a)(6) (Evaluation).

§ 8.227 Trademark Use and Branding Guidance.

(a) CLAs shall enter into a Trademark Use Agreement and agree to abide by the terms of the USCTM Branding Guidance, which may be updated from time to time at the sole discretion of the agency. The Trademark Use Agreement outlines the rights and expectations of CLAs related to their use of the USCTM and their limited right to authorize certain third-party sub-licensees to use the USCTM, including sub-licensing to authorized manufacturers or other agents, such as advertising agencies, sales agents, and retailers.

(b) CLAs shall maintain complete information about each sub-licensee including (at a minimum) the name, address, telephone number(s), email address(es), and website(s) of each sub-licensee; the date(s) on which each sub-licensee received authorization from the CLA to use any of the licensed marks; the names of any contact personnel for each sub-licensee; and a copy of all document(s) related to the vetting of and granting of the sublicense.

(c) CLAs shall maintain this information for a minimum of the term of the Trademark Use Agreement, plus five years thereafter.

(d) CLAs shall provide the Bureau with these records within five business days of receipt of a request to do so.

(e) CLAs shall provide the Bureau or its designated authorized representatives, with samples and/or relevant documentation regarding any product, commercial item, package, brochure, advertisement, or any other item that has been prepared by or is in the possession of CLA that the FCC reasonably believes uses, misuses, or incorporates any part or whole of a Cyber Trust Mark.

(f) CLAs shall assist the Bureau in policing unauthorized use of the U.S. Cyber Trust Mark through post-market surveillance and auditing activities, and by notifying the Lead Administrator and FCC as soon as it becomes aware of any use by any other person of a name, trade name, trademark, domain name, email address, metatag, AdWords (or similar search term), mode of advertising, or anything that may reasonably constitute (i) infringement of, (ii) unfair competition with, or (iii) passing off as, any of the Cyber Trust Marks. In addition to promptly reporting the improper usage, the CLAs shall provide relevant material, if available, to the Lead Administrator.

[FR Doc. 2026–23812 Filed 11–20–26; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 26–96, 26–288; FCC No. 26–75; FR ID 378440]

Connect America Fund; A National Broadband Plan for Our Future High-Cost Universal Support, Reforming the High-Cost Program for an All-IP Future, Safeguarding Universal Service Funding Through Effective Applicant Vetting

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) initiates a rulemaking to establish a vetting process for applicants for, and other recipients of, certain new funding awards of high-cost Universal Service Fund (USF) support.

DATES: Comments are due on or before December 23, 2026 and reply comments are due on or before January 22, 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 document, you should advise the contact listed in the following as soon as possible.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. You may submit comments identified by WC Docket Nos. 10–90, 26–96, and 26–288, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

○ Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.

○ Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

○ Commercial courier deliveries (any deliveries not by the U.S. Postal Service)

must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

○ Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530.

FOR FURTHER INFORMATION CONTACT: Scott Lively, *scott.lively@fcc.gov,* Wireline Competition Bureau, 202–418–7400 or TTY: 202–418–0484. Requests for accommodations should be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket Nos. 10–90, 26–96, 26–288; FCC No. 26–75; adopted October 29, 2026 and released October 30, 2026. The full text of this document is available for public inspection during regular business hours at the Commission's headquarters at 45 L Street NE, Washington, DC 20554 or at the following internet address: *https://www.fcc.gov/document/safeguarding-high-cost-funding-through-effective-applicant-vetting.*

Ex Parte Rules. The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

I. Introduction

In this document, consistent with the directives of the Rural Broadband Protection Act of 2025 (RBPA), the Commission initiates a rulemaking to establish a vetting process for applicants for, and other recipients of, certain new funding awards of high-cost USF support.

With this NPRM, the Commission seeks comment on its proposals for implementing the RBPA, including the Commission's proposed interpretation of the Act's definition of ''new covered funding awards'' under its universal service rules, and what details and documentation an applicant will be required to provide to the Commission to demonstrate that it has the technical, financial, and operational capabilities to deploy and operate a USF-supported network that will meet program requirements. The Commission also invites comment on implementation of the RBPA's penalty framework for pre-authorization defaults.

II. Discussion

In proposing rules to implement RBPA's vetting process and penalties for pre-authorization defaults for future awards of new covered funding, the Commission largely tracks the relevant statutory language. The Commission seeks comment on proposals to implement the statutory language in its rules, generally, and with regard to each specific issue addressed in the following.

The Commission proposes to interpret the statute's definitions of ''covered funding'' and ''new covered funding award'' to comprise an award of high-cost support based on an application for funding to support the deployment of a broadband-capable network and the provision of supported services over the network. The Commission seeks comment on the proposal.

The Commission proposes to interpret ''application'' as used in the RBPA as an application for funding from a specific high-cost mechanism wherein the applicant is required to include information and/or certifications regarding technical, financial, and operational capabilities, including, but not limited to, applications for funding from high-cost mechanisms governed by subpart AA of the Commission's rules. Though the Commission could choose to include an RBPA-compliant vetting process in any future high-cost mechanism, its proposed interpretation of application would not require that of high-cost mechanisms that offer support to a carrier based on its Eligible Telecommunications Carrier (ETC) status and mode of FCC regulation (*i.e.,* rate-of-return or price cap). The Commission seeks comment on the proposal. The Commission's rules distinguish between high-cost mechanisms that require applications from potential funding recipients and other mechanisms. For example, the rules governing the Alternative-Connect America Cost Model (A–CAM) support mechanism state that a rate-of-return carrier receiving support pursuant to 47 CFR part 54, subparts K (Connect America Fund Broadband Loop Support (CAF–BLS)) or M (High-Cost Loop Support (HCLS)) of the Commission's rules ''shall have the opportunity to voluntarily elect, on a state-level basis, to receive Connect America Fund (CAF) A–CAM support as calculated by the A–CAM adopted by the Commission in lieu of support calculated pursuant to subparts K or M.'' For rate-of-return carriers that continued receiving support from the CAF–BLS and/or HCLS high-cost mechanism, subparts K and M, respectively, of the Commission's rules detail how the support is calculated, and the information required from the support recipient has nothing to do with demonstrating technical, financial, or operational capabilities or the Commission vetting the recipient. Recipients of these mechanisms are vetted using the ETC designation process, which is not directly tied to receipt of support from any specific high-cost mechanism. In summary, these mechanisms offer support (and in some cases the possibility of electing a different support mechanism) to a class of carriers and do not contemplate an

''application'' or specific applicant vetting, whereas 47 CFR part 1, subpart AA of the Commission's rules enumerates extensive application requirements for carriers interested in participating in competitive bidding for USF support, and those rules are supplemented by further application requirements for each specific high-cost mechanism that employs competitive bidding.

The Commission further proposes to interpret the phrase ''the deployment of a broadband-capable network and the provision of supported services over the network'' as clarifying that the statute only applies to awards that include both of the two specified categories of funded activities, with ''deployment'' referring to construction of a network to serve a previously unserved location or upgrading the network to improve service at an underserved or unserved location and ''provision of supported services'' referring to maintaining existing service levels at a location. Therefore, funding that is being awarded only to maintain existing service levels would not be considered ''covered funding'' because it is not funding that supports deployment. Further, the Commission proposes that any new requirements adopted in this proceeding to establish a vetting process for a ''new covered funding award'' would not apply to any existing high-cost mechanisms for which the Commission had already adopted rules prior to enactment of the RBPA. The Commission seeks comment on its proposal and potential alternatives.

The Commission proposes adopting a new general Part 54 rule that would require new covered funding awards, offered through a competitive bidding mechanism or otherwise, to include a detailed RBPA-compliant vetting process. The RBPA provides the basic structure for the proposed new rule by directing the Commission to only award funding to applicants that can demonstrate through an initial application sufficient detail and documentation for the Commission to ascertain that the applicant possesses the technical, financial, and operational capabilities, and has a reasonable business plan, to deploy the proposed network and deliver services with the relevant performance characteristics and requirements defined by the Commission and as pledged by the applicant. The Commission seeks comment on the effectiveness of past and existing vetting frameworks and how those prior frameworks can inform the RBPA's vetting requirements for new covered funding awards. However, given that the Commission does not know what form a future mechanism for distributing ''new covered funding awards'' will take, it seeks comment on avoiding the adoption of a rigid, specific framework that must be used for all new covered funding awards. Instead, the Commission tentatively concludes that it is sufficient to require that future new covered funding awards meet the basic requirements of the RBPA. Specific requirements for evaluating applications for such new covered funding awards would instead be proposed and adopted as part of the proceedings to establish the program-specific requirements for such funding.

The plain language of the RBPA applies to an applicant's ''initial application'' for a new covered funding award, not an application to participate in competitive bidding. In the context of high-cost mechanisms that employ competitive bidding, the Commission seeks comment on whether the long-form application constitutes a winning bidder's ''initial application'' for a ''new covered funding award.''

In the first stage of the Commission's well-established two-stage application process for high-cost mechanisms that use competitive bidding, an entity seeking to participate in the competition must provide information and a series of certifications in a short-form application used by the Commission to determine whether the applicant has the necessary legal, technical, and financial qualifications. A determination that an applicant is qualified to bid based on that application is not a determination of the applicant's eligibility for such support.

After competitive bidding concludes, a winning bidder has a binding obligation to file a timely and sufficient post-auction long-form application before it can be authorized to receive the support associated with its winning bid(s). The long-form application contains more extensive information about the winning bidder's qualifications, funding, and the network it intends to use to meet its public interest obligations and performance requirements, as well as a series of certifications, to demonstrate to the Commission that it is legally, technically, and financially qualified to receive the universal service support associated with its winning bids, which allows for a further in-depth review by the Commission of the winning bidder's qualifications prior to any authorization of support.

The Commission has found that requiring an in-depth review of extensive information only from winning bidders at the long-form stage balances the need to collect essential information from potential auction applicants with administrative efficiency and provides an appropriate screen at the pre-auction stage to ensure serious participation by qualified bidders without being unduly burdensome to potential auction participants. Before there is a known pool of applicants for a given competition, finding the optimal balance between encouraging participation and screening out unqualified applicants is difficult to do with any certainty. The Commission has observed in connection with the use of competitive bidding to award high-cost support ''that maximizing the number of qualified participants in the competitive bidding process is likely to improve the overall quality of the process.''

In the interest of facilitating a robust and fulsome discussion of applicant vetting, the Commission seeks comment on whether there are further actions at the short-form application stage that, without contravening the purpose of the two-stage application process, could provide greater insight into an applicant's fitness to participate in competitive bidding for universal service support and its ability to meet the expectations of a support recipient. Would a more thorough application and intense vetting of applicants at the short-form stage prevent unqualified bidders from participating in the auction, and then defaulting prior to authorization, as was seen in the Rural Digital Opportunity Fund (RDOF)? Was that the intent of Congress in enacting the RBPA?

The Commission also seeks comment on whether it should require additional information at the long-form application stage to facilitate the Commission's review of winning bidders applying for new covered funding awards for universal service support. For example, to what extent does the Commission need to obtain information showing a realistic assessment that the provider's plans not only will enable the deployment of a network with the required technical and service capabilities that can be funded from available revenues but also the ability to meet pertinent deadlines specified in the program rules? Does the Commission need more specific and/or detailed information than it has received in the past regarding the provider's plans to address the types of challenges that routinely arise in connection with network deployments, such as weather, permitting, land access, or other considerations? The Commission further seeks comment on whether applicants with less experience providing the service(s) for which

support will be awarded, or which must be offered as a condition of support, should be required to undergo a more extensive vetting process. If so, how should the Commission categorize applicants based on experience? Could this framework be informed by the prior practice of creating two categories of applicants, those with at least two years of experience providing a voice, broadband, and/or electric transmission or distribution service and those with less than two? What information should be required for each category of applicant, and at what stage in the process?

The most recent use of competitive bidding for high-cost support (Auction 904) benefited from adapting lessons learned from vetting frameworks used by prior mechanisms and should serve as the starting point for discussion. The RDOF vetting framework is summarized in the following.

Applicants to participate in Auction 904 were required to submit:

- The applicant's ownership information
- Applicant information, including legal classification, jurisdiction of formation, address, contact information, and responsible individual
- Information regarding any agreements relating to its participation in the auction
- Description of the broadband technology the applicant planned to deploy
- Recent audited financials (with more financial statements required from less experienced applicants)
- A letter from a qualified bank committing to provide a letter of credit
- Various certifications, including certifications regarding:
  - ETC status, including an acknowledgement that it must be designated as an ETC in the relevant areas prior to being authorized to receive support in those areas
  - Audited financial statements (applicants with at least two years of operational history that were not audited in the ordinary course of business were allowed to submit unaudited financials and certify that they would submit audited financials at the long-form stage if selected)
  - Compliance with statutory and regulatory requirements
  - Financial and technical capability to meet the relevant public interest obligations for each performance tier and latency combination in the geographic areas in which it seeks support
  - Availability of funds for all project costs that exceed the amount of support to be received for the first two years of its support term
  - Compliance with the relevant public interest obligations
  - Access to spectrum, if applicable
  - Information regarding earth station licenses for satellite technology, if applicable

Prior to being authorized to receive the support already won at auction, each winning bidder in Auction 904 was required to submit during the long-form application process:

- Documentation of its designation as an ETC in all areas where it will receive support and ETC certification letter(s) from an officer of the applicant certifying that the ETC designation(s) covers all the areas where the applicant will receive support (submitted with long-form application if ETC designation(s) already obtained or no later than 180 days after the announcement of Auction 904 winning bidders if not yet obtained)
- Audited financial statements (if not submitted during the pre-auction short-form process)
- A detailed technology and system design description that explains how the design and technologies chosen will meet the relevant performance requirements, including information regarding quality, coverage, voice service, network management, and on-going operations, and a detailed network diagram that is certified by a professional engineer; the engineer must certify that the network is capable of delivering, to at least 95% of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements
- A description of how the required construction will be funded in each state, specifying how high-cost support and other funds, if applicable, will be used to complete the project, with financial projections demonstrating that the applicant can cover the necessary debt service payments over the life of any loans
- An irrevocable standby letter of credit issued by a qualified bank for each state in which it will be authorized to receive support that covers at least the first year of support to be received for the first-year support term for the state
- A letter of credit bankruptcy opinion letter from outside legal counsel regarding the treatment of the letter(s) of credit or its proceeds in a bankruptcy proceeding

Similarly, as explained in this document, where the Commission has used a competitive application process, as opposed to competitive bidding, to award high-cost support to a chosen selectee, it has also used a two-stage application process for a selectee to become authorized to receive support, albeit with the inclusion of more extensive applicant information required at the first phase of the application process. Given the unique circumstances of the Bringing Puerto Rico Together (Uniendo a Puerto Rico) Fund and Connect USVI Fund (PR–USVI Funds) program and because the Commission does not know whether, and if so how, it may choose to implement a competitive application process to award support in a future high-cost program, the Commission seeks comment on what it should consider to be an ''initial application'' for a ''new covered funding award'' when using that type of process and the information that applicants should be required to include in the initial application.

For future high-cost programs that do not use a system of competitive bidding or another competitive application process to allocate universal service support, the Commission seeks to develop a record on the appropriate framework and content for an application for a new covered funding award under any such program in order to facilitate vetting of such applications in compliance with the RBPA.

For future high-cost programs covered by the RBPA for which support is not allocated through competitive bidding or another competitive application process, the Commission seeks comment on whether the application process and content used to apply for Auction 904 provide a good starting point for establishing the framework for initial applications for new covered funding awards. The Commission further seeks comment on both the substance and the timing for new covered funding award applications outside of a competitive process. In particular, the Commission seeks comment on whether, and if yes, how, it should modify or build upon the requirements used for Auction 904 to ensure the Commission can sufficiently ascertain an applicant's capabilities and conduct the vetting required under the RBPA. The Commission also seeks comment on whether any of these requirements are overly burdensome or not useful outside of a competitive process and should therefore not be

required. Commenters are free to use examples from other programs to inform their positions.

The two-phased RDOF vetting process solicits both (i) information that is probative of applicants' technical, financial, and operational capabilities, as well as (ii) additional information that is typically included in prudent business plans. To the extent that future high-cost support mechanisms subject recipients of new covered funding awards to a similarly detailed vetting process, the Commission seeks comment on whether there is a need to also require a business plan on top of the other required submissions. The Commission seeks comment on whether obtaining a substantial amount of information in vetting processes amounts to a ''reasonable business plan'' as required by the RBPA even if it is not required as part of a separately-labeled portion of the submission. Using the RDOF vetting process as the starting point for discussion, the Commission invites comment and welcomes proposals regarding what applicants should be required to show, if anything, beyond what was required of RDOF program applicants through the two-phased vetting process.

Under the RBPA, the Commission may only award covered funding to applicants that can demonstrate that they meet the qualifications. The RBPA states that the Commission must evaluate the applicant's proposal against ''reasonable and well-established technical, financial, and operational standards, including the technical standards adopted by the Commission in orders of the Commission relating to Establishing the Digital Opportunity Data Collection (WC Docket No. 19–195) (or orders of the Commission relating to modernizing any successor collection) for purposes of entities that must report broadband availability coverage.''

Historically, the Commission did not adopt generally applicable standards and assumptions for reviewing information demonstrating a high-cost support applicant's capability given the fact-intensive, case-by-case nature of the review. The Commission benefits from the expertise of Commission engineers and/or other subject matter experts to discuss network plans with each applicant, including engineers and other specialists that support the applicant's operations and/or assisted with the application. Further, given the broad array of broadband technologies that compete in the communications marketplace and diverse terrain of areas needing service, it is difficult to develop one uniform set of evaluation standards for reviewing all applications and also maintain the principles of technology neutrality cited in the RBPA. The Commission invites comment on whether case-by-case evaluation is most appropriate to ensure that eligibility determinations are made consistently across all applications. The Commission welcomes proposals for a set of technical, financial, and operational standards that could be used for evaluating applicants for new covered funding awards in compliance with the RBPA.

The RBPA specifically references technical standards for entities that must report broadband availability coverage. These standards can be found in the Commission's rules and in the Commission's published guides designed to support entities that must report broadband availability coverage. For example, providers of fixed wired broadband service must not exceed specific maximum buffer distances (which must include the drop distance) from their aggregation points to their served locations when reporting service availability based on their wired technologies, with specific maximum buffer distances for fiber to the premises and hybrid fiber-coax. Similarly, these rules provide certain factors when modeling terrestrial fixed wireless services, including the geographic coordinates of each base station, ''the link budget and a description of the other parameters used in the propagation model, including predicted signal strength'' and ''receiver heights within a range of four to seven meters.'' The Commission invites comment on how, for purposes of evaluating applicant technical capability, it could employ these technical standards when evaluating applicants for new covered funding awards.

Under the RBPA, the Commission must also evaluate the applicant's proposal in light of ''the applicant's history of complying with requirements in Commission and other government broadband deployment funding programs.'' Myriad state and Federal programs could fall under a broad definition of ''other government broadband deployment funding programs.'' Compliance with some programs may be relatively easier for the Commission to track than others. It may be harder to elicit information about compliance in other programs, such as those with minimal support for network deployment and some state programs. The Commission seeks comment on interpreting ''other government broadband deployment funding programs'' to mean those programs depicted in the FCC's Broadband Funding Map.

How can the Commission most efficiently and effectively obtain information from administrators of state and other Federal broadband deployment programs that have records of an applicant's compliance history? Should new participants be penalized for having no program compliance history? How should the Commission weigh an applicant's prior history of abiding by, or failure to comply with, program rules? What if the applicant was able to cure its prior non-compliance? How should defaults on awards under other broadband deployment funding programs be addressed? The Commission invites comment on how best to ensure these criteria are fairly and systematically applied across all applicants. The Commission also proposes and invites comment on requiring applicants to disclose if they have been suspended or debarred from other Federal broadband deployment funding programs or are currently subject to an ongoing suspension and debarment action. The Commission further invites comment on how a potential applicant's suspension or debarment status should affect its eligibility to pursue a new covered funding award.

Regarding the Commission's broadband deployment funding programs, applicants that failed to comply with the obligations of high-cost support are subject to the compliance measures in § 54.320 of the Commission's rules, and failure to comply may trigger further action, including suspension or debarment pursuant to rule § 54.8. The Commission invites comment on whether and how a potential applicant previously subject to a non-compliance action under rule § 54.320 should be encumbered in or prevented from pursuing a new covered funding award. For example, Auction 903 participants that subsequently defaulted on their entire award were barred from participating in Auction 904. Should potential applicants that previously substantially defaulted in a universal service program be barred from participating in future competitions for new covered funding awards? How would the Commission determine what constitutes a substantial default, or would it evaluate that default on a case-by-case basis? Should a substantial or complete default result in a ban on participating in all subsequent competitions, or only the next competition? Should a default result in a disadvantage instead of an outright ban? Should these determinations be made when future programs that will

make new covered funding awards are noticed?

The RBPA requires the Commission to ''set a penalty for pre-authorization defaults of at least $9,000 per violation'' and stipulates that it ''may not limit the base forfeiture to an amount less than 30 percent of the applicant's total support, unless the Commission demonstrates the need for lower penalties in a particular instance.'' The Commission believes this RBPA provision addresses defaults after an applicant becomes a winning bidder or is selected by the Commission to receive support, but before it is authorized to receive funding.

Regarding pre-authorization defaults, a winning bidder that fails to file an application by the applicable deadline or that for any reason is not subsequently authorized to receive support has defaulted on its bid. The Commission may dismiss a winning bidder's application with prejudice for failure of the winning bidder to prosecute, failure of the winning bidder to respond substantially within the time period specified in official correspondence or requests for additional information, or failure of the winning bidder to comply with requirements for becoming authorized to receive support. Any such determination by the Bureau shall be final upon public notice of the determination, and a winning bidder or long-form applicant shall have no opportunity to cure through additional submissions, negotiations, or otherwise. The Commission invites comment on retaining these definitions from 47 CFR 1.21004 and Auction 904.

The advent of the Commission's Broadband Serviceable Location Fabric opened new possibilities for defining service areas under new awards of covered funding. The Commission proposes to defer defining ''violation'' for the purposes of the RBPA until it adopts rules for specific high-cost mechanisms and identifies the geographic areas eligible for support. The Commission invites comment on the proposal.

Auction 904 limited the total base forfeiture to 15% of ''the bidder's total assigned support for the Census Block Groups in which it is defaulting'' to prevent the base forfeiture amount from being disproportionate to the amount of a winning bidder's bid. In light of Congress's desire to increase penalties for pre-authorization defaults, the Commission invites comment on defining ''applicant's total support'' as the entire amount of support won at auction, which could potentially increase penalties considerably. The Commission also invites proposals for alternative definitions, such as defining applicant's total support as the total defaulted bid amount. The Commission further invites comment on which factors would demonstrate the need for lower penalties in a particular instance, per section 254(m)(3)(D) of the Communications Act.

In the Commission's experience developing subsidy programs to spur deployment of broadband-capable networks, the Commission recognizes that program design can impact outcomes. Therefore, the Commission invites proposals addressing the design of high-cost support mechanisms that would reduce pre-authorization defaults, possibly through deterring potential applicants that are unlikely to meet program requirements if they receive support. The proposals could include limits on the number of locations an applicant can win relative to the number of locations that it currently serves or the applicant's current revenues—especially applicants that lack any current ETC designation or have not provided a voice, broadband, and/or electric transmission or distribution service for at least two years (or are not a wholly-owned subsidiary of such an entity). Commenters should address potential downsides of design proposals, including potentially hindering competition and rapidly exhausting program budgets. Proposals may also include solutions for expeditiously awarding support for locations that still need service after a winning bidder defaults, and specific penalties for post-authorization defaults when the Commission reasonably believes that the winning bidder did not intend to meet program requirements or otherwise acted in bad faith.

III. Procedural Matters

A. Paperwork Reduction Act

The NPRM may contain proposed new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Providing Accountability Through Transparency Act. Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of the document will be available on *https://www.fcc.gov/proposed-rulemakings*.

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the policies and rules proposed in the NPRM assessing the possible significant economic impact on a substantial number of small entities. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in this document. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

The NPRM seeks comment on proposals for implementing the RBPA, which directs the Commission to initiate a rulemaking proceeding to establish a vetting process for applicants for, and other recipients of, a new covered funding award. The NPRM also seeks comment on proposals for implementing the RBPA's penalties for pre-authorization defaults.

Specifically, the NPRM seeks comment on adopting a rule that would require future high-cost support mechanisms that will make new covered funding awards to include a vetting framework that requires proposals from applicants for funding to contain sufficient detail and documentation for the Commission to ascertain that the applicant possesses the technical, financial, and operational capabilities, and has a reasonable business plan, to deploy the proposed network and deliver services with the relevant performance characteristics and requirements defined by the Commission and as pledged by the applicant. The NPRM also seeks comment on the effectiveness of vetting frameworks used for prior high-cost support competitive bidding mechanisms but allows the details of the vetting framework to be determined when programs for new covered funding awards are noticed in the future.

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 proposed rules, if adopted. 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 Small Business Administration (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.

Commission 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 not dominant 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.

The rules proposed in the NPRM will apply to small entities in the industries identified in the chart in the following by their six-digit North American Industry Classification System (NAICS) codes and corresponding SBA size standard. Where available, the Commission also provides additional information regarding the number of potentially affected entities in the industries identified in the following:

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
Wired Telecommunications Carriers	517111	1,500 employees	3,403	3,027	88.95
Wireless Telecommunications Carriers (except Satellite).	517112	1,500 employees	1,184	1,081	91.30
All Other Telecommunications	517810	$40 million	1,673	1,007	60.19

TABLE 2—TELECOMMUNICATIONS SERVICE PROVIDER DATA

2025 Universal Service monitoring report telecommunications service provider data (Data as of December 2024)	SBA size standard (1,500 Employees)		
Affected Entity	Total number FCC Form 499A filers	Small firms	Percent small entities
Cable/Coax CLEC	69	63	91.30
CAP/CLEC	645	548	84.96
Competitive Local Exchange Carriers (CLECs)	4,049	3,853	95.16
Incumbent Local Exchange Carriers (Incumbent LECs)	1,175	920	78.30
Interexchange Carriers (IXCs)	112	92	82.14
Local Exchange Carriers (LECs)	5,224	4,773	82.14
Operator Service Providers (OSPs)	26	24	92.31
Other Toll Carriers	72	69	95.83
Wired Telecommunications Carriers	4,971	4,531	91.15
Wireless Telecommunications Carriers (except Satellite)	608	522	85.86

The RFA directs agencies to describe the economic impact of proposed 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 requirements and the type of professional skills necessary for preparation of the report or record.

In the NPRM, the Commission seeks comment on proposals that, if adopted, would require future high-cost support program applicants, including small entities, to demonstrate that they possess the technical, financial, and operational capabilities to deploy the proposed network and deliver services with the relevant performance characteristics and requirements defined by the Commission. This includes proposed definitions for ''covered funding'' and the use of a two-stage application process for competitive bidding for high-cost support. Specifically, the NPRM seeks comment on the effectiveness of vetting frameworks used for prior high-cost support competitive bidding mechanisms while allowing the details of the vetting framework to be determined when programs for new covered funding awards are noticed in the future. The NPRM also seeks comment on proposals for implementing the RBPA's penalties for pre-authorization defaults.

The proposals in the NPRM would require that future high-cost support mechanisms that will make new covered funding awards include a vetting framework that complies with the RBPA, allowing the specifics of the framework to be detailed when the future high-cost mechanisms are noticed. This will allow the Commission to adopt a vetting framework that satisfies the RBPA and also comports with the specifics of a future mechanism that has not yet been proposed. Given that the proposed rules will not adopt the specific vetting framework to be used for future

programs, the Commission is uncertain of the impact on small entities at this time. However, small carriers that have participated in competitive bidding for high-cost support should be familiar with what is normally required of applicants for proving capabilities, such as audited financial statements, letters of credit, and ETC designation. The same measures have been used consistently across several mechanisms of competitive bidding for high-cost support and will likely be used in the future, perhaps with changes to the timing of the required submission during the competition. Under the RBPA, carriers will have greater certainty regarding the penalties for pre-authorization defaults on new covered funding awards. The proposed rules will only apply to future high-cost support mechanisms that make new covered funding awards. The Commission's previous competitive bidding programs for high-cost support attracted a broad array of applicants, including small entities. Before reaching its final conclusions and taking action in this proceeding, the Commission expects to review the comments filed in response to the *NPRM,* including costs and benefits of these proposed rules, and more fully consider the economic impact on small entities and how any impact can be minimized.

The RFA directs agencies to provide a description of any significant alternatives to the proposed rules that would accomplish the stated objectives of applicable statutes, and minimize any significant economic impact on small entities. The discussion is required to include alternatives such as: ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

In the NPRM, the Commission proposes new rules that may impact small entities and seeks comment on alternatives that may minimize any significant economic impact on small providers. Specifically, the Commission invites comment on alternative approaches for vetting applicants for future, new covered funding awards. This includes whether to request additional information, such as a business plan, with their application. The NPRM also seeks comment on whether small and other applicants that previously defaulted in a universal service program should be eligible to compete in new covered funding awards, and whether a history of compliance with other state and Federal programs should be included with the application. Alternative proposals and approaches from commenters will further develop the record and could help the Commission further minimize the economic impact on small entities. The Commission's evaluation of the comments filed in this proceeding will shape the final conclusions it reaches, the final alternatives it considers, and the actions it ultimately takes to minimize any possible economic impact the final rules may have on small entities.

III. Ordering Clauses

Accordingly, *it is ordered* that pursuant to sections 1, 2, 4(i)–(j), 201(b), 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 254, 303(r), and 403, and §§ 1.1 and 1.412 of the Commission's rules, 47 CFR 1.1, 1.412, the NPRM hereby *is adopted*.

It is further ordered that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 23, 2026, and reply comments on or before January 22, 2027.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Puerto Rico, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone, Virgin Islands.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 to read as follows:

PART 54—UNIVERSAL SERVICE

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

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

■ 2. Add § 54.323 to subpart D to read as follows:

§ 54.323 Application process for new covered funding awards under the Rural Broadband Protection Act of 2025.

(a) New Covered Funding Award. For purposes of this section, a New Covered Funding Award is an award of covered funding that is made based on an application submitted to the Commission on or after [*the date on which the Commission promulgates rules pursuant to the Rural Broadband Protection Act of 2025*]. Covered Funding means any new offer of high-cost universal service program funding with rules adopted after [*the date on which rules are promulgated pursuant to the Rural Broadband Protection Act of 2025*], including funding provided through a reverse competitive bidding mechanism, for the deployment of a broadband-capable network and the provision of supported services over the network.

(b) Proceedings to adopt the mechanism-specific requirements for future high-cost support programs for distributing New Covered Funding Awards must propose, seek comment on, and adopt a vetting process for applicants for, and other recipients of, the new covered funding award under the specific high-cost support mechanism at issue.

(c) The vetting process developed under paragraph (b) of this section must, at a minimum, require an applicant for a new covered funding award to include in its initial application a proposal containing sufficient detail and documentation for the Commission to ascertain that the applicant possesses the technical, financial, and operational capabilities, and has a reasonable business plan, to deploy the proposed network and deliver services with the relevant performance characteristics and requirements defined by the Commission and as certified by the applicant.

(d) The Commission shall evaluate the applicant proposal described in paragraph (c) of this section against reasonable and well-established technical, financial, and operational standards, including the technical standards adopted by the Commission in orders of the Commission relating to Establishing the Digital Opportunity Data Collection (WC Docket No. 19–195) (or orders of the Commission relating to modernizing any successor collection) for purposes of entities that must report broadband availability coverage and the applicant's history of complying with requirements in Commission and other government broadband deployment funding programs.

(e) In adopting rules for any new covered funding award, the Commission

shall set a penalty for pre-authorization defaults of at least $9,000 per violation and may not limit the base forfeiture to an amount less than 30 percent of the applicant's total support, unless the Commission demonstrates the need for lower penalties in a particular instance.

[FR Doc. 2026–23830 Filed 11–20–26; 8:45 am]

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Notices

Federal Register
Vol. 91, No. 224
Monday, November 23, 2026

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2026–0563]

Chronic Wasting Disease Herd Certification Program Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability; extension of comment period.

SUMMARY: We are extending the comment period for a notice of availability of a revised version of the Chronic Wasting Disease (CWD) Herd Certification Program Standards. The CWD Program Standards provide guidance on how to meet CWD Herd Certification Program and interstate movement requirements. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the notice published on October 26, 2026 (91 FR 67266) is extended. We will consider all comments that we receive on or before December 28, 2026.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2026–0563 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2026–0563, Regulatory Analysis and Development, PPD, APHIS, 5601 Sunnyside Ave., #AP760, Beltsville, MD 20705.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Tracy Nichols, Molecular Biologist, Cervid Health Staff, Strategy and Policy, Veterinary Services, APHIS; 2150 Centre Ave., Bldg. B, Fort Collins, CO 80526; (970) 494–7380; *Tracy.A.Nichols@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2026, we published in the **Federal Register** (91 FR 67266, Docket No. APHIS–2026–0563) a notice announcing the availability of a revised version of the Chronic Wasting Disease (CWD) Herd Certification Program Standards. The CWD Program Standards provide guidance on how to meet CWD Herd Certification Program and interstate movement requirements.

Comments on the notice were required to be received on or before November 25, 2026. We are extending the comment period on Docket No. APHIS–2026–0563 until December 28, 2026. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 16th day of November 2026.

Sarah Helming,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2026–23768 Filed 11–20–26; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Administration

Agency Information Collection Activities: Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—7 CFR Part 245

AGENCY: Food and Nutrition Administration (FNA), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection.

This collection is a reinstatement with change of a previously approved collection for determining eligibility for free and reduced price meals and free milk as stated in FNA regulations. These Federal requirements affect eligibility under the National School Lunch Program, School Breakfast Program, and the Special Milk Program and are also applicable to the Child and Adult Care Food Program and the Summer Food Service Program when individual eligibility must be established.

DATES: Written comments must be received on or before January 22, 2027.

ADDRESSES: Comments may be sent to: Michelle Frey, School Meals Policy Division, U.S. Department of Agriculture, 5601 Sunnyside Ave., Beltsville, MD 20705, *michelle.frey@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *https://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Michelle Frey at *michelle.frey@usda.gov* 703–305–2170.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—7 CFR part 245.

Form Number: This collection does not contain any forms. However, FNS–

742 and FNS–874, which are approved under OMB Control Number 0584–0594 Food Programs Reporting System (FPRS) (expiration date May 31, 2027), are used in conjunction with this collection.

OMB Number: 0584–0026.

Expiration Date: 09/30/2026.

Type of Request: Reinstatement with change of previously approved collection.

Abstract: The Food and Nutrition Administration administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the Richard B. Russell National School Lunch Act (NSLA), as amended (42 U.S.C. 1751, *et seq.*), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771, *et seq.*). The proposed collection reports the eligibility burden of the National School Lunch Program; the School Breakfast Program; and the Special Milk Program. The eligibility burden of the Child and Adult Care Food Program and the Summer Food Service Program is reported in information collections under OMB Control Numbers 0584–0055 and 0584–0280, respectively.

Per 7 CFR part 245, schools participating in these meal and milk programs must make free and reduced price meals and free milk available to eligible children. This information collection obtains eligibility information for free and reduced-price meals and free milk and also incorporates verification procedures as required to confirm eligibility. The Programs are administered at the State and local levels and operations include direct certification, the submission of household size and income applications for school meal/milk benefits, record maintenance, and public notification of eligibility determinations, documentation, and other data. The information collection burden associated with this revision is summarized in the chart below.

Since the last renewal of this collection there has been an increase in the number of State agencies required to meet requirements related to Community Eligibility Provision (CEP).This has led to a reduction in burden to Local Educational Agencies (LEA) and households. The reduction in burden for LEAs includes reduced time spent processing applications, conducting verification, and notifying households of their eligibility, their denial of benefits, or their selection for verification. For households, the most significant change is that fewer households now submit applications for benefits. Increased LEA and school participation in CEP has some impact on state agency and LEA reporting and public notification burden. This renewal incorporates changes in burden to the CEP that were previously approved as a part of the final rule: *Child Nutrition Programs: Community Eligibility Provision—Increasing Options for Schools* (88 FR 65778).

Affected Public: State, local, and Tribal government and individual/households: Respondent groups identified include State agencies, school food authorities/local educational agencies, and individuals/households.

Estimated Number of Respondents: 1,349,560 (55 SAs, 18,957 SFAs/LEAs, and 1,330,548 households).

Estimated Number of Responses per Respondent: 5.68.

Estimated Total Annual Responses: 7,659,574.

Estimated Hours per Response: 0.040.

Estimated Total Annual Reporting Burden: 295,287.

Estimated Total Annual Recordkeeping Burden: 2,660.

Estimated Total Annual Public Disclosure Burden: 6,605.

Estimated Total Annual Burden: 304,552.

Affected public	Estimated number of respondents	Estimated number of responses per respondent	Estimated total annual responses	Estimated hours per response	Estimated total annual burden hours
(a)	(b)	(c)	(d) = (b) × (c)	(e)	(f) = (d) × (e)
Reporting					
State Agencies	55	210.11	11,556	0.0591	683
School Food Authorities/Local Educational Agencies	18,473	338.03	6,244,385	0.0203	126,841
Individuals/Households	1,330,548	1.02	1,355,326	0.1238	167,763
Total Reporting Burden	1,349,076	5.64	7,611,267	0.0388	295,287
Recordkeeping					
State Agencies	55	14.71	809	0.1438	116
School Food Authorities/Local Educational Agencies	9,475	1.05	9,959	0.2554	2,544
Total Recordkeeping Burden	9,530	1.13	10,768	0.2470	2,660
Public Notification					
State Agencies	55	1.98	109	0.1339	15
School Food Authorities/Local Educational Agencies	18,957	1.97	37,430	0.1761	6,590
Total Public Notification Burden	19,012	1.97	37,539	0.1759	6,605
Total Reporting, Recordkeeping, and Public Notification					
State Agencies	55	226.80	12,474	0.0652	814
School Food Authorities/Local Educational Agencies	18,957	331.90	6,291,774	0.0216	135,975
Individuals/Households	1,330,548	1.02	1,355,326	0.1238	167,763
Total Reporting, Recordkeeping, and Public Notification Burden	1,349,560	5.68	7,659,574	0.0398	304,552

Shiela Corley,

Acting Administrator, Food and Nutrition Administration.

[FR Doc. 2026–23796 Filed 11–20–26; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–500–2026]

Foreign-Trade Zone 18; Application for Subzone Expansion; Energy Recovery, Inc.; Tracy, California

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of San Jose, grantee of FTZ 18, requesting an expansion of Subzone 18X on behalf of Energy Recovery, Inc. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on November 13, 2026.

The applicant is now requesting to expand Subzone 18X to include an additional site: Site 2 (1.2 acres)—2000 Chabot Ct., Suite 150, Tracy, California. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–68–2026).

In accordance with the FTZ Board's regulations, Qahira El-Amin of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 4, 2027. Rebuttal comments in response to material submitted during the foregoing period may be submitted through January 19, 2027.

A copy of the application will be available for public inspection in the ''Online FTZ Information System'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Qahira El-Amin at *Qahira.El-Amin@trade.gov.*

Dated: November 18, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026–23808 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–24–2026]

Foreign-Trade Zone (FTZ) 21; Authorization of Production Activity; Zapp Precision Wire, Inc.; (Precision Wire and Metal Products); Summerville, South Carolina

On February 26, 2026, Zapp Precision Wire, Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 21P, in Summerville, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (91 FR 10370, March 3, 2026). On November 18, 2026 the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized on a limited basis, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14, and further subject to a one-year time limitation on the admission of all foreign-status components. Additionally, Zapp Precision Wire, Inc. must provide a report after one year on the availability of the domestic components and the company's efforts to source them domestically.

Dated: November 18, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026–23804 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–146–2026]

Foreign-Trade Zone (FTZ) 7, Notification of Proposed Production Activity; Hindustan Platinum Puerto Rico; (Electrical Contacts); Humacao, Puerto Rico

Hindustan Platinum Puerto Rico submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Humacao, Puerto Rico within FTZ 7. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on November 10, 2026.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished product is electrical contacts (duty rate is 3.5%).

The proposed foreign-status materials/components include: silver powder; tungsten powder; silver-tungsten carbide powder; tungsten carbide powder; nickel powder; copper powder; silver wires; silver strips; silver-copper-phosphorous shims; silver-copper-zinc braze shims; silver-copper-phosphorous strips; silver-copper-zinc braze strips; and silver graphite slugs (duty rates range from duty-free to 7%).

The request indicates that certain materials/components are subject to duties under section 232 of the Trade Expansion Act of 1962 or section 301 of the Trade Act of 1974, depending on the country of origin. The applicable section 232 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 4, 2027.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Williams at *christopher.williams@trade.gov.*

Dated: November 18, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026–23807 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–144–2026]

Foreign-Trade Zone (FTZ) 204, Notification of Proposed Production Activity; Primester GP; (Nonplasticized Cellulose Acetate Flakes); Kingsport, Tennessee

Primester GP submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in

Kingsport, Tennessee within FTZ 204. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on October 23, 2026.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished product is nonplasticized cellulose acetate flakes (duty rate is 5.6%).

The proposed foreign-status material/component is high-purity wood pulp (duty free).

The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974, depending on the country of origin. The applicable section 301 decision requires subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41). The request also indicates that high-purity wood pulp is subject to antidumping/countervailing duty (AD/CVD) orders if imported from Brazil or Norway. The Board's regulations (15 CFR 400.13(c)(2)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 4, 2027.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact John Frye at *John.Frye@trade.gov.*

Dated: November 18, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026–23805 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–10–2026]

Foreign-Trade Zone (FTZ) 102; Authorization of Production Activity; BASF Agricultural Solutions US LLC; (Agricultural Fungicide and Herbicide Products); Fenton and Palmyra, Missouri

On January 26, 2026, BASF Agricultural Solutions US LLC submitted a notification of proposed production activity to the FTZ Board for its facilities within FTZ 102, in Fenton and Palmyra, Missouri.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (91 FR 4058, January 30, 2026). On November 18, 2026, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized on a limited basis, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14, and further subject to a quantitative limit on the admission of foreign status dimethylsulfide and dimethylsulfate. The annual quantitative limit for foreign status dimethylsulfide will be 100,000 kgs and the annual quantitative limit for foreign status dimethylsulfate will be 2,000,000 kgs. Additionally, BASF must provide information annually on the domestic availability of these components and its efforts to source these components domestically.

Dated: November 18, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026–23803 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–145–2026]

Foreign-Trade Zone (FTZ) 19, Notification of Proposed Production Activity; CLAAS Omaha, Inc.; (Combine Harvesters and Adapters); Omaha, Nebraska

CLAAS Omaha, Inc. submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Omaha, Nebraska within Subzone 19B. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on October 12, 2026.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include: Combine Harvesters; and Forage Harvester Attachment Adapters (duty free).

The proposed foreign-status materials/components include: Grease; Talcum; Ethylene Propylene Diene Monomer Adhesives; Silicone Sealing Compounds; Petroleum-Based Assembly Pastes; Plastic Edge Protection Profiles; Plastic Hoses; Plastic Hose Assemblies; Plastic Tubes; Plastic Fuel Lines; Plastic Pipes; Rubber Tube Fittings; Polyurethane Gaskets; Plastic, Polyurethane, Rubber, Metal and Fiber Seals; Self-Adhesive Decals; Sealing Tape; Pressure Locking Bags; Water and Grain Sampling Tanks; Plastic Tank Caps to Cover/Protect Locks and Guards; Plastic Fins Plug; Handles for Operator Safety; Plastic and Aluminum Levers; Rubber, Plastic, and Steel O-rings, Adapter O-Rings; Plastic, Rubber, and Steel Washers; Sealing Strips and Plastic Flanges; Rubber Pads; Rubber Sealing Profiles; Rubber Seals; Plastic and Polyurethane Brake Hoses; Synthetic Rubber Hose Pipes; Hose Assemblies; Hoses; Synthetic Rubber Fuel Lines; Multi-material Drain Hoses; Plastic with Rubber Belts; Rubber Foam; Through Guides (*i.e.,* Rubber Grommets); Rubber Sealing and Lip Profiles; Rubber Coatings; Rubber and Steel Bushings; Rubber Grommets; Multi-material Hose Supports; Multi-material Lock Caps; Protective Caps/Guards; Deflectors; Rubber and Steel Strips; Rubber Blankets; Rubber Protective Cap Covers and Other Covers; Other Rubber Seals and Lip Profiles; Rubber Insulators/Buffers; Rubber Block Clamps; Cardboard Foldable Cartons; Paper Leaflets; PVC Canvas Components for Graintank Extension; Ropes; Straps; Glass Covers; Cylindrical Collar Structures for Combine Harvester and Other Collars; Covering Structural Hoods and Other Hoods; Cylindrical Cover Shell Structure for Combine Harvester; Engine Insulation Components and Other Insulation; Pack Panel and Cover Structures for Combine Harvester; Cladding; Cover Plates for

Engine Insulation Components and Other Cover Plates; Insulating Mats; Steel (E235, ST37.4) Tubes; Steel (AISI 304, AISI 303) Union Nuts; Steel and Base Metal Flanges; Steel Elbows; Steel Fittings; Steel Studs; Steel and Metal Unions; Steel Two-way Connectors; Steel (Alloy Steel 11SMn30 Case Hardened) Adapters; Steel (Alloy Steel 44SMn28QT with Carbon Modified) Nipples and Other Nipples; Steel Male Stud Adapters; Steel (Alloy Steel 11SmnPb30 QT) and Steel with Plastic Connectors; Steel Couplings; Steel Reducers; Steel Wire Ropes; Steel Cables; Steel (C45 Carbon Steel) Roller Chains; Steel Link Chains; Steel Wires; Steel and Steel Coated with Zinc Chains; Steel Eye Bolts; Steel Screws; Steel (42CRM04 QT, S5CRNI18–10, FE/ZN8/Cn/T2+L, X5CRNI18–10) Bolts; Steel (C45 QT) Nuts; Steel Rods, Threaded Steel (S355J2C) Rods, and Rods; Steel Angle Joints; Steel (42CrMo4 QT) and Base Metal Pins; Adjustable Linkage Steel Forks; Steel (X5CrNi18–10) Shafts; Steel (DC03, A2) Contact Washers; Steel Plates; Steel (S700MC, S355J2) Circular Discs/Steel (Stainless Steel A2, Alloy Steel 11SMn30 Case Hardened, C75S, DC01, A4) Washers; Steel (HC340LA) Sheets/Flat Metal Linkages; Steel (11SMn30) Alloy Rivets; Snap Rings; Jib Keys; Safety Device Plugs; Steel (S235JRC) Rings; Steel (S235JRC) Machined Cylindrical Rod Guides; Steel (C75) and Base Metal Springs; Steel Clasps; Steel (W3 Spring Steel, S235JRC, HC340LA, S355J2C, Stainless Steel W1) Clamps; Steel (DC01, S235JRC) Retainers; Steel Support Brackets; Steel (11SMn30, S355J2G3, E235, X8CrNiS18–9) Sleeves; Steel (X6Cr17) Gear Discs/Steel Worm Gear Hose Clamp; Steel (S235JRC, HC340LA) Angles; Steel Support Clamp/Holders; Steel Screw Clips; Steel Plugs; Steel (S234JRC) Brackets; Steel (S275JR) Pipe Retainer Bands with Surface Mounting Points; Steel (DX51D+Z275) Lids for Combine Harvester; Steel (S235JR, E235) Guide Tubes; Steel (S355J2C+C) Shaft/Sliders; Steel Structural Frames for Combine Harvester; Steel (80CrV2+QT) Shims; Steel (DC01) Beams; Copper and Steel Sealing Rings; Steel Hose Connectors; Steel Mat for Diesel Engine; Steel Ball Joint Heads; Steel Ring Ladders, an Aluminum Ladder Installed on Combine for Service Access; Specialized Wrench with Interface for Service Panels; Tool Cases to repair a harvesting machine; Steel Knife Set for Straw Cutting and Discharge; Lock Mechanisms on Service Panels; Latches to Close Panels; Door Locks; Locking Pins-Door Locks; Hinges; Gas (S235JRC) Spring; Steel Pistons; Turning Lock Mechanisms for Panels; Formed Steel (S235JRC) Cross Bar Section for Latch; Steel (Stainless Steel A2), Nickel Alloy, Aluminum Alloy, and Copper Alloy Blind Rivets; Lock Plugs; Tapered Lock Catch Cones; Metal Slow Moving Vehicle Warning Signs; Diesel Engines with Power Rates Between 343KW to 581KW; Diesel Engines with Power Rates Between 343KW to 581KW with Compressors; Steel Pipes; Half Bearings; Engine Cylinders; Variable Displacement Hydraulic Motor; Oscillating Variable Displacement Pump; Axial Piston Pump; Grease Pump; Rotating Gear Hydraulic Pump; Gear Pump; Hydraulic Pump; Rotating Pump System; Rotating Displacement Hydraulic Double Pump; Windshield Washer Fluid Pump; Fans; Rotors; Fan Variators; Structural Steel Fabricated Mounts; Containers; Air Conditioning Expansion Tank; Fuel Coolers; Tank Heater for Diesel Exhaust Fluid System; Engine Coolant Expansion Tank; Cooling Covers for Radiator Screens; Fuel Prefilters; Fuel Filter, In-Line Hydraulic Filter, and AC System Filters; Diesel Engine Exhaust Aftertreatment System; Catalytic Converters; Nozzles Made from a Combination of Steel, Plastic, Copper, and Other Materials; Plastic Filling Sieves; Plastic Water Reservoirs/Tanks; Steel Axle Spacers for Mobile Track System; Threshing Kit, a Steel Concave Set for a Specific Crop; Soybean Kit, a Steel Concave Set for Specific Crop; Conversion Sets for Specific Crop Harvesting; Steel Supports; Steel Structural Frames; Fuel Hose Assemblies; Cool Water Pipes for Engine Coolant; Ejectors; Exhaust Pipes; Disc-Latches; Steel Lids; Structural Steel Braces for Combine Integrity; Structural Steel Spacers; Drive Axles; Steel Strips; Steering Axles; Crawler Track Undercarriages; Protective Cladding; Handles for Harvester; Lifting Eyes; Camera Mounts; Communication Modules to Other Machines; Hooks; Compressed Air Reservoirs; Leather and Cloth Cabin Seats; Brakes; Brake Pedals; Spoilers; Chutes to Direct and Funnel Air Flow; Steel Linkage Swing Arms for Motion; Threshing Drum Covers; Locking Devices to Secure Combine Componentry; Motion Links; Harvester Cylinders; Tension Rods; Threshing Units; Consoles, a Structural Element of the Combine; Rakes; Grease Lubrication Lines; Step Floors to Direct Crop Under Threshing Concave; Steel Gussets; Structural Steel Girdles to Reinforce Structure; Structural Steel Element in the Form of Pots; Hybrid Units with Separation Drums, Housings, and Concaves; Grain Troughs; Steel Axle Pins; Steel Rails; Steel Sieves; Steel Frogmouth Sieves; Backside Debris Spreaders; Tubular Steel Safety Frames to Prevent Access to Rotating Machinery; Steel Struts; Various Steel, Plastic, Polyurethane, and Rubber Coverings for Combine Harvester; Polyvinyl Chloride Sheeting Straw Guides to Direct Machine's Discharge Downward; Grain Augers; Grain Elevator Shafts; Sheet Metal Bracket Indicators; Steel Compression Rings; Steel Filling Heads; Steel Curved Supporting Structural Ribs for Graintank; General Troughs; Mostly Steel, Movable Weldment Flaps; Ladder S420MC Supports; Steel Clevis Pins for Combine Harvester; Steel Handrails; Under Carriage Track Drive System Tracks; Steel Structural Weldment Engine Console; Steel Choppers; Small Dot-Matrix Printers; Engine Communication Modules; Accumulators; Tens Pull Supports as Belt Driver Tensioners; Lubrication Lines; Grease Blocks; Hydraulic Fittings; Valve Blocks; Steel Couplers; Non-Return Valves; Quick Release Couplers; Steel and Plastic Valves; Plug Drains; Hydraulic Line Connector Units; Steel Bearings; Roller Assembly; Steel Balls; Steel Nilos Rings; Drive Bearing Housing Units with Bearings Assembled; Gearboxes; Pulleys; Pulley Mounting Structure Supports; Guide Wheels; Clamping Units; Output Packages as Variable Speed Pulley Assemblies; Drive Units; Tensioning Units; Rings; Belt Tensioners; Cylinders; Pulley Bearing Shafts; Drivers as Variable Speed Pulley Assemblies; Chain Sprockets for Combine Harvester Drive; Pinion AM, a Chain Sprocket with Embedded Bearing; Clevis Pins; Steel USIT Rings; Dampers; Rotary Union Hydraulic Arm Joints; Linear Motors; Linear Drives; Chargers; Engine Alternators; LED Lamps; Deflector Kits with Vehicle Work and Driving Light for Cab Lighting; Miscellaneous Lights for Combine Harvesters; Warning Beacons; Rotating Lamps; Headlights; Work Lamps; Rear Lights and Headlights; Signal Transmitters; Insert-Headlights; Wiper Arms; Sensors for Nitrogen Oxides from Engine; Camera; In-Cabin Display Monitors; Buffer Stops; Relay; Switches; Electrical Light Socket; Junction Distributors for Electrical Feeds; Jumpers; Electronics Hardware and Modules; Fuse Sockets; Harness for Camera; GPS; Connection Electrical Cables; Harnesses with Copper Conductive Core Wire Wrapped Individually with Polymer, then Bundled and Wrapped in a Protective Conduit; Fuse Pullers; Steel for Step Ladder Treads; Plastic Trays; Cabin

Trim for Compartment Opening; Steel Bracket Grinders; Sensors Made from a Combination of Materials; Temperature Sensors; Pressure Sensors; Meters to Measure Moisture Content of Harvested Crop; Encoders Made from a Combination of Materials; and Metal or Plastic Strip Brushes with Nylon Brush Bristles for Sealing Between Surfaces (duty rate ranges from duty-free to 9.0%).

The request indicates that certain materials/components are subject to duties under section 232 of the Trade Expansion Act of 1962 or section 301 of the Trade Act of 1974, depending on the country of origin. The applicable section 232 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 4, 2027.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact John Frye at *John.Frye@trade.gov.*

Dated: November 18, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026–23806 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Additional Protocol Report Forms

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 22, 2027.

ADDRESSES: Interested persons are invited to submit comments by email to Nancy Kook, IC Liaison, Bureau of Industry and Security, at *PRA@bis.doc.gov* or to *PRAcomments@doc.gov*). Please reference OMB Control Number 0694–0135 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Nancy Kook, IC Liaison, Bureau of Industry and Security, phone 202–482–2440 or by email at *PRA@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Additional Protocol requires the United States to submit declaration forms to the International Atomic Energy Agency (IAEA) on a number of commercial nuclear and nuclear-related items, materials, and activities that may be used for peaceful nuclear purposes but also would be necessary elements for a nuclear weapons program. These forms provides the IAEA with information about additional aspects of the U.S. commercial nuclear fuel cycle, including mining and milling of nuclear materials; buildings on sites of facilities selected by the IAEA from the U.S. Eligible Facilities List; nuclear-related equipment manufacturing, assembly, or construction; import and export of nuclear and nuclear-related items and materials; and research and development. The Protocol also expands IAEA access to locations where these activities occur in order to verify the form data.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0135.

Form Number(s): AP–1 through AP–17, and AP–A through AP–Q.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Response: 23 minutes to 6 hours.

Estimated Total Annual Burden Hours: 920.

Estimated Total Annual Cost to Public: 5,400.

Respondent's Obligation: Mandatory.

Legal Authority: Additional Protocol Implementation Act (Title II of Pub. L. 109–401), Executive Order (E.O.) 13458.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–23758 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–882]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results and Rescission, in Part of Countervailing Duty Administrative Review; 2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable

subsidies were provided to Hyundai Steel Company (Hyundai Steel) and POSCO for the production of certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea). The period of review (POR) is January 1, 2024, through December 31, 2024. In addition, Commerce is rescinding this review, in part, with respect to 46 companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable November 23, 2026.

FOR FURTHER INFORMATION CONTACT: Christopher Doyle or Seth Brown, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5882 or (202) 482–0029, respectively.

SUPPLEMENTARY INFORMATION:

Background

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.[1] Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.[2]

On December 8, 2025, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the countervailing duty (CVD) order on cold-rolled steel from Korea.[3] On January 8, 2026, Commerce selected Hyundai Steel and POSCO as the mandatory respondents in this review.[4] On March 5, 2026, Nucor Corporation, Cleveland-Cliffs Inc., Steel Dynamics Inc., and United States Steel Corporation (collectively, the petitioners) timely withdrew their request for review with respect to 46 companies.[5] On July 27, 2026, we extended the deadline for the preliminary results of this review until November 18, 2026.[6]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[7] A list of topics included in the Preliminary Decision Memorandum is provided as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS, which is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/frnotices.*

Scope of the Order

The product covered by the *Order* is cold-rolled steel from Korea. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if all parties that requested the review withdraw their requests within 90 days of the date of publication of the notice of initiation. As noted above, Commerce received timely-filed withdrawal requests with respect to the companies listed in Appendix II, and no other parties requested a review of these companies.[8] Therefore, we are rescinding this administrative review with respect to these companies, pursuant to 19 CFR 351.213(d)(1).

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of a CVD order where it concludes that there were no suspended entries of subject merchandise during the POR.[9] Normally, upon completion of an administrative review, the suspended entries are liquidated at the CVD assessment rate calculated for the POR.[10] Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the CVD rate calculated for the POR.[11] Commerce notified all interested parties of its intent to rescind this administrative review regarding KG Dongbu.[12] No party commented on this memorandum. In the absence of any suspended entries of subject merchandise from this company during the POR, we are also rescinding this administrative review for KG Dongbu, in accordance with 19 CFR 351.213(d)(3).

Methodology

Commerce is conducting this administrative review in accordance with 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[13] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following net countervailable subsidy rates exist for the POR, January 1, 2024, through December 31, 2024:

[1] *See* Memorandum ''Deadlines Affected by the Shutdown of the Federal Government,'' dated November 14, 2025.

[2] *See* Memorandum, ''Tolling of All Case Deadlines,'' dated November 24, 2025.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 90 FR 56725 (December 8, 2025); *see also Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders* (*Brazil and India*), 81 FR 64436 (September 20, 2016) (*Order*).

[4] *See* Memorandum, ''Respondent Selection,'' dated January 8, 2026.

[5] *See* Petitioner's Letter, ''Withdrawal of Request for Administrative Review,'' dated March 5, 2026.

[6] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2024 Countervailing Administrative Review,'' dated July 27, 2026.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review on Certain Cold-Rolled Steel Flat Products from the Republic of Korea; 2024,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] We note that the petitioners also withdrew their review request for KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.) (KG Dongbu); however, KG Dongbu also requested its own review. *See* KG Dongbu's Letter, ''Request for Administrative Review,'' dated September 30, 2025.

[9] *See, e.g., Certain Non-Refillable Steel Cylinders from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2024,* 90 FR 48043 (October 3, 2025).

[10] *See* 19 CFR 351.212(b)(2).

[11] *See, e.g., Shanghai Sunbeauty Trading Co.* v. *United States,* 380 F.Supp.3d 1328, 1337 (CIT 2019), at 12 (referring to section 751(a) of the Act, the U.S. Court of International Trade held that ''{w}hile the statute does not explicitly require that an entry be suspended as a prerequisite for establishing entitlement to a review, it does explicitly state the determined rate will be used as the liquidation rate for the reviewed entries. This result can only obtain if the liquidation of entries has been suspended''; *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 36102, and accompanying Issues and Decision Memorandum at Comment 4; and *Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Notice of Rescission of Antidumping Duty Administrative Review,* 77 FR 65532 (October 29, 2012) (noting that ''for an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate'').

[12] *See* Memorandum, ''Notice of Intent to Rescind Review, In Part,'' dated January 15, 2026.

[13] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Company	Subsidy rate (percent *ad valorem*)
Hyundai Steel Company [14] ...	0.66
POSCO [15]	1.10

Disclosure

Commerce intends to disclose its calculations performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon for the final results.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[16] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[17] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public executive summary for each issue raised in their briefs.[18] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[19]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants, and whether any participant is a foreign national; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.[20]

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review.

For the companies listed in Appendix II for which the review is being rescinded and KG Dongbu, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue rescission instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Commerce intends to issue assessment instructions to CBP regarding Hyundai Steel and POSCO no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.107(e), Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, as follows: (1) the cash deposit rate for the companies listed above will be equal to the company-specific estimated individual countervailable subsidy rates determined in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) if both the producer and exporter of the subject merchandise have company-specific estimated subsidy rates assigned, and their rates differ, then the applicable cash deposit rate will be the higher of these two rates; (3) if either the producer or the exporter, but not both, of the subject merchandise has a company-specific estimated subsidy rate assigned, the applicable cash deposit rate will be that company's company-specific rate; and (4) the cash deposit rate for all other producers and exporters will be continue to be 3.89 percent, the all-others subsidy rate established in the investigation.[21] These cash deposit instructions, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, which will include the results of Commerce's analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

[14] As discussed in the Preliminary Decision Memorandum, Commerce has found Hyundai Green Power to be cross-owned with Hyundai Steel.

[15] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with POSCO: POSCO Future M; POSCO Holdings; POSCO M-Tech; POSCO Nippon Steel RHF Joint Venture Co., Ltd., and POSCO Mobility Solution. We note that POSCO also exported certain subject merchandise through an affiliated trading company, POSCO International Corporation (POSCO International). We examined POSCO International in the context of POSCO, and POSCO International's subsidies are included in POSCO's total subsidy rate.

[16] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

[17] *See* 19 CFR 351.309(c)(2) and (d)(2).

[18] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[19] *See APO and Service Procedures.*

[20] *See* 19 CFR 351.310(d).

[21] *See Order,* 81 FR at 64438.

Dated: November 18, 2026.

Kasey O'Connor,

Deputy General Counsel, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Diversification of Korea's Economy
V. Subsidies Valuation Information
VI. Benchmarks and Interest Rates
VII. Analysis of Programs
VIII. Recommendation

Appendix II

Companies for Which All Review Requests Were Withdrawn

1. AJU Steel Co., Ltd.
2. Amerisource Korea
3. BC Trade
4. Busung Steel Co., Ltd.
5. Cenit Co., Ltd.
6. Daewoo Logistics Corp.
7. Dai Yang Metal Co., Ltd.
8. DK GNS Co., Ltd.
9. Dongbu Incheon Steel Co., Ltd.
10. Dongbu Steel Co., Ltd.
11. Dong Jin Machinery
12. Dongkuk Industries Co., Ltd.
13. Dongkuk Steel Mill Co., Ltd.
14. Eunsan Shipping and Air Cargo Co., Ltd.
15. Euro Line Global Co., Ltd.
16. Golden State Corp.
17. GS Global Corp.
18. Hankum Co., Ltd.
19. Hanawell Co., Ltd.
20. Hyosung TNC Corp.
21. Hyuk San Profile Co., Ltd.
22. Hyundai Group
23. Iljin NTS Co., Ltd.
24. Iljin Steel Corp.
25. Jeen Pung Industrial Co., Ltd.
26. JS Steel Co., Ltd.
27. JT Solution
28. Kolon Global Corporation
29. Nauri Logistics Co., Ltd.
30. Okaya (Korea) Co., Ltd.
31. PL Special Steel Co., Ltd.
32. POSCO C&C Co. Ltd.
33. POSCO Daewoo Corp.
34. Samsung C&T Corp.
35. Samsung STS Co., Ltd.
36. SeAH Steel Corp.
37. SM Automotive Ltd.
38. SK Networks Co., Ltd.
39. Taihan Electric Wire Co., Ltd.
40. TGS Pipe Co., Ltd.
41. TI Automotive Ltd.
42. Topco Global Co., Ltd.
43. Union Steel Co., Ltd.
44. Xeno Energy
45. Young Steel Co., Ltd

[FR Doc. 2026–23802 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Mexico-Canada Agreement (USMCA), Article 10.12: Binational Panel Review: Notice of Request for Panel Review

AGENCY: United States Section, USMCA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of USMCA request for panel review.

SUMMARY: Two Requests for Panel Review were filed in the matter of Certain Softwood Lumber Products from Canada: Final Results of Countervailing Duty Administrative Review, 2024 with the U.S. Section of the USMCA Secretariat on November 18, 2026. The USMCA Secretariat has assigned case number USA–CDA–2026–10.12–01 to this request. The first Request for Panel Review was filed on behalf of the Government of Canada, the Governments of Alberta, British Columbia, New Brunswick, Ontario, and Québec; Alberta Softwood Lumber Trade Council, British Columbia Lumber Trade Council; Canfor Corporation, Interfor Corporation, Interfor Sales & Marketing Ltd., EACOM Timber Corporation, Chaleur Forest Products Inc., Chaleur Forest Products LP, J.D. Irving, Limited, Tolko Marketing and Sales Ltd. and Tolko Industries Ltd., Gilbert Smith Forest Products, as well as West Fraser Mills Ltd. The second Request for Panel Review was filed on behalf of Resolute FP Canada Inc., the Conseil de l'industrie forestière du Québec, the Ontario Forest Industries Association, and each association's respective individual members listed in Attachment A of the Request for Panel Review (collectively ''Central Canada''); Plaster Rock Lumber Corporation; as well as CHAP Alliance Inc.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, United States Secretary, USMCA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, 202–482–5438.

SUPPLEMENTARY INFORMATION: The final results of the investigation under review were determined by the United States Department of Commerce and were published in the **Federal Register** on October 19, 2026 (91 FR 66,092).

Article 10.12 of Chapter 10 of USMCA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established USMCA *Rules of Procedure for Article 10.12 (Binational Panel Reviews),* which were adopted by the three governments for panels requested pursuant to Article 10.12(2) of USMCA which requires Requests for Panel Review to be published in accordance with Rule 40. For the complete Rules, please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/usmca-aceum-tmec/rules-regles-reglas/article-article-articulo_10_12.aspx?lang=eng.*

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 44 no later than 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 18, 2026);

(b) A Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with Rule 45 no later than 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is January 4, 2027);

(c) The panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

Dated: November 19, 2026.

Vidya Desai,

United States Secretary, USMCA Secretariat.

[FR Doc. 2026–23794 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Mexico-Canada Agreement (USMCA), Article 10.12: Binational Panel Review: Notice of Request for Panel Review

AGENCY: United States Section, USMCA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of USMCA Requests for Panel Review.

SUMMARY: Two Requests for Panel Review were filed in the matter of

Certain Softwood Lumber Products From Canada: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review, and Final Determination of No Shipments; 2024 with the U.S. Section of the USMCA Secretariat on November 18, 2026. The USMCA Secretariat has assigned case number USA–CDA–2026–10.12–02 to this request. The first Request for Panel Review was filed on behalf of Resolute FP Canada Inc., the Conseil de l'industrie forestière du Québec, the Ontario Forest Industries Association, and each association's respective individual members listed in Attachment A of the Request for Panel Review (collectively ''Central Canada''); Plaster Rock Lumber Corporation; as well as CHAP Alliance Inc. The second Request for Panel Review was filed on behalf of Government of Canada, the Governments of Alberta, British Columbia, Ontario, and Québec; Alberta Softwood Lumber Trade Council, British Columbia Lumber Trade Council; Canfor Corporation, Canadian Forest Products Ltd., Canfor Wood Products Marketing Ltd., Canfor Fox Creek Ltd., Canfor Whitecourt Ltd., Fontaine Inc., Interfor Corporation, Interfor Sales & Marketing Ltd., EACOM Timber Corporation, Chaleur Forest Products Inc., Chaleur Forest Products LP, J.D. Irving, Limited, Tolko Marketing and Sales Ltd. and Tolko Industries Ltd., Gilbert Smith Forest Products, and West Fraser Mills Ltd.,

FOR FURTHER INFORMATION CONTACT: Vidya Desai, United States Secretary, USMCA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, 202–482–5438.

SUPPLEMENTARY INFORMATION: The final results of the investigation under review were determined by the United States Department of Commerce and were published in the **Federal Register** on October 19, 2026 (91 FR 66,087).

Article 10.12 of Chapter 10 of USMCA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established USMCA *Rules of Procedure for Article 10.12 (Binational Panel Reviews),* which were adopted by the three governments for panels requested pursuant to Article 10.12(2) of USMCA which requires Requests for Panel Review to be published in accordance with Rule 40. For the complete Rules, please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/usmca-aceum-tmec/rules-regles-reglas/article-article-articulo_10_12.aspx?lang=eng.*

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 44 no later than 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 18, 2026);

(b) A Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with Rule 45 no later than 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is January 4, 2027);

(c) The panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

Dated: November 19, 2026.

Vidya Desai,

United States Secretary, USMCA Secretariat.

[FR Doc. 2026–23790 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Review: Notice of Completion of Panel Review

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review.

SUMMARY: In accordance with Rules 78 and 80 of the NAFTA *Rules of Procedure for Article 1904 Binational Panel Reviews,* the Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Investigation and Final Determination (Secretariat File Number: USA–CDA–2017–1904–02) Panel Review was completed and the panelists were discharged from their duties effective November 19, 2026.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, 202–482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. For the complete NAFTA *Rules of Procedure for Article 1904 Binational Panel Reviews,* please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/nafta-alena-tlcan/rules-regles-reglas/index.aspx?lang=eng.*

Dated: November 19, 2026.

Vidya Desai,

United States Secretary, NAFTA Secretariat

[FR Doc. 2026–23773 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Economic Surveys of the Commercial and Charter Fishing Sectors of U.S. Marine Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 22, 2027.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please

reference OMB Control Number 0648–0823 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Laura Oremland, Office of Science and Technology, 1315 East West Hwy., Bldg. SSMC3, Rm. 12423, Silver Spring, MD 20910–3282, (301) 427–8162, *laura.oremland@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved collection. NOAA is amending the title to ''Generic Clearance for Economic Surveys of the Commercial and Charter Fishing Sectors of U.S. Marine Fisheries'' to more accurately reflect NOAA's responsibility for managing marine fisheries within the U.S. exclusive economic zone.

The Office of Science and Technology is sponsoring this collection. Economic surveys will be conducted for the commercial and charter fishing sectors of marine fisheries of the United States.

The requested information will include different components of operating costs/expenditures, earnings, employment, ownership, vessel characteristics, effort/gear descriptors, employment, and demographic information. The information will be collected from the owners and operators of fishing vessels that participated in the commercial and/or charter fishing sectors, where the vessels that participated in the charter sector include guide boats, 6-pack boats, charter boats, commercial passenger fishing vessels, and party/head boats.

A variety of laws, Executive Orders (EOs), and NOAA Fisheries strategies and policies include requirements for economic data and the analyses they support. When met adequately, those requirements allow better-informed conservation and management decisions on the use of living marine resources and marine habitat in marine fisheries of the United States. Obtaining these data improves the ability of NOAA Fisheries and the Regional Fishery Management Councils (Councils) to monitor, explain and predict changes in the economic performance and impacts of U.S. marine fisheries. Measures of economic performance include costs, earnings, and profitability (net revenue); productivity and economic efficiency; capacity; economic stability; the level and distribution of net economic benefits to society; and market power. The economic impacts include sector, community, or region-specific and national employment, sales, value-added, and income impacts. Economic data is required to support more than a cursory effort to comply with or support the following laws, EOs, and NOAA Fisheries strategies and policies:

1. The Magnuson-Stevens Fishery Conservation and Management Act (MSA)
2. The Marine Mammal Protection Act (MMPA)
3. The Endangered Species Act (ESA)
4. The National Environmental Policy Act (NEPA)
5. The Regulatory Flexibility Act (RFA)
6. E.O. 12866 Regulatory Planning and Review
7. E.O. 14192 Unleashing Prosperity Through Deregulation
8. E.O. 14276 Restoring American Seafood Competitiveness
9. E.O. 13840 Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States
10. The NOAA Fisheries Guidelines for Economic Reviews of Regulatory Actions
11. The NOAA Fisheries Ecosystem-Based Fishery Management (EBFM) Road Map
12. The NOAA Fisheries National Bycatch Reduction Strategy
13. NOAA's Catch Share Policy

Data collections will focus each year on a different set of fisheries. This cycle of data collection will facilitate economic data being available and updated for all federally managed fisheries.

There will be an effort to coordinate the data collections in order to reduce the additional burden for those who participate in multiple fisheries. To further reduce the burden, the requested information for a specific fishery will be limited to that which is not available from other sources. Participation in these data collections will be voluntary.

II. Method of Collection

The information will be collected by mail, internet, phone, video call, and in-person interviews. Where feasible, survey respondents will have the option to respond to an on-line survey. If phone and in-person interviews are not feasible or not desired by the potential respondents, the information will be collected by mail or internet.

III. Data

OMB Control Number: 0648–0823.

Form Number(s): None.

Type of Review: Regular submission. Extension of a current information collection.

Affected Public: Individuals and business and/or other for-profit organizations.

Estimated Number of Respondents: 7,052.

Estimated Time per Response: 55 minutes.

Estimated Total Annual Burden Hours: 6,464 hours.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: The Magnuson-Stevens Fishery Conservation and Management Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–23811 Filed 11–20–26; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR)

abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burdens.

DATES: Comments must be submitted on or before December 23, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (Commission or CFTC) by any of the following methods:

- *Regulations.gov:* Go to *https://www.regulations.gov* and press the ''Search'' button, then proceed as follows:

1. Under Refine Documents Results—check the box to ''Only show documents open for comment'';

2. Under Agency—select ''See More'' and check the box for ''Commodity Futures Trading Commission,'' then press the Apply button;

3. Identify this notice in the list of CFTC documents open for comment, press the ''Comment'' button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this notice on *www.federalregister.gov,* click the ''Submit A Public Comment'' button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to *Regulations.gov*.

- *Mail:* Send to—Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Address to—CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through *Regulations.gov* are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this Notice under **FOR FURTHER INFORMATION CONTACT** before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (FOIA) of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as—without limitation—obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this notice, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act, the Paperwork Reduction Act, and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Elizabeth Groover, Special Counsel, (202) 418–5985, *egroover@cftc.gov,* or Michael Ehrstein, Special Counsel, (202) 418–5957, *mehrstein@cftc.gov,* Market Participants Division, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581, and refer to OMB Control No. 3038–0005.

SUPPLEMENTARY INFORMATION:

Title: Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants (OMB Control No. 3038–0005). This is a request for extension of a currently approved information collection.

Abstract: The various collections of information required by part 4 of the Commission's regulations were previously approved by OMB in accordance with the PRA and assigned OMB control number 3038–0005.[1] The Commission offers the following summary of the renewal and the resulting impact on existing burden hour estimates associated with this information collection. The Commodity Exchange Act (CEA) empowers the Commission with the authority to require commodity pool operators (CPOs) and commodity trading advisors (CTAs) to maintain books and records and to file reports as required by the Commission.[2] The Commission also has the power to promulgate such regulations as it deems necessary to implement the purposes of the CEA.[3] It is pursuant to this authority that the Commission has promulgated the various compliance requirements for CPOs and CTAs in 17 CFR part 4. The reporting, filing, and recordkeeping requirements within part 4 of the Commission's regulations were adopted to assist and inform customers, to establish customer protection initiatives for investors, to facilitate monitoring intermediary compliance with part 4 regulations by the Commission and its delegee, the National Futures Association (NFA), and to enable the Commission to better monitor the market risks posed by its registrants. The information collections are necessary to enable the Commission and NFA to accomplish the purposes of both the CEA and the compliance regime set forth in part 4 of the Commission's regulations.

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. On August 14, 2026, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 91 FR 52677 (60-Day Notice). The Commission received one comment, submitted anonymously, asserting that

[1] 17 CFR part 4.

[2] 7 U.S.C. 6n(3).

[3] 7 U.S.C. 8a(5).

the 60-Day Notice ''omits monetized public labor costs and operating expenses.'' The Commission, however, provides detailed burden estimates in its Supporting Statement including estimated time spent to complete each reporting, recordkeeping, and filing requirement, with along with estimated labor costs and operating expenses associated with each information collection requirement. The commenter did not otherwise comment on the Commission's burden estimates or the utility of the information collected. Accordingly, the Commission is retaining its burden estimates as proposed.

Burden Statement: The respondent burden for this collection is estimated to be as follows:

Respondents/Affected Entities: (1) All persons filing reports required by 17 CFR part 4, and (2) all principals of such persons.

Estimated number of respondents: 49,083.

Estimated number of exempt pools/reports per respondent: 8.8.

Estimated total annual burden on respondents: 432,325 hours.

(Authority: 44 U.S.C. 3501, *et seq.*)

Dated: November 19, 2026.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2026–23801 Filed 11–20–26; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: Section 610 of the Regulatory Flexibility Act (''RFA'') requires an agency to publish in the **Federal Register** each year a list of rules that are to be reviewed in accordance with the RFA during the succeeding 12 months. Based upon its review of rules potentially subject to review under the RFA during the succeeding 12 months, the Commodity Futures Trading Commission (''Commission'') has identified no such rules to be reviewed. Accordingly, the Commission is not publishing a list of rules to be reviewed pursuant to the RFA during the succeeding 12 months.

DATES: November 23, 2026.

FOR FURTHER INFORMATION CONTACT: Tyler S. Badgley, General Counsel; Aaron M. Levine, Deputy General Counsel for Regulation; Herminio Castro, Associate General Counsel; Travis Andrews, Senior Assistant General Counsel; 202–418–5000, *rulemaking@cftc.gov,* Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

The RFA [1] requires agencies to consider the effects of their regulatory actions on small entities. Section 610 of the RFA requires each agency to review all final rules that the agency has determined have, or will have, a significant economic impact on a substantial number of small entities, within 10 years of the publication of such final rules.[2] The purpose of the review is ''to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities.'' [3] The RFA further requires each agency to publish in the **Federal Register** a list of rules that are to be reviewed in accordance with Section 610 during the succeeding 12 months.[4]

II. Results of the Review

The Commission includes in its rule review any rule that may have a significant economic impact on a substantial number of small entities but excludes rules that previously have been reviewed, rules that have been substantially changed since adoption, rules that are minor amendments to previously adopted rules, and rules that are ministerial, procedural, or technical in nature.

Based upon an analysis of the rules adopted by the Commission in 2017, the Commission has determined that no rules are required to be reviewed pursuant to the RFA during the succeeding 12 months. Accordingly, the Commission is not publishing a list of rules to be reviewed pursuant to the RFA during the succeeding 12 months.

Issued in Washington, DC, on November 18, 2026, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendix to List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act—Commission Voting Summary

On this matter, Chairman Selig voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2026–23735 Filed 11–20–26; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before December 23, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be

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[1] 5 U.S.C. 601 *et seq.*

[2] 5 U.S.C. 610(a).

[3] *Id.* The RFA sets forth specific factors that must be addressed in the review of each rule, including: (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(b).

[4] 5 U.S.C. 610(c).

submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by any of the following methods:

• *Regulations.gov:* Go to *https://www.regulations.gov* and press the ''Search'' button, then proceed as follows:

1. Under ''Refine Documents Results''—check the box to ''Only show documents open for comment'';

2. Under ''Agency''—select ''See More'' and check the box for ''Commodity Futures Trading Commission,'' then press the ''Apply'' button;

3. Identify this notice in the list of CFTC documents open for comment, press the ''Comment'' button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this notice on *www.federalregister.gov,* click the ''Submit A Public Comment'' button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to *Regulations.gov.*

• *Mail:* Send to—Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

• *Hand Delivery/Courier:* Address to—CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through *Regulations.gov* are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this Notice under **FOR FURTHER INFORMATION CONTACT** before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (''FOIA'') of information submitted to the Commission.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as—without limitation—obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this notice, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act, the PRA, and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Isabella Bergstein, (202) 993–1384, *ibergstein@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, and refer to OMB Control No. 3038–0059.

SUPPLEMENTARY INFORMATION:

Title: Part 41 Relating to Security Futures Products (OMB Control No. 3038–0059). This is a request for extension of a currently approved information collection.

Abstract: Section 4d(c) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 6d(c), requires the CFTC to consult with the Securities and Exchange Commission (''SEC'') and issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to firms that are fully registered with the SEC as brokers or dealers and the CFTC as futures commission merchants, involving provisions of the CEA that pertain to the treatment of customer funds. The CFTC, jointly with the SEC, issued regulations requiring such dually-registered firms to make choices as to how its customers' transactions in security futures products will be treated, either as securities transactions held in a securities account or as futures transactions held in a futures account. How an account is treated is important in the unlikely event of the insolvency of the firm. Only securities accounts receive insurance protection under provisions of the Securities Investor Protection Act. By contrast, only futures accounts are subject to the protections provided by the segregation requirements of the CEA.

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.[1] On August 19, 2026, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 91 FR 53610 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden for this collection for a total of 10 respondents (2 DCMs and 8 FCMs). The respondent burden for this collection is estimated to be as follows:

Estimated number of respondents/affected entities: 10.

Estimated average burden hours per respondent: 60 hours (rounded).

Estimated total annual burden: 603 hours.

Frequency of collection: On occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: November 19, 2026.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2026–23800 Filed 11–20–26; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER FINANCIAL PROTECTION BUREAU

Consumer Advisory Board Meeting

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB or Board) of the Consumer Financial Protection Bureau (CFPB or Bureau). The notice also describes the functions of the Board.

DATES: The meeting date is Thursday, December 3, 2026, from approximately 2:00 p.m. to 3:30 p.m., eastern standard time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

[1] 44 U.S.C. 3512; 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Advisory Board and Councils, External Affairs Division, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Charter of the Board states that: The purpose of the CAB is outlined in section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which states that the CAB shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the CAB's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the CFPB. The CAB will generally serve as a vehicle for trends and themes in the consumer finance marketplace for the CFPB. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

II. Agenda

The CAB will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority. During this meeting, the topic of discussion will be Accessibility and Affordability of Mortgage Credit: Emerging Dynamics and Industry Perspectives.

If you require any additional reasonable accommodation(s) in order to attend this event, please contact the Reasonable Accommodations team at *CFPB_ReasonableAccommodations@cfpb.gov* 48 hours prior to the start of this event.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CAB members for consideration. Individuals who wish to join this meeting must RSVP via this link *https://events.gcc.teams.microsoft.com/event/fbcaa2ef-cc29-4950-b85d-61e542a43efa@c817bf69-ef41-4ed6-ac5f-1f44da3798c0?source=copyLinkLegacyShareEventDialog.*

III. Availability

The Board's agenda will be made available to the public on Wednesday, December 2, 2026, via *consumerfinance.gov.*

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Geoffrey Gradler,

Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2026–23814 Filed 11–20–26; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER FINANCIAL PROTECTION BUREAU

Consumer Advisory Board Meeting

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB or Board) of the Consumer Financial Protection Bureau (CFPB or Bureau). The notice also describes the functions of the Board.

DATES: The meeting date is Thursday, December 3, 2026, from approximately 11:00 a.m. to 12:30 p.m., eastern standard time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Advisory Board and Councils, External Affairs Division, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Charter of the Board states that: The purpose of the CAB is outlined in section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which states that the CAB shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the CAB's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the CFPB. The CAB will generally serve as a vehicle for trends and themes in the consumer finance marketplace for the CFPB. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

II. Agenda

The CAB will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority. During this meeting, the topic of discussion will be Frauds and Scams Targeting Servicemembers and Older Americans.

If you require any additional reasonable accommodation(s) in order to attend this event, please contact the Reasonable Accommodations team at *CFPB_ReasonableAccommodations@cfpb.gov* 48 hours prior to the start of this event.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CAB members for consideration. Individuals who wish to join this meeting must RSVP via this link *https://events.gcc.teams.microsoft.com/event/e6083efe-35a1-4cc4-ac19-2ae585ef7e38@c817bf69-ef41-4ed6-ac5f-1f44da3798c0?source=copyLinkLegacyShareEventDialog.*

III. Availability

The Board's agenda will be made available to the public on Wednesday, December 2, 2026, via *consumerfinance.gov.*

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Geoffrey Gradler,

Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2026–23815 Filed 11–20–26; 8:45 am]

BILLING CODE 4810–AM–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: Election Assistance Commission (EAC).

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission Technical

Guidelines Development Committee (TGDC) 2026 Annual Meeting.

DATES: Tuesday, December 15, 2026, 9:00 a.m. to 4:30 p.m. ET. The public registration deadline for the event is on or before December 8, 2026. Written comments should be received no later than 24 hours prior to the start of the meeting.

ADDRESSES: The meeting will be held in person at the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), and the Federal Advisory Committee Act (5 U.S.C. 10), the EAC will conduct the annual meeting of the TGDC to discuss regular business of the committee.

Agenda: The EAC will hold its 2026 TGDC Annual Meeting to conduct regular business, share EAC agency developments, discuss program updates for the EAC Testing and Certification Program, the National Institute of Standards and Technology (NIST) Voting Program, the Voluntary Voting System Guidelines, and more.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov/events/2026/12/15/2026-eac-technical-guidelines-development-committee-annual-meeting.*

Registration is required to attend. Members of the public should register by December 8, 2026: https://www.eac.gov/events/2026/12/15/2026-eac-technical-guidelines-development-committee-annual-meeting.

Public comments on the meeting must be submitted in writing on *regulations.gov* (Docket ID: EAC–2026–0298). Comments must be received no later than 24 hours prior to the start of the meeting.

Background: Section 221 of the Help America Vote Act (HAVA) of 2002 (52 U.S.C. 20971(b)) requires that the EAC adopt voluntary voting system guidelines and provide for the testing, certification, decertification, and recertification of voting system hardware and software.

The TGDC was established in accordance with the requirements of Section 221 of the Help America Vote Act of 2002 (Pub. L. 107–252, codified at 52 U.S.C. 20961), to act in the public interest to assist the Executive Director of the EAC in the development of voluntary voting system guidelines.

Status: This meeting will be open to the public.

Seton Parsons,

Senior Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2026–23787 Filed 11–19–26; 11:15 am]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP27–135–000.
Applicants: Great Basin Gas Transmission Company.
Description: Compliance filing: 2024 Expansion Rate Compliance to be effective 10/1/2026.
Filed Date: 11/2/26.
Accession Number: 20261102–5400.
Comment Date: 5 p.m. ET 11/25/26.

Docket Numbers: RP27–170–000.
Applicants: Discovery Gas Transmission LLC.
Description: 4(d) Rate Filing: 2027 Annual HMRE Surcharge Filing to be effective 1/1/2027.
Filed Date: 11/13/26.
Accession Number: 20261113–5241.
Comment Date: 5 p.m. ET 11/25/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern Time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP26–1234–001.
Applicants: National Grid LNG, LLC.
Description: Compliance filing: 2026–11–18 Amendment to Order 587–AB Tariff Compliance Filing to be effective 1/1/2027.
Filed Date: 11/18/26.
Accession Number: 20261118–5149.
Comment Date: 5 p.m. ET 11/30/26.

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 18, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23767 Filed 11–20–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Exempt Wholesale Generator filings:

Docket Numbers: EG27–39–000
Applicants: Circle City Energy Storage LLC
Description: Circle City Energy Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/16/26
Accession Number: 20261116–5360
Comment Date: 5 p.m. ET 12/7/26.

Docket Numbers: EG27–40–000.
Applicants: Felix 1, LLC.
Description: Felix 1, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/18/26.
Accession Number: 20261118–5126.
Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: EG27–41–000.
Applicants: Travertine Solar LLC.
Description: Travertine Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/18/26.
Accession Number: 20261118–5129.
Comment Date: 5 p.m. ET 12/9/26.

Take notice that the Commission received the following Electric Rate filings:

Docket Numbers: ER25–1708–001.
Applicants: Duke Energy Progress, LLC, Duke Energy Florida, LLC, Duke Energy Carolinas, LLC.
Description: Compliance filing: Duke Energy Carolinas, LLC submits tariff

filing per 35: Compliance Filing—Schedule 2 (Bayboro Unit 3) to be effective 6/1/2025.

Filed Date: 11/18/26.

Accession Number: 20261118–5185.

Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: ER26–3773–001.

Applicants: Walker Solar LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 11/15/2026.

Filed Date: 11/18/26.

Accession Number: 20261118–5164.

Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: ER27–506–001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2026–11–18 Amendment to Large Load Amendment in Original Docket Number to be effective N/A.

Filed Date: 11/18/26.

Accession Number: 20261118–5181.

Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: ER27–521–000.

Applicants: San Diego Gas & Electric.

Description: 205(d) Rate Filing: ER26–71 Order to Show Cause Tariff Revisions to be effective 2/16/2027.

Filed Date: 11/16/26.

Accession Number: 20261116–5311.

Comment Date: 5 p.m. ET 12/7/26.

Docket Numbers: ER27–522–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Operational Requirements for Large Computational Load and Annual Reporting to be effective 1/16/2027.

Filed Date: 11/16/26.

Accession Number: 20261116–5309.

Comment Date: 5 p.m. ET 12/7/26.

Docket Numbers: ER27–523–000.

Applicants: Viridon Path 15 LLC.

Description: 205(d) Rate Filing: Viridon Path 15—Trans. Owner Tariff Response to Show Cause Order EL26–71 to be effective 2/16/2027.

Filed Date: 11/16/26.

Accession Number: 20261116–5312.

Comment Date: 5 p.m. ET 12/7/26.

Docket Numbers: ER27–526–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2026–11–16_Large Load Review, Cost Recovery and Transmission Services Filing to be effective 2/14/2027.

Filed Date: 11/16/26.

Accession Number: 20261116–5323.

Comment Date: 5 p.m. ET 12/16/26.

Docket Numbers: ER27–527–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2026–11–16_Grid Responsive Integration Transmission Service Filing to be effective 3/16/2027.

Filed Date: 11/16/26.

Accession Number: 20261116–5326.

Comment Date: 5 p.m. ET 12/7/26.

Docket Numbers: ER27–528–000.

Applicants: LS Power Grid California, LLC.

Description: 205(d) Rate Filing: Revisions to TO Tariff to Provide for Large Load Interconnection.

Filed Date: 11/16/26.

Accession Number: 20261116–5329.

Comment Date: 5 p.m. ET 12/7/26.

Docket Numbers: ER27–529–000.

Applicants: New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Niagara Mohawk Power Corporation, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc.

Description: 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYTOs 205: Proposed Revisions re: Integration of Large Loads to be effective 2/1/2027.

Filed Date: 11/16/26.

Accession Number: 20261116–5335.

Comment Date: 5 p.m. ET 12/7/26.

Docket Numbers: ER27–530–000.

Applicants: Horizon West Transmission, LLC.

Description: 205(d) Rate Filing: Horizon West Transmission—Response to Show Cause Order EL26–71- to be effective 2/16/2027.

Filed Date: 11/16/26.

Accession Number: 20261116–5337.

Comment Date: 5 p.m. ET 12/16/26.

Docket Numbers: ER27–531–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Proposed Tariff Revisions for Large Loads and Compliance with EL26–67 to be effective 3/16/2027.

Filed Date: 11/16/26.

Accession Number: 20261116–5340.

Comment Date: 5 p.m. ET 1/15/27.

Docket Numbers: ER27–532–000.

Applicants: California Independent System Operator Corporation.

Description: 205(d) Rate Filing: 2026–11–16 Large Load Tariff Amendment: Resubmission.

Filed Date: 11/16/26.

Accession Number: 20261116–5343.

Comment Date: 5 p.m. ET 12/16/26.

Docket Numbers: ER27–533–000.

Applicants: GridLiance West LLC.

Description: 205(d) Rate Filing: GridLiance West—Response to Show Cause Order EL26–71 to be effective 2/16/2027.

Filed Date: 11/16/26.

Accession Number: 20261116–5345.

Comment Date: 5 p.m. ET 12/16/26.

Docket Numbers: ER27–534–000.

Applicants: DesertLink, LLC.

Description: 205(d) Rate Filing: Revisions to TO Tariff to Provide for Large Load Interconnection.

Filed Date: 11/16/26.

Accession Number: 20261116–5346.

Comment Date: 5 p.m. ET 12/7/26.

Docket Numbers: ER27–535–000.

Applicants: Trans Bay Cable LLC.

Description: 205(d) Rate Filing: Trans Bay Cable—Respsonse to Show Cause Order EL26–71- to be effective 2/16/2027.

Filed Date: 11/16/26.

Accession Number: 20261116–5348.

Comment Date: 5 p.m. ET 12/16/26.

Docket Numbers: ER27–548–000.

Applicants: Puget Sound Energy, Inc.

Description: Tariff Amendment: Notice of Cancellation of Multiple Agreements to be effective 12/21/2011.

Filed Date: 11/17/26.

Accession Number: 20261117–5165.

Comment Date: 5 p.m. ET 12/8/26.

Docket Numbers: ER27–549–000.

Applicants: Wisconsin Public Service Corporation.

Description: Tariff Amendment: Notices of Cancellation to be effective 1/1/2018.

Filed Date: 11/18/26.

Accession Number: 20261118–5087.

Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: ER27–550–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: Revisions to Modify Addendum 1 to Attachment AE to be effective 1/18/2027.

Filed Date: 11/18/26.

Accession Number: 20261118–5088.

Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: ER27–551–000.

Applicants: Burney Forest Products, A Joint Venture.

Description: Tariff Amendment: Cancellation filing to be effective 11/18/2026.

Filed Date: 11/18/26.

Accession Number: 20261118–5133.

Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: ER27–552–000.

Applicants: California Independent System Operator Corporation.

Description: 205(d) Rate Filing: 2026–11–18 VOM Adders, Cost for Storage Resources & ATF Cost Recovery Tariff Amd to be effective 12/31/9998.

Filed Date: 11/18/26.

Accession Number: 20261118–5145.

Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: ER27–553–000.

Applicants: Public Service Company of New Mexico.

Description: 205(d) Rate Filing: NTEC TCIA Service Agreement No. 685 to be effective 10/19/2026.

Filed Date: 11/18/26.

Accession Number: 20261118–5146.

Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: ER27–554–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: Revisions to Attachment W to Update Index of Grandfathered Agreements to be effective 2/1/2027.

Filed Date: 11/18/26.

Accession Number: 20261118–5151.

Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: ER27–555–000.

Applicants: Duke Energy Carolinas, LLC.

Description: 205(d) Rate Filing: DEC–CEPCI Amended and Restated Reimbursement Agmt RS No. 665 to be effective 2/2/2027.

Filed Date: 11/18/26.

Accession Number: 20261118–5201.

Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: ER27–556–000.

Applicants: Duke Energy Progress, LLC.

Description: 205(d) Rate Filing: DEP–DEC Affected System Study Agreement SA No. 539 to be effective 1/18/2027.

Filed Date: 11/18/26.

Accession Number: 20261118–5215.

Comment Date: 5 p.m. ET 12/9/26.

Docket Numbers: ER27–557–000.

Applicants: AEP Texas Inc.

Description: 205(d) Rate Filing: AEPTX-Coleto Creek Power Amended Generation Interconnection Agreement to be effective 10/31/2026.

Filed Date: 11/18/26.

Accession Number: 20261118–5216.

Comment Date: 5 p.m. ET 12/9/26.

Take notice that the Commission received the following Foreign Utility Company Status filings:

Docket Numbers: FC27–3–000.

Applicants: Hesi Renewables Co., Ltd.

Description: Hesi Renewables Co., Ltd. submits Notice of Self-Certification of Foreign Utility Company Status.

Filed Date: 11/16/26.

Accession Number: 20261116–5359.

Comment Date: 5 p.m. ET 12/7/26.

Docket Numbers: FC27–4–000.

Applicants: Hexa India Companies.

Description: Hexa India Companies submit Notice of Self-Certification of Foreign Utility Company Status.

Filed Date: 11/16/26.

Accession Number: 20261116–5362.

Comment Date: 5 p.m. ET 12/7/26.

Docket Numbers: FC27–5–000.

Applicants: Hexa Japan Companies.

Description: Hexa Japan Companies submit Notice of Self-Certification of Foreign Utility Company Status.

Filed Date: 11/16/26.

Accession Number: 20261116–5363.

Comment Date: 5 p.m. ET 12/7/26.

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 18, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23765 Filed 11–20–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP27–172–000.

Applicants: ARC Resources U.S. Corp., Shell Energy North America (U.S.), L.P.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al., Request for Expedited Action and Request for Shortened Comment Period of ARC Resources U.S. Corp., et al.

Filed Date: 11/16/26.

Accession Number: 20261116–5361.

Comment Date: 5 p.m. ET 11/30/26.

Docket Numbers: RP27–174–000.

Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al., Request for Expedited Action and Request for Shortened Comment Period of Duke Energy Carolinas, LLC, et al.

Filed Date: 11/17/26.

Accession Number: 20261117–5166.

Comment Date: 5 p.m. ET 11/30/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern Time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 18, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23766 Filed 11–20–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2025–2862; FRL–13235–03–OAR]

EPA Response to State Initial Designations for the 2024 Revised Secondary Annual Sulfur Dioxide National Ambient Air Quality Standard: Notice of Availability and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is providing notice of the Agency's intended designations for the 2024 revised secondary annual Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) under Clean Air Act (CAA) section 107(d). Details regarding these designations, as well as the EPA's

responses to initial designations submitted by States (where applicable) are accessible via the Agency's website and public electronic docket. With this notice, the EPA is providing an opportunity for public comment on the intended designations during the comment period specified in the **DATES** section. The EPA sent notifications directly to applicable States, Tribes, and territories on or about November 18, 2026, and intends to move forward with final designations consistent with CAA requirements.

DATES: Comments must be received on or before December 23, 2026.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2025–2862, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (the EPA's preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2025–2862 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.—4:30 p.m., Monday—Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. For information on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For information on this notice of data availability, contact Angelina Brashear, U.S. Environmental Protection Agency, Office of State Air Partnerships, Air Quality Planning Division, P.O. Box 12055, Mail Code: C531–C, Research Triangle Park, NC 27709; telephone number: (919) 541–4746; email address: *brashear.angelina@epa.gov.*

Regional Office Contacts: The following serve as points of contact for inquiries related to specific areas within the respective EPA Regional offices.

EPA regional office contacts	Affected states
EPA Region 1—Lynne Hamjian, *Hamjian.Lynne@epa.gov*	CT, ME, MA, NH, RI, VT.
EPA Region 2—Richard Ruvo, *Ruvo.Richard@epa.gov*	NJ, NY, Puerto Rico, U.S. Virgin Islands.
EPA Region 3—Michael Dunn, *Dunn.Michael@epa.gov*	DE, DC, MD, PA, VA, WV.
EPA Region 4—Denisse Diaz, *Diaz.Denisse@epa.gov*	AL, FL, GA, KY, MS, NC, SC, TN.
EPA Region 5—John Mooney, *Mooney.John@epa.gov*	IL, IN, MI, MN, OH, WI.
EPA Region 6—James McDonald, *McDonald.James@epa.gov*	AR, LA, NM, OK, TX.
EPA Region 7—Dana Skelley, *Skelley.Dana@epa.gov*	IA, KS, MO, NE.
EPA Region 8—Adrienne Sandoval, *Sandoval.Adrienne@epa.gov*	CO, MT, ND, SD, UT, WY.
EPA Region 9—Anita Lee, *Lee.Anita@epa.gov*	AZ, CA, HI, NV, American Samoa, Commonwealth of the Northern Mariana Islands, Guam.
EPA Region 10—Angeles Herrera, *Herrera.Angeles@epa.gov*	AK, ID, OR, WA.

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2025–2862. All documents in the docket are listed in *https://www.regulations.gov.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available as PDF versions that can only be accessed on the EPA computers in the docket office reading room. Certain databases and physical items cannot be downloaded from the docket but may be requested by contacting the docket office at (202) 566–1744. With the exception of such material, publicly available docket materials and a plain language summary of the action are available electronically at *https://www.regulations.gov.*

Written Comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2025–2862, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA will publish any comment received to the Agency's public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be CBI, Proprietary Business Information (PBI), or other information the disclosure of which is restricted by statute. This type of information should be submitted as discussed below. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* section above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance

with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is electronic transmission using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the Office of State Air Partnerships (OSAP) CBI Office at the email address *osapcbi@epa.gov* and, as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *osapcbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: U.S. Environmental Protection Agency, Attn: OSAP Document Control Officer, Mail Drop: C404–02, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2025–2862. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this preamble, the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
DV Design Value
EPA Environmental Protection Agency
FR Federal Register
NAAQS National Ambient Air Quality Standard or Standards
OSAP Office of State Air Partnerships
PBI Proprietary Business Information
SIP State Implementation Plan
SO_2 Sulfur Dioxide
TSD Technical Support Document
U.S.C. United States Code

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I. Overview of Action
II. Legal Authority
III. The EPA's Intended Modifications to Initial Designations

I. Overview of Action

Under CAA section 107(d), the EPA is required to issue designations upon promulgation of a new or revised NAAQS. On December 11, 2024, the EPA promulgated revisions to the secondary annual SO_2 NAAQS.[1] With that action, the EPA established the revised secondary annual SO_2 NAAQS as an annual standard with a level of 10 parts per billion (ppb), averaged over three consecutive years as determined by 40 CFR part 50, Appendix T. As a general matter, the first step in the designations process is for the Governors of States and territories, and Tribes, if they so choose, to submit initial designations to the EPA. Whenever the EPA intends to modify a Governor's or Tribal Leader's initial designation, the Agency must notify the State, territory, or Tribe no later than 120 days prior to promulgating final designations.[2] These notifications are informally referred to as ''120-day letters''.

This notice of availability provides notice of the EPA's intended designations for the 2024 secondary annual SO_2 NAAQS under CAA section 107(d)(1)(B), as further explained in the TSD located in the docket for this action.[3] The EPA invites public input regarding these intended designations during the 30-day comment period provided in this notice. To receive full consideration, input from the public must be submitted to the docket by the date provided in the **DATES** section of this document. This notice and opportunity for public comment does not affect any rights or obligations of any State, territory, or Tribe, or of the EPA, which might otherwise exist pursuant to CAA section 107(d).

II. Legal Authority

Following promulgation of any new or revised NAAQS, CAA section 107(d) requires the EPA to designate areas of the country as attainment, nonattainment, or unclassifiable for the NAAQS. CAA section 107(d)(1)(A)(i)–(iii) defines: (i) nonattainment, as any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS; (ii) attainment, as any area (other than an area identified in clause (i)) that meets the NAAQS; and (iii) unclassifiable, as any area that cannot be classified on the basis of available information as meeting or not meeting the NAAQS. Generally, the designations process involves identifying areas of the country that either meet or do not meet the NAAQS, along with any nearby areas that are causing or contributing to NAAQS violations.

In accordance with the statutory timeline prescribed under CAA section 107(d)(1)(A), Governors of each State or territory were required to submit their initial designations for all areas of their State or territory by December 11, 2025. Though not required, Tribal governments were encouraged to submit initial designations for their respective areas of Indian Country.[4] The EPA evaluated these submissions as part of the Agency's duty to promulgate final designations for a new or revised NAAQS. CAA section 107(d)(1)(B)(ii) states that, whenever the EPA intends to modify an initial designation, the Agency must notify the State, territory, or Tribe and provide an opportunity for the State, territory, or Tribe to demonstrate why any proposed modification is inappropriate no later than 120 days before the date the Administrator promulgates the designation.

III. The EPA's Intended Modifications to Initial Designations

A. What are the EPA's intended designations modifications?

Consistent with CAA section 107(d)(1), the EPA has conducted an evaluation of the most recent and relevant air quality information available. This includes evaluation of complete and certified SO_2 ambient air quality monitoring data including the 2022–2024 design value (DV) period, on which States based their initial designations. Additionally, the EPA evaluated the most recent complete and certified SO_2 air quality monitoring data including the 2023–2025 DVs, and other available technical information pertinent to these designations. Furthermore, the EPA considered the information submitted from States in their initial designations. To ensure transparency and facilitate public engagement, the EPA has provided an associated TSD, *The EPA's Intended Designations for the 2024 Revised*

[1] *See* 89 FR 105692 (Dec. 27, 2024).

[2] The EPA notified Tribes that have obtained treatment in a similar manner as a State under CAA section 301(d) and 40 CFR part 49 for purposes of CAA section 107(d).

[3] *See also* U.S. Environmental Protection Agency. Last updated 2026. Air Quality Designations for Sulfur Dioxide. *https://www.epa.gov/sulfur-dioxide-designations.*

[4] After promulgation of a new or revised NAAQS, each Governor or Tribal leader has an opportunity to submit initial designations to the EPA. Consistent with the approach outlined in the EPA's 2011 Policy for Establishing Separate Air Quality Designations for Areas of Indian Country, in circumstances in which the Agency either does not receive an initial designation letter from a Tribe or receives a letter that does not specify designation of a separate area, the Agency intends to designate the relevant Tribe's Indian country as part of the surrounding multi-jurisdictional area. See memorandum from Stephen D. Page to Regional Air Directors, Regions 1–10, *https://www.epa.gov/sites/default/files/2015-09/documents/20120117indiancountry.pdf.*

Secondary Annual SO_2 NAAQS, which is available in the docket for this action. The TSD outlines the rationale, methodology, and supporting evidence underlying the EPA's intended designations.[5]

On or about November 18, 2026, in accordance with CAA section 107(d)(1)(B)(ii), the EPA notified affected States of any intent to modify aspects of the State's initial designations for the 2024 secondary annual SO_2 NAAQS. Additionally, if a State, territory, or Tribe did not submit an initial designation, the EPA notified the affected areas as a courtesy, to promote early engagement regarding the Agency's intended designations for these areas. While the EPA is generally in agreement with the initial designations received, the Agency intends to modify certain State initial designations of ''attainment'' and/or ''unclassifiable'' to ''attainment/unclassifiable,'' as detailed in the TSD for this notice and in the 120-day letters. As a functional matter, there is no change for those States; the statutory and regulatory burdens of ''attainment'' and ''unclassifiable'' and ''attainment/unclassifiable'' are the same.

The EPA's 120-day letters responding to State initial designations initiated a 30-day period for States to provide additional information to the Agency. If States choose to submit additional information related to why the EPA's intended modification is inappropriate, such information should be submitted within the 30-day period.

Information may be submitted to the EPA's public docket regarding these designations at EPA–HQ–OAR–2025–2862, available at *www.regulations.gov.* Pursuant to CAA section 107(d)(1)(B) and following consideration of any additional information the EPA receives, the Agency anticipates completing final designations consistent with CAA requirements. The EPA is available to assist States, territories, and Tribes with any outstanding matters concerning appropriate designations for all remaining areas.

B. Where can I find information for the basis for these designations?

Information providing the basis for these intended designations is provided in the TSD included in the docket. The TSD, other technical assistance documents, applicable EPA guidance memoranda, and copies of correspondence regarding this process between the EPA and the States, along with other parties, are available for review at the public docket for these secondary SO_2 designations at *http://www.regulations.gov* under Docket ID No. EPA–HQ–OAR–2025–2862, at the EPA Docket Center listed in the **FOR FURTHER INFORMATION CONTACT** section of this document, and on the Agency's secondary SO_2 Designations website at *https://www.epa.gov/sulfur-dioxide-designations.*

Abigale Tardif,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2026–23791 Filed 11–20–26; 8:45 am]

BILLING CODE 6560–50–P

[5] After promulgation of a new or revised NAAQS, each governor or Tribal leader has an opportunity to submit initial area designations, including the appropriate boundaries for nonattainment areas, to the EPA. For these designations, the EPA did not receive any initial area designation letters from any Tribes for their Tribal areas. Consistent with the approach outlined in the EPA's 2011 *Policy for Establishing Separate Air Quality Designations for Areas of Indian Country,* in circumstances in which the Agency either does not receive an initial area designation letter from a Tribe, or receives a letter that does not specify designation of a separate area, the EPA intends to designate the relevant Tribe's Indian country as part of the surrounding multi-jurisdictional area. *See* memorandum from Stephen D. Page to Regional Air Directors, Regions 1–10, *https://www.epa.gov/sites/default/files/2015-09/documents/20120117indiancountry.pdf.*

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2026–1849; FRL–13203–08–OCSPP]

Certain New Chemicals or Significant New Uses; Statements of Findings—August 2026

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from August 1, 2026, to August 31, 2026.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2026–1849, is available online at *https://www.regulations.gov.* Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at *https://www.epa.gov/*dockets.

FOR FURTHER INFORMATION CONTACT:

For technical information: Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (202) 564–1667 email address: *edelstein.rebecca@epa.gov.*

For general information: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the applicable period.

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

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make specific findings pertaining to whether the substance may present unreasonable risk of injury to health or the environment. Among those potential findings is that the chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment per TSCA Section 5(a)(3)(C).

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a

notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA identifies the PMNs, MCANs and SNUNs for which EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. For the findings made during this period, the following list provides the EPA case number assigned to the TSCA section 5(a) submission and the chemical identity (generic name if the specific name is claimed as confidential).

• J–26–0002, *Saccharomyces cerevisiae,* chromosomal integration modification (Generic Name).

To access EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C), lookup the specific case number at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/chemicals-determined-not-likely*.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: November 18, 2026.

Shari Z. Barash,

Director, New Chemicals Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2026–23789 Filed 11–20–26; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Meeting for the 2026–2027 EXIM Advisory Committee

SUMMARY: Discussion of EXIM policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services.

DATES: Thursday, December 3rd, 2026 at 3:00 p.m.–4:00 p.m. EST.

ADDRESSES: The meeting will be held online for committee members, EXIM's Board of Directors, support staff. All other participants must register to attend virtually.

Registration and Public Comment

Virtual Public Participation: The meeting will be open to public participation virtually and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *advisory@exim.gov*.

Interested parties may register for the meetings at: Advisory Committee: *https://events.teams.microsoft.com/event/fef476d9-3adc-4d00-abe8-356c1fbc5436@b953013c-c791-4d32-996f-518390854527*.

FOR FURTHER INFORMATION CONTACT: For more information about applying for membership to any of the committees, please contact India Walker at *advisory@exim.gov*.

(Authority: The Committee was established by the Bank as directed by Section 2(b)(9) of the Export Import Bank Act of 1945. These Advisory Committees are chartered in accordance with the Federal Advisory Committee Act (''FACA''), 5 U.S.C. App.)

India Walker,

Deputy Vice President, Office of External Affairs.

[FR Doc. 2026–23739 Filed 11–20–26; 8:45 am]

BILLING CODE 6690–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number CDC–2026–1849, NIOSH–357]

Request for Public Comment on the Proposed Short-Term Exposure Limit for Occupational Exposure to Carbon Monoxide

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) in the Centers for Disease Control and Prevention (CDC), an operating division of the Department of Health and Human Services (HHS), requests public comment on the draft document, *Proposed Short-Term Exposure Limit for Occupational Exposure to Carbon Monoxide.*

DATES: Electronic or written comments must be received by February 22, 2027.

ADDRESSES: You may submit comments, identified by docket number CDC–2026–1849 and docket number NIOSH–357, by either of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998.

Instructions: All information received in response to this notice must include the agency name and docket number (CDC–2026–1849; NIOSH–357). All relevant comments, including any personal information provided, will be posted without change to *https://www.regulations.gov.* Do not submit comments by email. CDC does not accept comments by email. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: R. Todd Niemeier, Ph.D., National Institute for Occupational Safety and Health, MS–C15, 1090 Tusculum Avenue, Cincinnati, OH 45226. Telephone: (513) 533–8166.

SUPPLEMENTARY INFORMATION: NIOSH is requesting public comment on a draft document, *Proposed Short-Term Exposure Limit for Occupational Exposure to Carbon Monoxide,* available in the dockets for this activity. NIOSH's existing recommendations for limiting carbon monoxide exposure in the workplace were published in 1972. This draft document details NIOSH's reassessment of the original recommended exposure limits and proposes updating the ceiling limit recommendation to a short-term exposure limit. This is being done in consideration of improvements to the science and technologies, including instrumentation and monitoring methods, involved in the recognition and control of workplace carbon monoxide health hazards since the publication of NIOSH's original recommendations in 1972. The final publication, which will address public comments, will be available on the NIOSH website and in the dockets for this activity (NIOSH–357 and CDC–2026–1849).

Background: NIOSH develops recommended occupational exposure limits (RELs) to protect workers from the risk of adverse health effects from acute and repeated exposures to chemicals. These include RELs, short-term exposure limits (STELs), or ceiling values depending on the length of exposure time the recommendation is intended to apply to. NIOSH bases its occupational exposure limits on detailed reviews of available human and animal toxicity data to identify health hazards, determine the level at which

they are likely to occur in workers, and characterize the point at which the risk to health becomes unreasonable. The analytical feasibility of putting these recommendations into practice using available methods and measurement technologies is also factored into NIOSH's decisions. The Current Intelligence Bulletin (CIB) 69: *NIOSH Practices in Occupational Risk Assessment* details the information and methods used to develop NIOSH RELs [NIOSH 2020].

The bases for NIOSH's current REL for carbon monoxide are detailed in the *Criteria for a Recommended Standard: Occupational Exposure to Carbon Monoxide* [NIOSH 1972]. The recommendations at that time included a REL applicable to a whole-day average and a ceiling limit meant not to be exceeded at any point. These recommendations considered the workplace exposure data that were available at the time and the capacity to put the recommendations into practice using available methods and technologies. As technologies and data availability have improved over the years, NIOSH has reassessed the original carbon monoxide exposure limit recommendations and proposes this update to ensure consistency with the current state-of-science and applicability to the modern workplace. This is consistent with NIOSH risk assessment practices [NIOSH 2020].

To facilitate the review of this document, NIOSH requests comment on the following specific questions for this draft proposed workplace short-term exposure limit for carbon monoxide:

1. Does this document clearly describe NIOSH's proposed update for short-term workplace exposure to carbon monoxide and its justification? If not, what specific information is missing from the document?

2. Are the scientific rationale and logic behind the proposed update to the short-term exposure limit clearly explained? If not, what specific information is needed to clarify the basis of the short-term exposure limit?

3. Does the scientific evidence and modeling support replacing the 1972 NIOSH 200-parts per million (ppm) ceiling limit with a 200-ppm, 10-minute time-weighted average (TWA) STEL? Does the proposed STEL adequately protect workers from acute carbon monoxide effects associated with short-term exposures over the 10-minute averaging period? Does the proposed STEL adequately protect workers from acute carbon monoxide effects associated with short-term exposures over the course of a work day?

4. Are the tables, figures, and equations clearly presented? Are the analyses clearly explained in support of the proposed STEL? If not, what specific improvements would be helpful?

5. Are you aware of any additional scientific information reported in government publications, databases, peer-reviewed journals, or other sources that should be considered in this document? If yes, please provide the full reference citation of any additional information or publications that would be helpful to consider.

References

NIOSH [1972]. Criteria for a recommended standard: occupational exposure to carbon monoxide. Cincinnati, OH: U.S. Department of Health, Education, and Welfare, Health Services and Mental Health Administration, National Institute for Occupational Safety and Health, DHEW (NIOSH) Publication No. 73–11000.

NIOSH [2020]. Current intelligence bulletin 69: NIOSH practices in occupational risk assessment. By Daniels RD, Gilbert SJ, Kuppusamy SP, Kuempel ED, Park RM, Pandalai SP, Smith RJ, Wheeler MW, Whittaker C, Schulte PA. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2020–106 (revised 03/2020).

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2026–23798 Filed 11–20–26; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2026–1882, NIOSH–366]

National Institute for Occupational Safety and Health (NIOSH) Center for Occupational Robotics Research (CORR); Request for Information

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health (NIOSH), in the Department of Health and Human Services, requests public input on research priorities and prevention needs related to humanoid robots in workplaces. Through its Center for Occupational Robotics Research (CORR), NIOSH conducts research and provides scientific leadership to improve the safety, health, and well-being of workers who use, wear, or work near robots. NIOSH seeks information on workplace applications, human-robot interaction, performance measurement and validation, and ways to prevent injuries and illnesses throughout design, deployment, and use. This request is for information-gathering purposes only and does not propose new regulations, requirements, or policies.

DATES: Comments must be received on or before February 22, 2027.

ADDRESSES: Submit comments by either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS C–34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226–1998.

Instructions: All written submissions received in response to this document must include the agency name and docket number (CDC–2026–1882 NIOSH–366) for this activity. All relevant comments, including any personal information provided, will be posted without change to *https://www.regulations.gov.* Do not submit comments by email.

FOR FURTHER INFORMATION CONTACT: Emily Haas, 626 Cochran Mills Rd. Pittsburgh, PA 15236; Telephone (412) 386–4627 (this is not a toll-free number); Email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION: NIOSH established the Center for Occupational Robotics Research (CORR) in 2017 to address the safety of workers who use, wear, or work near robots. CORR works with partners to monitor robot-related injury trends; evaluate robotic technologies as potential sources of, and interventions for, work-related injuries and illnesses; develop risk profiles; identify and conduct research; support consensus safety standards; and develop best practices, guidance, and training for safe human-robot interaction. CORR's portfolio includes traditional industrial robots as well as collaborative and mobile robots, wearable robotics and powered exoskeletons, remotely controlled or autonomous vehicles and drones, and other emerging robotic technologies. Additionally, NIOSH's Center for Direct Reading and Sensor Technologies (CDRST) informs research and guidance related to selecting, evaluating, using, and interpreting direct-reading and sensor technologies for occupational safety and health. This

expertise may be relevant to questions about robot-mounted sensors, workplace monitoring, worker-worn sensors, alarm performance, sensor data quality, and the interpretation and use of those data. Current and recent NIOSH work includes:

- Surveillance of robot-related injury claims and studies of how robot motion and design can affect perceived safety, trust, workload, worker behavior, and task performance.
- Human-robot interaction studies including robot-arm and mobile-robot studies that examine how movement speed, trajectory, design, and interaction geometry shape perceived safety, trust, workload, worker behavior, and task performance.
- Various approaches to visibility, separation, and collision avoidance.
- Research in application areas such as construction that also considers how changing work conditions, sensing, communication, software, and work organization can affect safe implementation.

NIOSH is exploring occupational safety and health applications of humanoid robots. Humanoid robots may combine bipedal or other human-like mobility with manipulation, perception, remote operation, autonomous functions, and software that can be updated or adapted. These characteristics may create questions that are not fully answered by experience with fixed industrial robots or other established robot types. NIOSH is interested in evidence about both potential worker-safety benefits and potential hazards, including how robot capabilities, work organization, and workplace conditions affect risk. Please consider addressing these questions or provide other comments you deem relevant.

(1) What tasks could humanoid robots perform, and how might their safety risks and benefits differ from those of other robots?

(2) How might humanoid robots affect workers' awareness, trust, workload, training, and safety behaviors?

(3) What hazards should be prioritized, and what injury, near-miss, or exposure data would help identify risks to workers?

(4) What tests or measures are needed to assess humanoid robot safety in realistic work conditions?

(5) What factors help or hinder organizations in adopting and sustaining effective safety practices for humanoid robots?

(6) How could sensors or wearables support worker safety around humanoid robots?

(7) Which robot design features and safety controls should be prioritized?

(8) What research, standards, or partnerships should NIOSH prioritize to support safe human-robot interaction?

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2026–23799 Filed 11–20–26; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–N–5829]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Extralabel Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by December 23, 2026.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0325. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kelly Covington, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–402–5661, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Extralabel Drug Use in Animals—21 CFR 530

OMB Control Number 0910–0325—Extension

This information collection supports Food and Drug Administration (FDA, us or we) implementation of section 512 of the Federal Food, Drug and Cosmetic Act (FD&C Act) (21 U.S.C. 360b), which governs new animal drugs. Agency regulations in 21 CFR part 530, permit FDA, if we find that there is a reasonable probability that the extralabel use of an animal drug may present a risk to public health, to establish a safe level for a residue from the extralabel use of the drug, and to require the development of an analytical method for the detection of residues above that established safe level. This requirement is codified at 21 CFR 530.22(b). Although to date, we have not established a safe level for a residue from the extralabel use of any new animal drug and, therefore, have not required the development of analytical methodology, we believe that there may be instances when analytical methodology will be required. We are, therefore, estimating the reporting burden based on two methods being required annually. The requirement to establish an analytical method may be fulfilled by any interested person. We believe that the sponsor of the drug will be willing to develop the method in most cases. Alternatively, FDA, the sponsor, and perhaps a third party may cooperatively arrange for method development. The respondents may be sponsors of new animal drugs, State, or Federal and/or State Agencies, academia, or individuals.

In the **Federal Register** of June 18, 2026 (91 FR 36868), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
530.22(b); Submission(s) of analytical method	2	1	2	4,160	8,320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–23740 Filed 11–20–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–N–13368]

Tobacco Products Scientific Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Tobacco Products Scientific Advisory Committee (TPSAC, the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues related to tobacco products. The meeting will be open to the public. FDA is establishing a docket for public comments related to the TPSAC meeting.

DATES: The meeting will be held on January 21, 2027, from 9 a.m. to 4:30 p.m. Eastern Time (ET).

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. The public will also have the option to participate in person, and the advisory committee meeting will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee (AC) meetings, including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FDA is establishing a docket for public comments on this meeting. The docket number is FDA–2026–N–13368. The docket will close on January 12, 2027. Comments received on or before January 12, 2027, will be provided to the Committee. The electronic filing system will accept comments until 11:59 p.m. ET at the end of January 12, 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. In the event that the meeting is cancelled, FDA will update its website with information on the rescheduled date and will continue to evaluate any relevant information, and consider any comments submitted to the docket, as appropriate.

As required under Section 911 of the FD&C Act, FDA also is accepting public comments on the Modified Risk Tobacco Product Application: Renewal Applications for VLN® King and VLN® Menthol King, Cigarette Products Submitted by 22nd Century Group Inc. via Docket No. FDA–2019–N–0994–0230, which is separate from the docket intended for comments for TPSAC: FDA–2026–N–13368.

- For comments to be considered as part of scientific review for the MRTPA, submit comments to FDA–2019–N–0994–0230. Comments in this docket will not be referred to the Committee.
- For comments to be considered by the TPSAC as part of the January 21, 2027, TPSAC meeting discussion, submit comments to FDA–2026–N–13368 by January 12, 2027, as noted above.
- For comments to be considered as part of the scientific review for the MRTPA and the January 21, 2027, TSPAC meeting discussion, submit comments to both dockets.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2026–N–13368 for ''Tobacco Products Scientific Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m. ET, 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 in total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT:

- Advisors and Consultants Staff, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 1–877–287–1373,
- *TPSAC@fda.hhs.gov,* or
- FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572) in the Washington, DC area).

A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On January 21, 2027, the Committee will convene to discuss the renewal of modified risk granted orders issued to 22nd Century Group Inc., for the following combusted cigarette products:

MR0000159: VLN® King, and

MR0000160: VLN® Menthol King.

Discussion generally will focus on whether the statutory standard for exposure modification orders under Section 911(g)(2) continues to be met.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting and after the meeting. Background material will be available at the location of the advisory committee meeting and at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Oral presentations from the public will be scheduled approximately between 1 p.m. and 2 p.m. ET. Those individuals interested in making formal oral presentations should notify Advisors and Consultants Staff, CTP (see **FOR FURTHER INFORMATION CONTACT**) and submit a brief statement of the general nature of the evidence or arguments they wish to present, along with the names, phone numbers, and email addresses of proposed participants on or before December 28, 2026. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the FDA Newsroom at *www.fda.gov/news-events/fda-newsroom.*

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Advisors and Consultants Staff, CTP (see **FOR FURTHER INFORMATION CONTACT**) at least 7 business days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform in conjunction with the physical meeting room (see location). This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for issuance of a waiver under 21 CFR 10.19 are met.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–23750 Filed 11–20–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Microbiome Subcommittee of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; 29th public meeting of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB).

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a virtual meeting is scheduled to be held for the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB).

DATES: The meeting is scheduled to be held on December 2, 2026, at 9:00 a.m. ET (times are tentative and subject to change). The confirmed time and agenda items for the meeting will be

posted on the website for the PACCARB at *http://www.hhs.gov/paccarb* when this information becomes available.

ADDRESSES: The meeting will be held virtually at *www.hhs.gov/live.*

FOR FURTHER INFORMATION CONTACT: Sarah Mcclelland, M.P.H., Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, Email: *CARB@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB), established by Executive Order 13676, is continued by Section 505 of Public Law 116–22, the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019 (PAHPAIA). Activities and duties of the PACCARB are governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

The PACCARB shall advise and provide information and recommendations to the Secretary of Health and Human Services (Secretary) regarding programs and policies intended to reduce or combat antibiotic-resistant bacteria that may present a public health threat and improve capabilities to prevent, diagnose, mitigate, or treat such resistance. The PACCARB shall function solely for advisory purposes.

Such advice, information, and recommendations may be related to improving: the effectiveness of antibiotics; research and advanced research on, and the development of, improved and innovative methods for combating or reducing antibiotic resistance, including new treatments, rapid point-of-care diagnostics, alternatives to antibiotics, including alternatives to animal antibiotics, and antimicrobial stewardship activities; surveillance of antibiotic-resistant bacterial infections, including publicly available and up-to-date information on resistance to antibiotics; education for health care providers and the public with respect to up-to-date information on antibiotic resistance and ways to reduce or combat such resistance to antibiotics related to humans and animals; methods to prevent or reduce the transmission of antibiotic-resistant bacterial infections; including stewardship programs; and coordination with respect to international efforts in order to inform and advance the United States capabilities to combat antibiotic resistance.

The focus of the December 2, 2026, meeting will assess the current State of the Threat that antimicrobial resistance possesses. It will include presentations, review, and analysis of recently released data and reports from the Centers for Disease Control (CDC), the American Veterinary Medical Association (AVMA), the Food and Drug Administration (FDA), and HHS. Written public comments can be emailed to *CARB@hhs.gov* by midnight December 30, 2026, and should be limited to no more than one page. All public comments received prior to December 30, 2026, will be provided to the subcommittee members.

Sarah Mcclelland,

Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health.

[FR Doc. 2026–23797 Filed 11–20–26; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2027, Through September 30, 2028

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Federal Medical Assistance Percentages (FMAP) and Enhanced Federal Medical Assistance Percentages (eFMAP) for fiscal year 2028 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 2027, through September 30, 2028. This notice announces the calculated FMAP rates, in accordance with the Act, that the U.S. Department of Health and Human Services (HHS) will use in determining the amount of Federal matching for State medical assistance (Medicaid), Temporary Assistance for Needy Families (TANF) Contingency Funds, Child Support collections, Child Care Mandatory and Matching Funds of the Child Care and Development Fund, Title IV–E Foster Care Maintenance payments, Adoption Assistance payments and Kinship Guardianship Assistance payments, and the eFMAP rates for the Children's Health Insurance Program (CHIP) expenditures. Table 1 gives figures for each of the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. This notice reminds states of adjustments available for states meeting requirements for disproportionate employer pension or insurance fund contributions and adjustments for disaster recovery. At this time, no state qualifies for such adjustments, and territories are not eligible.

DATES: The percentages listed in Table 1 will be effective for each of the four quarter-year periods beginning October 1, 2027, and ending September 30, 2028.

FOR FURTHER INFORMATION CONTACT: Amelia Whitman, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, (202) 578–1478.

SUPPLEMENTARY INFORMATION: The Secretary of HHS manages programs under titles IV, XIX and XXI of the Act in each jurisdiction of the United States. Programs under titles I, X, and XIV of the Act operate only in Guam and the Virgin Islands, and a program under title XVI of the Act (Aid to the Aged, Blind, or Disabled) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for most medical assistance and child health assistance, and assistance payments for certain social services provided under these titles. The Act provides separate terms for Federal matching of administrative costs.

Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of HHS to publish the FMAP rates each year. The Secretary calculates the percentages, using formulas set out in sections 1905(b) and 1101(a)(8), and calculations from the Department of Commerce of average income per person in each State and for the United States (meaning, for this purpose, the fifty states). The final percentages are subject to upper and lower limits specified in section 1905(b) of the Act. The percentages for the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified in statute, and thus are not based on the statutory formula that determines the percentages for the 50 states.

Federal Medical Assistance Percentage

Section 1905(b) of the Act, subject to statutory qualifications, specifies the formula for calculating FMAPs as follows:

''[T]he term 'Federal medical assistance percentage' for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum[.]''

Section 1905(b) further specifies that the FMAP for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 55 percent. However, section 5101(b) of Division FF of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) amended section 1905(ff) of the Act to provide that the FMAP for the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 83 percent permanently. We note that the Consolidated Appropriations Act, 2023 also amended section 1905(ff) of the Act to provide that the FMAP for Puerto Rico shall be 76 percent through September 30, 2027. Beginning October 1, 2027, the FMAP for Puerto Rico will be 55 percent under section 1905(b)(2) of the Act. In addition, we note that the rate that applies for Puerto Rico, the Virgin Islands, and Guam in certain other programs pursuant to section 1118 of the Act is 75 percent. Section 4725(b) of the Balanced Budget Act of 1997 (Pub. L. 105–33) amended section 1905(b) to provide that the FMAP for the District of Columbia, for purposes of titles XIX and XXI, shall be 70 percent. For the District of Columbia, we note under Table 1 that other rates may apply in certain other programs. The rates for the states, the District of Columbia, and the territories are set out in Table 1, Column 1.

Section 1905(y) of the Act, as added by section 2001(a)(3) of the Patient Protection and Affordable Care Act (''Affordable Care Act'') (Pub. L. 111–148), provides for an increase in the FMAP for medical assistance expenditures for newly eligible individuals described in section 1902(a)(10)(A)(i)(VIII) of the Act, as added by the Affordable Care Act (the adult group); ''newly eligible'' is defined in section 1905(y)(2)(A) of the Act. The FMAP for the adult group is 100 percent for Calendar Years 2014, 2015, and 2016, gradually declining to 90 percent for calendar quarters in 2020 and each year thereafter.[1] In addition, section 1905(z) of the Act, as added by section 10201 of the Affordable Care Act, provides that states that offered substantial health coverage to certain low-income parents and nonpregnant, childless adults on the date of enactment of the Affordable Care Act, referred to as ''expansion states,'' shall receive an enhanced FMAP beginning in 2014 for medical assistance expenditures for nonpregnant childless adults who may be required to enroll in benchmark coverage under section 1937 of the Act. Some of these provisions are discussed in more detail in the proposed rule, ''Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010,'' published on August 17, 2011 (76 FR 51148, 51172) and the final rule and interim final rule published on March 23, 2012 (77 FR 17144, 17194). This notice does not set forth the matching rates for the adult group as specified in section 1905(y) of the Act or the matching rates for nonpregnant, childless adults in expansion states as specified in section 1905(z) of the Act.

Other Adjustments to the FMAP

For purposes of title XIX (Medicaid) of the Act, the FMAP, defined in section 1905(b) of the Act, for each State beginning with fiscal year 2006, may be subject to an adjustment pursuant to section 614 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3.

First, the FMAP is adjusted if a State experiences no growth or positive growth in total personal income and an employer in that State has made a significantly disproportionate contribution to an employer pension or insurance fund. The adjustment involves disregarding the significantly disproportionate employer pension or insurance fund contribution in computing the per capita income for the State (but not in computing the per capita income for the United States). Employer pension and insurance fund contributions are significantly disproportionate if the increase in contributions exceeds 25 percent of the total increase in personal income in that State. A **Federal Register** Notice with comment period was published on June 7, 2010 (75 FR 32182) announcing the methodology for calculating this adjustment; a final notice was published on October 15, 2010 (75 FR 63480).

The second situation arises if a State experiences negative growth in total personal income. Beginning with fiscal year 2006, section 614(b)(3) of CHIPRA specifies that, for the purposes of calculating the FMAP for a calendar year in which a State's total personal income has declined, the portion of an employer pension or insurance fund contribution that exceeds 125 percent of the amount of such contribution in the previous calendar year shall be disregarded in computing the per capita income for the State (but not in computing the per capita income for the United States).

No Federal source of reliable and timely data on pension and insurance contributions by individual employers and states is currently available. We request that states report employer pension or insurance fund contributions to help determine potential FMAP adjustments for states experiencing significantly disproportionate pension or insurance contributions and states experiencing a negative growth in total personal income. See also the information described in the January 21, 2014 **Federal Register** notice (79 FR 3385).

Section 1905(aa) of the Act, as amended by section 2006 of the Affordable Care Act, specifies that notwithstanding section 1905(b) of the Act, the FMAP for a ''disaster-recovery FMAP adjustment State'' is adjusted as described in section 1905(aa)(1) of the Act. The statute defines a ''disaster-recovery FMAP adjustment State'' as one of the 50 states or District of Columbia for which, at any time during the preceding 7 fiscal years, the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, under which every county or parish in the State warrant individual and public assistance or public assistance from the Federal Government, and for which the regular FMAP [2] as determined for succeeding fiscal years is less than the FMAP for the preceding fiscal year by an amount outlined under sections 1905(aa)(2)(A) and (aa)(2)(B) of the Act. This notice does not contain disaster recovery adjustments since no state qualifies as a ''disaster-recovery FMAP adjustment State.'' See more information described in the December 22, 2010 **Federal Register** notice (75 FR 80501).

[1] Section 1905(kk) of the Act, as added by section 71110 of Public Law 119–21, provides that, notwithstanding sections 1905(y) and (z), beginning October 1, 2026, the FMAP for payments for care and services described in section 1903(v)(2) furnished to an alien described in section 1903(v)(1) may not exceed the FMAP determined under section 1905(b).

[2] Section 1905(aa)(3) of the Act defines a State's ''regular FMAP'' to be the FMAP that would otherwise apply to the State for the fiscal year, as determined under section 1905(b) and without regard to section 1905(aa), (y), and (z), and section 10202 of the Affordable Care Act.

Enhanced Federal Medical Assistance Percentage (eFMAP) for CHIP

Section 2105(b) of the Act specifies the formula for calculating the eFMAP rates as follows:

[T]he ''enhanced FMAP'', for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) for the State increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the State, is less than (2) 100 percent; but in no case shall the enhanced FMAP for a State exceed 85 percent.

The eFMAP rates are used in the Children's Health Insurance Program under title XXI and in the Medicaid program for expenditures for medical assistance provided to certain children as described in sections 1905(u)(2) and 1905(u)(3) of the Act. There is no specific requirement to publish the eFMAP rates. We include them in this notice for the convenience of the states (Table 1, Column 2).

(Catalog of Federal Domestic Assistance Program Nos. 93.558: TANF Contingency Funds; 93.563: Child Support Services; 93.596: Child Care Mandatory and Matching Funds of the Child Care and Development Fund; 93.658: Foster Care Title IV–E; 93.659: Adoption Assistance; 93.769: Ticket-to-Work and Work Incentives Improvement Act (TWWIIA) Demonstrations to Maintain Independence and Employment; 93.778: Medical Assistance Program; 93.767: Children's Health Insurance Program)

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

TABLE 1—FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2027–SEPTEMBER 30, 2028

[Fiscal year 2028]

State	Federal medical assistance percentages	Enhanced federal medical assistance percentages
Alabama	72.81	80.97
Alaska	51.23	65.86
American Samoa *	83.00	85.00
Arizona	64.16	74.91
Arkansas	70.88	79.62
California	50.00	65.00
Colorado	50.00	65.00
Connecticut	50.00	65.00
Delaware	63.93	74.75
District of Columbia ***	70.00	79.00
Florida	53.56	67.49
Georgia	67.45	77.22
Guam *	83.00	85.00
Hawaii	56.91	69.84
Idaho	68.77	78.14
Illinois	52.54	66.78
Indiana	66.28	76.40
Iowa	64.95	75.47
Kansas	63.78	74.65
Kentucky	71.84	80.29
Louisiana	68.77	78.14
Maine	61.05	72.74
Maryland	50.00	65.00
Massachusetts	50.00	65.00
Michigan	65.75	76.03
Minnesota	52.96	67.07
Mississippi	77.62	84.33
Missouri	63.08	74.16
Montana	60.77	72.54
Nebraska	55.54	68.88
Nevada	58.78	71.15
New Hampshire	50.00	65.00
New Jersey	50.00	65.00
New Mexico	71.46	80.02
New York	50.00	65.00
North Carolina	64.75	75.33
North Dakota	54.27	67.99
Northern Mariana Islands *	83.00	85.00
Ohio	65.36	75.75
Oklahoma	66.83	76.78
Oregon	59.15	71.41
Pennsylvania	57.22	70.05
Puerto Rico **	55.00	68.50
Rhode Island	57.08	69.96
South Carolina	69.45	78.62
South Dakota	52.79	66.95
Tennessee	63.67	74.57
Texas	58.86	71.20
Utah	62.50	73.75
Vermont	56.80	69.76
Virgin Islands *	83.00	85.00

TABLE 1—FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2027–SEPTEMBER 30, 2028—Continued

[Fiscal year 2028]

State	Federal medical assistance percentages	Enhanced federal medical assistance percentages
Virginia	50.17	65.12
Washington	50.00	65.00
West Virginia	74.67	82.27
Wisconsin	61.45	73.02
Wyoming	50.00	65.00

* The Consolidated Appropriations Act, 2023 set the FMAP for American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands permanently at 83 percent. For purposes of section 1118 of the Act, the percentage used under titles I, X, XIV, and XVI will be 75 per centum for the Virgin Islands and Guam.

** The Consolidated Appropriations Act, 2023 set the FMAP for Puerto Rico at 76 percent through September 30, 2027. Beginning October 1, 2027, the FMAP for Puerto Rico will be 55 percent under section 1905(b)(2) of the Act. For purposes of section 1118 of the Act, the percentage used under titles I, X, XIV, and XVI will be 75 per centum for Puerto Rico.

*** The values for the District of Columbia (DC) in the table were set for the state plan under titles XIX and XXI and for capitation payments and disproportionate share hospital (DSH) allotments under those titles. For other purposes, the percentage for DC is 50.00, unless otherwise specified by law.

[FR Doc. 2026–23741 Filed 11–20–26; 8:45 am]

BILLING CODE 4150–28–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 at: *samhsapra@samhsa.hhs.gov.*

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.

Proposed Project: National Survey on Drug Use and Health (OMB No. 0930–0110)

The National Survey on Drug Use and Health (NSDUH) is a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older within the 50 states and the District of Columbia. Consistent with NSDUH designs since 1991, the 2027 NSDUH will include residents of noninstitutional group quarters (*e.g.,* shelters, rooming houses, dormitories) and civilians residing on military bases. Excluded from the NSDUH are those without fixed household address (*e.g.,* homeless people not in shelters) and residents of institutional group quarters, such as jails and hospitals.

The 2027 sampling frame will exclude U.S. territories. Although data collection pilots were conducted to assess operational feasibility in Puerto Rico (2023—2025) and in the U.S. Virgin Islands (2024), SAMHSA determined that additional testing and discussions with other statistical agencies are needed before expanding full-scale NSDUH data collection to Puerto Rico and the U.S. Virgin Islands.

The 2027 NSDUH will continue to use both in-person and web-based modes of data collection. Consistent with all NSDUH surveys conducted since 2002, each respondent who completes the full interview will be given a $30 incentive. The delivery method will depend on the interview mode: in-person respondents will receive a $30 cash incentive, while web-based respondents will receive either an electronic gift card by email or a physical gift card by mail, based on their preference.

The data provide nationally representative data on the use of tobacco, alcohol, and drugs; substance use disorders; mental health issues; recovery from substance use disorders and mental health issues; and receipt of substance use and mental health treatment at the national, state, and substate levels. NSDUH data also help to identify the extent of substance use and mental illness among different population subgroups, estimate trends over time, and determine the need for treatment services. Substance use topics covered include lifetime, past-year, and past-month use; age at first use; substance use treatment history; perceived need for treatment; and substance use disorders. Mental health topics include major depressive episodes; suicidal ideation and attempts; general mental illness; and use of mental health care. NSDUH estimates allow researchers, clinicians, policymakers, and the general public to better understand and improve the nation's behavioral health.

The NSDUH questionnaire must be updated periodically to reflect changing substance use and mental health issues and to continue producing current data. For the 2027 NSDUH, planned changes from the 2026 questionnaire include: (1) revisions and additions to the Special Drugs module to prevent inconsistent reporting of last use of specific drugs with earlier modules; (2) revisions to the Risk/Availability module to ask about using marijuana rather than smoking marijuana; (3) addition to the Mental Health Services Utilization module to capture past 12-month use of a Crisis Line service; (4) reinstatement of a question in the Youth Experiences module about perceived attitudes of close friends; (5) revisions to the Consumption of Alcohol module to ask about polysubstance use in the past 30 days rather than the last time the

respondent used drugs; (6) additions to the Emerging Issues module to measure past 12-month use of glucagon-like peptide-1 medications (GLP–1s), selective serotonin reuptake inhibitors (SSRIs), serotonin and norepinephrine reuptake inhibitors (SNRIs), mood stabilizers, and antipsychotic medications; (7) reinstatement of questions in the Employment module about workplace testing for drug and alcohol use; and (8) revisions to the Health Insurance and Income modules to include updated state program names for Medicaid, the Children's Health Insurance Program, and Temporary Assistance for Needy Families.

Overall, these changes are expected to generate data on new areas of interest, such as mental health medications and Crisis Line services. They will also reinstate questions previously used by other federal agencies in their reporting and revise additional items to prevent misreporting.

The revisions to the Special Drugs module will allow the 2027 NSDUH to collect more consistent information across the survey and lower interview completion time by avoiding redundant questions for some respondents. Several questions in the Risk/Availability module were revised to ask about ''using'' marijuana rather than ''smoking'' marijuana. This wording change is intended to measure other ways of using marijuana that are common with youth, such as vaping or edibles. In the Mental Health Services Utilization module, the addition of a question capturing past 12-month use of a Crisis Line service is to provide new data on emerging topics. Reinstating items in the Youth Experience and Employment module will collect data needed by several government agencies for their ongoing reporting while revising polysubstance use questions in the Consumption of Alcohol module to a standardized past 30-day reference period will bring this data more in line with other NSDUH drug use questions. The new questions measuring use of mental health medications, GLP–1s, and Crisis Line services were added because the NSDUH did not previously include these items and they are of growing interest to data users. Questions about workplace testing for drug and alcohol use were also reinstated in the Employment module to collect data needed by several government agencies for their ongoing reporting. Finally, annual updates of state Medicaid, Children's Health Insurance Program, and Temporary Assistance to Needy Families program names were made to ensure question accuracy.

As with all NSDUH/NHSDA [1] surveys conducted since 1999, the sample size of the NSDUH for 2027 will be sufficient to permit prevalence estimates for each of the 50 states and the District of Columbia. The total annual burden estimate for the NSDUH is shown below in Table 1. The primary set of new items is included in the Emerging Issues Module, which appears near the end of the interview. By this point, respondents are familiar with the survey format and questionnaire structure. The additional questions will take about one minute for an average respondent to complete, as they are short, contained within a module, and use straightforward survey logic. Overall, while new questions are being added, it is not expected that the addition will result in any significant increase in participant burden, as the survey branches efficiently to keep it short for most respondents.

TABLE 1—ANNUALIZED ESTIMATED BURDEN FOR 2027 NSDUH

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Household Screening	297,529	1	297,529	0.083	24,695
Interview	67,507	1	67,507	1.008	68,047
Screening Verification	6,248	1	6,248	0.067	419
Interview Verification	7,088	1	7,088	0.067	475
Total	378,372	.....	378,372	.....	93,636

Send comments to SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E57A, Rockville, MD 20852 *OR* email a copy at *samhsapra@samhsa.hhs.gov.* Written comments should be received by December 23, 2026.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2026–23788 Filed 11–20–26; 8:45 am]

BILLING CODE 4162–20–P

[1] Prior to 2002, the NSDUH was referred to as the National Household Survey on Drug Abuse (NHSDA).

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–DHS–2026–0298]

Agency Information Collection Activities: DHS Civil Rights and Civil Liberties Complaint and Privacy Waiver Form, 1601–0035

AGENCY: Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; reinstatement without change of a currently approved collection, 1601–0035.

SUMMARY: The Department of Homeland Security will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until January 19, 2027. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number Docket #DHS–DHS–2026–0298, at:

○ Federal eRulemaking Portal: *https://www.regulations.gov.* Please

follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket #DHS–DHS–2026–0298. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) reviews and investigates civil rights and civil liberties complaints filed by the public regarding U.S. Department of Homeland Security (DHS) policies and activities. Under 6 U.S.C. 345 and 42 U.S.C. 2000ee–1, CRCL reviews and assesses allegations involving a range of alleged civil rights and civil liberties abuses.

The information collected on this form will allow CRCL to review and investigate civil rights and civil liberties complaints filed by the public regarding DHS programs and activities.

CRCL submits copies of all external allegations of civil rights and civil liberties violations within its jurisdiction that it receives to the DHS Office of Inspector General (OIG) for review because OIG has the right of first refusal to investigate any allegations. If the OIG declines to investigate the allegations, CRCL may investigate. CRCL coordinates with DHS Components and the OIG regarding matters that CRCL opens as complaint investigations as well as some it decides not to investigate. In general, CRCL shares the incoming information with the Components involved and coordinates with the Components throughout a CRCL investigation. CRCL typically has a designated liaison office or person for each component and directs requests to them, which they route or share according to their internal procedures and obligations to obtain and share information with CRCL pursuant to statute, delegation, and other Department policies and directives. CRCL staff receive privacy training and adhere to DHS required policies and procedures regarding the protection of PII. At the conclusion of its complaint investigations, CRCL may issue recommendations to DHS Components to address issues of concern and to enhance the agency's civil rights and civil liberties protections. CRCL also engages with Components on the implementation of such recommendations.

In addition, the information provided is entered into a CRCL complaint management system (CMS) and may be used by CRCL to track allegations and identify trends and systemic issues that are within CRCL's jurisdiction regardless of whether CRCL investigates an individual allegation. CRCL has used information from these database records to notify DHS Components of issue areas and locations that may warrant closer attention.

Information must be submitted to CRCL via the web form *https://www.dhs.gov/make-civil-rights-complaint* and may be initiated by members of the public. The use of the complaint form is mandatory, but all fields do not have to be completed to submit a complaint.

The form in an electronic form and it is available online for submission at *https://www.dhs.gov/make-civil-rights-complaint.*

This information collection does not have an impact on small businesses or other small entities.

If the information collection is not conducted or is conducted less frequently, CRCL may not be able to effectively fulfill its statutory obligation to the public to review and investigate allegations involving alleged civil rights and civil liberties concerns regarding DHS polices and activities.

The assurance of confidentiality provided to the respondents for this information collection will be provided by: CRCL's statute under 6 U.S.C. 345, 42 U.S.C. 2000ee–1; the Privacy Impact Assessment for the CRCL Complaint Form and Privacy Waiver; and the Systems of Record Notice: Department of Homeland Security/ALL–029 Civil Rights and Civil Liberties Records System of Records.

This submission is a reinstatement of a previously approved collection. Any changes reflected are updates made to incorporate 2026 data and information. No other program changes or adjustments have been made beyond these updates. This notice replaces the published notice, on July 22, 2026. The public will have 60 days from the publication date of this notice to submit comments on the collection.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security (DHS).

Title: DHS Civil Rights and Civil Liberties Complaint and Privacy Waiver Form.

OMB Number: 1601–0035.

Frequency: Annually.

Affected Public: Members of the Public or non-government organizations.

Number of Respondents: 13,000.

Estimated Time per Respondent: .5hrs (30 mins).

Total Burden Hours: 6,500 hrs (390,00 mins).

Suzanne Komara,

Deputy Executive Director, Enterprise Business Management Directorate.

[FR Doc. 2026–23736 Filed 11–20–26; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2026–3863; FXES11140400000–267–FF04E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of permit applications and request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We or Service) invites the public to comment on permit applications to conduct certain activities with listed species under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities involving listed species unless the Service issues a federal authorization, such as a permit, to allow for such activities. The ESA also requires the Service to invite public comment and to consider any information received during the public comment period before issuing a permit

for any activity otherwise prohibited by the ESA. We invite the public as well as local, State, Tribal, and Federal agencies, to comment on these applications. We will consider all information received during the public comment period before issuing any of the requested permits.

DATES: Comments will be accepted on or before December 23, 2026. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

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:

Reviewing Documents: Submit requests for copies of applications and supporting materials to *permitsr4es@fws.gov* (see **FOR FURTHER INFORMATION CONTACT**). All requests for application information and comments should specify the applicant's name and application number accordingly to facilitate the request.

Comment submission: All submissions must include the docket number [FWS–R4–ES–2026–3863] for this document. You must submit comments using one of the following methods:

- *Electronic submission:* Federal eRulemaking Portal at: *https://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2026–3863, which is the docket number for this action. Then click the Search button. On the resulting page, you may submit a comment by clicking on ''Comment.'' Please ensure that you have found the correct docket before submitting your comments.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2026–3863, Policy and Regulations Branch, 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.

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 ''Public Availability of Comments'' for more information.

FOR FURTHER INFORMATION CONTACT: Kaye London via telephone at 404–679–7097 or via email at *permitsr4es@fws.gov.* Individuals in the U.S. who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a), and the Freedom of Information Act (5 U.S.C. 552).

Background

With some exceptions, the Act prohibits certain activities with listed species, including the take of listed wildlife, unless a federal permit is issued that authorizes such activities. A recovery permit issued by the Service under section 10(a)(1)(A) of the Act authorizes an otherwise prohibited take of listed species by the permittee while engaging in activities conducted for scientific purposes that promote recovery of the species, for enhancement of propagation, or survival of the species in the wild. The Service regulations implementing the Act's prohibitions and permitting requirements for listed species are set forth in 50 CFR part 17.

Permit Applications Available for Review and Comment

Section 10(c) of the Act requires the Service to publish notice of each application in the **Federal Register** and to invite interested parties to submit written data, views, or arguments before we take final action on the permit application. Accordingly, we invite comments on these applications. The comments and recommendations that will be most useful and most likely to influence agency decisions are those supported by quantitative information or studies. The proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

We invite comments on the following applications:

Reference No.	Applicant	Species	Permit action
PER0037593–1	Donald Hubbs; Camden, TN	49 species of freshwater mussels and 13 species of snails.	Amendment.
PER9605390–0	Amanda Rosenberger; Cookeville, TN	Chucky madtom (*Noturus crypticus*) and 53 species of freshwater mussels.	New.
PER0007863–1	Jana Day; Louisville, KY	Longsolid (*Fusconaia subrotunda*), round hickorynut (*Obovaria subrotunda*), and salamander mussel (*Simpsonaias ambigua*).	Amendment.
ES60238B–3	Odum School of Ecology, University of Georgia; Athens, GA.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), and northern long-eared bat (*Myotis septentrionalis*).	Renewal with changes.
PER36136928–0	Odum School of Ecology, University of Georgia; Athens, GA.	8 species of fishes	New.
ES040792–6	U.S. Forest Service, Savannah River Site; New Ellenton, SC.	Tricolored bat (*Perimyotis subflavus*)	Renewal with changes.
ES66039A–3	Arkansas Game and Fish Commission; Benton, AR.	Ozark hellbender (*Cryptobranchus alleganiensis bishopi*) and 8 species of freshwater mussels.	Renewal with changes.
PER31433012–0	Niemiller Nature, LLC; Madison, AL	5 species of bats and 4 species of crustaceans	New.
PER31754783–0	Dewberry Engineers, Inc.; Raleigh, NC	Cape Fear shiner (*Notropis mekistocholas*) and Carolina madtom (*Noturus furiosus*).	New.

Reference No.	Applicant	Species	Permit action
ES88809B–2	Ray Eaton; Berea, KY	5 species of bats	Amendment.
ES64232B–2	Joshua Young; Lexington, KY	4 species of bats	Renewal.
PER33900511–0	Katherine Caldwell; Asheville, NC	5 species of bats	New.
PER35026980–0	Giam Lab, University of Tennessee; Knoxville, TN.	8 species of freshwater mussels	New.
PER35025122–0	Nutter and Associates, Inc.; Athens, GA.	8 species of fishes	New.
CS21862369	Michael Moore; Richmond, KY	4 species of fishes	New.
CS21886201	Bradlyn McEttrick; St. Petersburg, FL	5 species of sea turtles and piping plover (*Charadrius melodus*).	New.
CS21887737	Danielle Gaus; St. Petersburg, FL	5 species of sea turtles and piping plover (*Charadrius melodus*).	New.
PER35574771–0	Ava Hagan; Louisville, KY	4 species of bats	New.
ES59318D–1	Marie Selby Botanical Gardens; Sarasota, FL.	Aboriginal prickly-apple (*Harrisia (=Cereus) aboriginum (=gracilis)*).	Renewal with changes.
PER3613672–0	Hayden Mattingly; Cookeville, TN	Pygmy madtom (*Noturus stanauli*)	New.
PER36228923–0	Samuel Freeze; Palmetto, FL	4 species of bats	New.

Public Availability of Comments

Any written comments that we receive will become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed above in this notice, we will publish a subsequent notice in the **Federal Register**. The notice announcing the permit issuance may be located by searching *regulations.gov* for the permit application number listed in the table above. Enter the search exactly as the permit application number appears above, with spaces and hyphens as necessary. For example, to find information about the potential issuance of Permit No. PER1234567–0, go to *https://www.regulations.gov* and enter ''PER1234567–0'' in the Search field.

An interested party opposed to a recovery permit's issuance may object by following the requirements in 50 CFR 17.22(d). The Service will notify the interested party of the Service's decision on the permit application under that section.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Christopher Cooley,

Acting Assistant Regional Director, Ecological Services, Southeast Region.

[FR Doc. 2026–23776 Filed 11–20–26; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2026–1486; FXES111607MRG01–278–FF07CAMM00]

Marine Mammals; Incidental Take During Specified Activities; Proposed Incidental Harassment Authorization for Southwest Alaska Stock of Northern Sea Otters in Kodiak, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of receipt of application and proposed authorization; availability of draft environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS or we), in response to a request under the Marine Mammal Protection Act of 1972, as amended, from the City of Kodiak, propose to authorize incidental take by harassment of small numbers of Southwest Alaska stock northern sea otters (*Enhydra lutris kenyoni*) from November 1, 2026, to October 31, 2027. The applicant has requested this authorization for take by harassment that may result from activities associated with pile driving and marine construction within St. Herman Harbor in Kodiak, Alaska. We estimate that this project may result in the incidental take by harassment of up to 324 northern sea otters from the Southwest Alaska stock. Neither the applicant nor the FWS anticipated any lethal take. We invite comments on the proposed incidental harassment authorization and the accompanying draft environmental assessment from the public, Tribes, and local, State, and Federal agencies.

DATES: Comments must be received by December 23, 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 the application package, the draft environmental assessment, and other supporting material at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2026–1486, or you may request these documents from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Comment submission: All submissions must include the docket number (FWS–R7–ES–2026–1486) for this document. You must submit comments using one of the following methods:

- *Electronic submission:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R7–ES–2026–1486, which is the docket number for this 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–2026–1486, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Comments submitted through any method not authorized in this document, or sent to an address not listed here, will not be considered. We will not accept comments via email, fax, or hand delivery. We are not required to consider comments that are submitted after the comment period ends or that are submitted via a method outside of these instructions. Comments containing profanity, vulgarity, threats, or other inappropriate content will not be considered.

We request that you send comments only by the methods described above. We will post all comments at *https://www.regulations.gov.* You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. See Request for Public Comments for more information.

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Burgess, by email at *R7mmmregulatory@fws.gov,* by telephone at 907–786–3800 or by U.S. mail at U.S. Fish and Wildlife Service, MS 341, 1011 East Tudor Road, Anchorage, AK 99503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA) (16 U.S.C. 1361, *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of 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 periods of not more than 1 year. The Secretary has delegated authority for implementation of the MMPA to the FWS. According to the MMPA, the FWS shall allow this incidental taking by harassment if we find that such harassment during each period concerned:

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 by harassment;

2. Means of effecting the least practicable adverse impact on the species or stock and its habitat; and

3. Measures necessary to ensure no unmitigable adverse impacts on the availability of the species or stock for taking for subsistence uses; and

4. 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) (*i.e.,* regulations governing small takes of marine mammals incidental to specified activities) 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. For this IHA, 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 February 26, 2025, the FWS received a request prepared by Solstice Alaska Consulting, Inc. on behalf of the City of Kodiak (hereafter, the City, or the applicant) for an authorization to take by harassment a small number of northern sea otters (*Enhydra lutris kenyoni*) (hereafter, sea otters unless another sea otter subspecies is specified) from the Southwest Alaska stock. The applicant expects take by harassment may occur during their construction modifications to the existing St. Herman Harbor within St. Herman Bay in Kodiak, Alaska. The FWS requested additional information on project activities, geospatial files of the project impact area, and mitigation measures. We received a revised request on December 10, 2025 (dated July 2025), and determined the revised application to be adequate and complete.

Description of Specified Geographic Region and Specified Activities

The specified geographic region is the nearshore waters within and surrounding St. Herman Harbor in Kodiak, Alaska (figure 1, below).

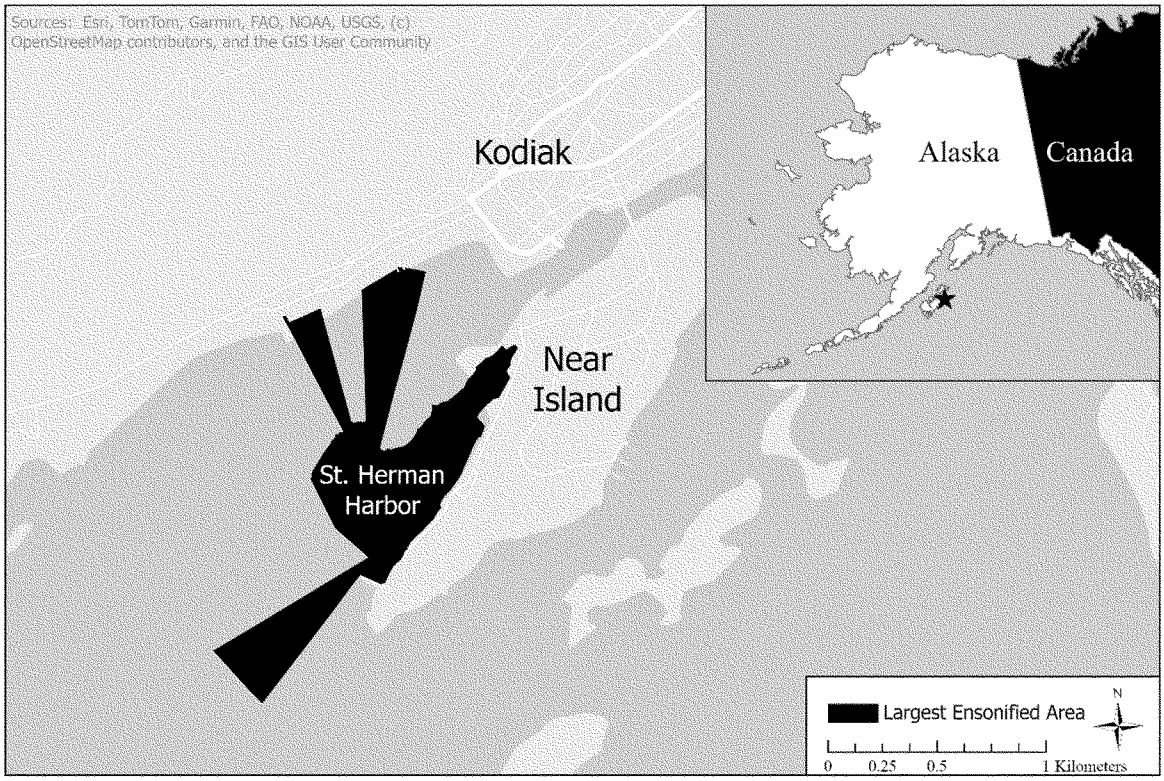

Figure 1. Specified geographic region of the project.

The specified activity (hereafter, project) will include installation of a new float and drive down dock within St. Herman Harbor in Kodiak, Alaska. A total of 20 temporary steel piles, each 61.0 centimeters (cm) (24 inches (in)) in diameter, will be installed and removed to guide permanent piles into place. Up to 12 of the temporary template piles may be installed using an impact hammer and/or down-the-hole (DTH) driving. All template piles would be removed via vibratory hammer. The applicant plans to install a total of 58 permanent steel piles no greater than 76.2 cm (30 in) in diameter using a combination of vibratory pile driving, impact pile driving, and DTH drilling. Hereafter (unless otherwise specified), the terms ''pile driving'' and ''pile-driving activities'' are used to refer to both pile installation and pile removal. In-water project activities are summarized in table 1, below.

TABLE 1—ST. HERMAN HARBOR INFRASTRUCTURE REPLACEMENT PROJECT ACTIVITIES, PILES INSTALLED OR REMOVED, AND DAYS OF ACTIVITY

Project component	Pile size and material	Activity	Total number of piles	Maximum number of piles per day	Maximum number of days of activity
Construction	61.0-cm (24-in) steel	Temporary installation–vibratory.	20	6	4
		Temporary installation–impact.	12	6	2
		Temporary installation–DTH	12	6	2
		Temporary removal–vibratory	20	6	4
	61.0-cm (24-in) steel	Installation-vibratory	6	6	1
		Installation-impact	6	6	1
		Installation-DTH	6	6	1
	76.2-cm (30-in) steel	Installation-vibratory	52	6	9
		Installation-impact	52	6	9
		Installation-DTH	52	6	9

Pile-driving activities will occur over 42 non-consecutive days for approximately 249 hours from November 1, 2026, to October 31, 2027. Materials and equipment will be transported via barges to the project location. The applicant will also use a construction barge to support construction operations. A small skiff may also be used to support construction operations and transport personnel to and from the construction barge. Additional project details may be reviewed in the application materials available as described under **ADDRESSES** or may also be requested as described under **FOR FURTHER INFORMATION CONTACT**.

Description of Marine Mammals in the Specified Geographic Region

The northern sea otter is the only species of marine mammal under FWS jurisdiction likely found within the specified geographic region. Information on range, stocks, and biology of sea otters can be found in the supplemental information (available as described above in **ADDRESSES**).

Potential Impacts of the Specified Activities on Marine Mammals

Effects of Noise on Sea Otters

We characterize ''noise'' as sound released into the environment from human activities that exceeds ambient levels or interferes with normal sound production or reception by sea otters. The terms ''acoustic disturbance'' and ''acoustic harassment'' are disturbances or harassment events resulting from noise exposure. Potential effects of noise exposure are likely to depend on the distance of the sea otter from the sound source, the level and intensity of sound the sea otter receives, background noise levels, noise frequency, noise duration, and whether the noise is pulsed or continuous. The actual noise level perceived by individual sea otters will also depend on whether the sea otter is above or below water and atmospheric and environmental conditions. Temporary disturbance of sea otters or localized displacement reactions are the most likely effects to occur from noise exposure.

Sea Otter Hearing

Pile driving and marine construction activities produce sound within the hearing range of sea otters. Controlled sound exposure trials on southern sea otters (*Enhydra lutris nereis*) indicate that sea otters can hear frequencies between 125 hertz (Hz) and 38 kilohertz (kHz), with best sensitivity between 1.2 and 27 kHz (Ghoul and Reichmuth 2014). Sea otters are more adept at aerial hearing and their sensitivity is similar to that of terrestrial carnivores (Reichmuth and Ghoul 2012; Ghoul and Reichmuth 2016; Zellmer et al. 2021). Aerial and underwater audiograms for a captive adult male southern sea otter in the presence of ambient noise suggest the sea otter's hearing was less sensitive to high-frequency (greater than 22 kHz) and low-frequency (less than 2 kHz) sound than that of terrestrial mustelids but was similar to that of a California sea lion (*Zalophus californianus*). However, the sea otter was still able to hear low-frequency sounds, and the detection thresholds for sounds between 0.125 and 1 kHz were between 116 and 101 decibels (dB), respectively. Dominant frequencies of southern sea otter vocalizations are between 3 and 8 kHz, with some energy extending above 60 kHz (McShane et al. 1995; Ghoul and Reichmuth 2012).

Exposure to high levels of sound may cause changes in behavior, masking of communications, temporary or permanent changes in hearing sensitivity, discomfort, and injury to marine mammals. Sea otters do not rely on sound to orient themselves, locate prey, or communicate under water; therefore, masking of communications by anthropogenic noise is less of a concern than for other marine mammals. However, sea otters, especially mothers and pups, do use sound for communication in air (McShane et al. 1995), and sea otters may monitor underwater sound to avoid predators (Davis et al. 1987).

Exposure Thresholds

Underwater Sounds

Noise exposure criteria for identifying underwater noise levels capable of causing Level A harassment (injury) to marine mammal species, including sea otters, have been established using the same methods as those used by the National Marine Fisheries Service (NMFS) (Southall et al. 2019). These criteria are based on estimated levels of sound exposure capable of causing a permanent shift in hearing sensitivity (*i.e.,* a permanent threshold shift (PTS) (NMFS 2018)). A PTS occurs when noise exposure causes damage to hair cells within the inner ear system (Ketten 2012). Although the effects of PTS are, by definition, permanent, PTS does not equate to total hearing loss.

Sound exposure thresholds incorporate two metrics of exposure: the peak level of instantaneous exposure likely to cause permanent (PTS) or temporary threshold shift (TTS) in hearing, and the cumulative sound exposure level (SEL_{CUM}) during a 24-hour period. They also include weighting adjustments for the sensitivity of different species to varying frequencies. A TTS is a noise-induced threshold shift in hearing sensitivity that fully recovers over time (Finneran 2015). Sound exposure trials in lab settings led to observations of TTS, which were then used to establish PTS-based injury criteria through theoretical extrapolation (Finneran 2016). In 2019, TTS thresholds were established for sea otters, which are included in the ''other marine carnivores'' category, of 188 dB SEL for impulsive sounds and 199 dB SEL for nonimpulsive sounds (Southall et al. 2019). Based on these analyses, Southall et al. (2019) predict that PTS for sea otters will occur at 232 dB peak or 203 dB SEL_{CUM} for impulsive underwater sound and 219 dB SEL for nonimpulsive (continuous) underwater sound.

The NMFS (2018) sound exposure criteria do not identify thresholds for avoidance of Level B harassment. For pinnipeds (seals and sea lions), NMFS has adopted a 160-dB threshold for Level B harassment from exposure to impulsive noise and a 120-dB threshold for continuous noise (High Energy Seismic Survey Team 1999; NMFS 2018). These thresholds were developed from observations of mysticete (baleen) whales responding to airgun operations (*e.g.,* Malme et al. 1983; Malme and Miles 1983; Richardson et al. 1986, 1995). Southall et al. (2007, 2019) assessed behavioral response studies and found considerable variability among pinnipeds. The authors determined that exposures between approximately 90 to 140 dB generally do not appear to induce strong behavioral responses from pinnipeds in water. However, they found behavioral effects, including avoidance, become more likely in the range between 120 and 160 dB, and most marine mammals showed some, albeit variable, responses to sound between 140 and 180 dB. Wood et al. (2012) adapted the approach identified in Southall et al. (2007) to develop a probabilistic scale for marine mammal taxa at which 10 percent, 50 percent, and 90 percent of individuals exposed are assumed to produce a behavioral response. For many marine mammals, including pinnipeds, these response rates were set at sound pressure levels (SPL) of 140, 160, and 180 dB, respectively.

We have evaluated these thresholds and determined that the Level B harassment threshold of 120 dB for nonimpulsive noise is not applicable to sea otters. The 120-dB threshold is based on studies in which gray whales (*Eschrichtius robustus*) were exposed to experimental playbacks of industrial noise (Malme et al. 1983; Malme and Miles 1983). During these playback studies, southern sea otter responses to industrial noise were also monitored (Riedman 1983, 1984). While gray whales exhibited avoidance to industrial noise at the 120-dB threshold, there was no evidence of disturbance reactions or avoidance in southern sea otters. Thus, given the differences in hearing and behavior between sea otters and gray whales, the NMFS 120-dB threshold based on gray whale behavior is not appropriate for predicting sea otter behavioral responses.

Based on the lack of sea otter disturbance response or any other

reaction to the playback studies from the 1980s, as well as the absence of a clear pattern of disturbance or avoidance behaviors attributable to underwater sound levels up to about 160 dB resulting from low-frequency broadband noise, we assume 120 dB is not an appropriate behavioral response threshold for sea otters exposed to continuous underwater noise.

Based on the best available scientific information about sea otters and closely related marine mammals when sea otter data are limited, the FWS has set 160 dB of received underwater sound as a threshold for take by Level B harassment of sea otters in this proposed IHA. Exposure to in-water noise levels between 125 Hz and 38 kHz that are greater than 160 dB—for both impulsive and nonimpulsive sound sources—will be considered by the FWS as Level B harassment. Thresholds for Level A harassment (which entails the potential for injury) for in-water noise levels between 125 Hz and 38 kHz are 232 dB peak or 203 dB SEL for impulsive sounds and 219 dB SEL for continuous sounds (table 2, below).

Airborne Sounds

The NMFS (2018) guidance neither addresses thresholds for preventing injury or disturbance from airborne noise, nor provides thresholds for avoidance of Level B harassment. Conveyance of underwater noise into the air is of little concern since the effects of pressure release and interference at the water's surface reduce underwater noise transmission into the air. For activities that create both in-air and underwater noise, we will estimate take based on parameters for underwater noise transmission. Considering sound energy travels more efficiently through water than through air, this estimation will also account for exposures to sea otters at the surface. We do not anticipate the proposed project to generate airborne sounds not associated with in-water noise already accounted for by our analyses.

TABLE 2—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS

[Established by Southall et al. (2019) through modeling and extrapolation for ''Other Marine Carnivores,'' which include sea otters. *]

	TTS			PTS		
	nonimpulsive	impulsive		nonimpulsive	impulsive	
	SEL_{CUM}	SEL_{CUM}	Peak SPL	SEL_{CUM}	SEL_{CUM}	Peak SPL
Air	157	146	170	177	161	176
Water	199	188	226	219	203	232

Note: * Values are weighted for other marine carnivores' hearing thresholds and given in cumulative sound exposure level (SEL_{CUM} dB re (20 micropascal (μPa) in air and SEL_{CUM} dB re 1 μPa in water) for impulsive and nonimpulsive sounds, and unweighted peak sound pressure level (SPL) in air (dB re 20μPa) and water (dB 1μPa) (impulsive sounds only).

Evidence From Sea Otter Studies

Individual sea otters near the St. Herman Harbor project location will likely show a range of responses to noise from pile-driving activities. Some sea otters will likely dive, show startle responses, change direction of travel, or prematurely surface. Sea otters reacting to pile-driving activities may divert time and attention from biologically important behaviors, such as feeding and nursing pups. Sea otter responses to disturbance can result in energetic costs. For example, sea otters spend more time traveling in areas with high levels of disturbance (Curland 1997). Higher energetic costs require increased amounts of prey consumption (Barrett 2019). This increased prey consumption may impact sea otter prey availability and cause sea otters to spend more time foraging and less time resting (Barrett 2019). Some sea otters may abandon the project area and return when the disturbance has ceased. Based on the observed movement patterns of sea otters (Lensink 1962; Kenyon 1969, 1981; Garshelis and Garshelis 1984; Riedman and Estes 1990), we expect some sea otters will respond to pile-driving activities by dispersing to nearby areas of suitable habitat; however, other sea otters, especially territorial adult males, will not be displaced.

Additional information on the evidence from studies about how sea otters may be affected by noise can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Consequences of Permanent Threshold Shift

Sea otters exposed to noise levels above Level A harassment threshold criteria may experience a permanent shift in the sensitivity of their hearing. Information on the consequences of a PTS in sea otter hearing due to noise exposure can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Consequences of Disturbance

Information on the consequences of disturbance to sea otters can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Vessel Activities

Vessel activity during the project includes the use of barges to transport and stage equipment and materials to support construction operations. A skiff may also be used to support construction operations. Vessels will not be used extensively or over a long duration during project activities. We do not anticipate that sea otters will experience changes in behavior indicative of harassment during vessel operations. Additionally, vessel operators would take every precaution to avoid harassment of sea otters when a vessel is operating near sea otters and implement mitigation measures described below in this proposed IHA, which include maintaining a minimum distance of 100 meters (m) (328 feet [ft]) from all sea otters.

Additional information on vessel activities can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Effects on Sea Otter Habitat and Prey

Information on the potential impacts of the specified activities on sea otter habitat and prey species can be found in the supplemental information to this document (available as described above in **ADDRESSES**). Based on this information, we do not anticipate any harassment to sea otters due to effects on sea otter habitat or prey from the specified activities.

Potential Impacts of the Specified Activities on Subsistence Uses

The specified activities will occur near marine subsistence harvest areas used by Alaska Natives from Kodiak and the surrounding areas. The majority of sea otter harvest in this area occurs more than 3.2 kilometers (km) (2 miles [mi]) outside of Kodiak. Since 2020, there have been 50 sea otters harvested around the Kodiak area, from Womens Bay, Long Island, and Spruce Island.

The planned project would occur within Kodiak city limits, where firearm use is prohibited. The area potentially affected by the planned project does not significantly overlap with current subsistence harvest areas. Construction activities will not preclude access to hunting areas or interfere in any way with individuals wishing to hunt. Despite no conflict with subsistence use being anticipated, the City will conduct outreach with potentially affected communities to see whether there are any questions, concerns, or potential conflicts regarding subsistence use in those areas. If any conflicts are identified in the future, the City will develop a plan of cooperation (POC) specifying the steps necessary to minimize any effects the project may have on subsistence harvest.

Estimated Take

Definitions of Incidental Take Under the MMPA

Under the MMPA, ''take'' means ''to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal'' (16 U.S.C. 1362(13)). Below we provide definitions of three potential types of take of sea otters. The FWS does not anticipate and is not proposing to authorize lethal take as a part of this proposed IHA; however, the definitions of these take types are provided for context and background.

Lethal Take

In the most serious interactions, human actions can result in the mortality of sea otters, which we define here as lethal take.

Level A Harassment

The MMPA defines Level A harassment, for nonmilitary readiness activities, as ''any act of pursuit, torment, or annoyance which . . . has the potential to injure a marine mammal or marine mammal stock in the wild'' (16 U.S.C. 1362(18)(A)(i), (C)). We interpret this definition to include human activity that may result in the injury of sea otters.

Level B Harassment

The MMPA defines Level B harassment for nonmilitary readiness activities as ''any act of pursuit, torment, or annoyance which . . . has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering'' (16 U.S.C. 1362(18)(A)(ii), (D)). We interpret this definition to include human-caused reactions that disrupt biologically significant behaviors or activities for the affected animal. Such reactions include, but are not limited to, the following:

- Swimming away at a fast pace on belly (*i.e.,* porpoising);
- Repeatedly raising the head vertically above the water to get a better view (spyhopping) while apparently agitated or while swimming away;
- In the case of a pup, repeatedly spyhopping while hiding behind and holding onto its mother's head;
- Abandoning prey or feeding area;
- Ceasing to nurse and/or rest (applies to dependent pups);
- Ceasing to rest (applies to independent animals);
- Ceasing to use movement corridors;
- Ceasing mating behaviors;
- Shifting/jostling/agitation in a raft (*i.e.,* group of 10 or more sea otters) so that the raft disperses;
- Sudden diving of an entire raft; or
- Flushing animals off a haulout.

This list does not encompass all possible behaviors that indicate Level B harassment; other behavioral responses may be indicative of take by Level B harassment. 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.

Calculating Take

Sea Otter Density

We assumed all sea otters exposed to underwater sound levels that meet the acoustic exposure criteria defined above in *Exposure Thresholds* will experience take by Level A harassment or Level B harassment. We refer to the area in which sound levels meet or exceed the acoustic exposure criteria defined for either Level A harassment or Level B harassment as the ensonification area. Spatially explicit ensonification areas were established around the planned construction location to estimate the number of sea otters that may be exposed to these sound levels.

We determined the number of sea otters present in the ensonification areas using a localized sea otter density estimate derived from sea otter observation data to account for potentially large sea otter groups. Increased numbers of sea otters were observed in Womens Bay, near where project activities in Kodiak would occur, during the most recent sea otter abundance survey of the Kodiak Archipelago in 2014 (Cobb 2018). The estimate of sea otter density from these surveys is 2.54 sea otters per square kilometer (km^2). Additionally, large group sizes of up to 159 sea otters were observed in Womens Bay (Cobb 2018). Since much of the project area is within St. Herman Harbor, an active harbor with several existing floats, it is not anticipated to support large rafts of sea otters. Therefore, sea otter density is expected to be lower than outside the harbor in Near Island Channel. For areas within the harbor, we used a sea otter density of 2.54 sea otters/km^2. We calculated a separate density for Near Island Channel to account for the potential presence of large sea otter groups.

To account for the potential presence of large sea otter groups in the Kodiak project area, we estimated the number of sea otters expected to be present in the Kodiak project area by analyzing sea otter observation data collected during a dock improvement project at the Kodiak Ferry Terminal from November 2015 to June 2016 (ABR 2016). The Kodiak Ferry Terminal project area occurred in Near Island Channel and is approximately 0.6 km (0.4 mi) from the St. Herman Harbor project area. Observers monitored for marine mammals at various periods throughout the day, and some days multiple observers monitored from different observation stations. Marine mammals were monitored for 110 days, and sea otters were observed on 100 days. We calculated a daily sea otter count at each observation station for each observation day by summing the maximum sea otter group size for each observation recorded within a given day at that station. Maximum group size ranged from 0 to 218 sea otters. Daily sea otter counts ranged from 0 to 423 sea otters.

To obtain consistent and comparable measures for each observation station, we calculated the total area in which sea otters were observed by drawing a minimum convex polygon around the spatial extent of all sea otter locations

observed at an observation station. The daily sea otter counts were then divided by the respective total area of observation for the station at which it was observed, resulting in a measure of sea otters per square kilometer. This resulting density will be biased higher than actual densities because the actual observed area is larger than the minimum convex polygon around the observed sea otter locations, but this conservative assumption will avoid underestimating potential disturbance to sea otters during project activities. On days with observations conducted at multiple observation stations, we calculated the average sea otter density for those observation stations to get a single sea otter density on that day. We averaged all daily sea otter densities to obtain 51.81 sea otters/km^2 per day to represent the average number of sea otters anticipated in Near Island Channel.

Sound Levels for the Specified Activities

The project activities consist of multiple possible methods of pile removal (vibratory pile extraction and direct-pull methods) and multiple methods of pile installation (vibratory pile driving, impact pile driving, and DTH drilling). Each of these methods will generate a different type of in-water noise. Vibratory pile extraction and installation will produce nonimpulsive or continuous noise; impact pile installation will produce impulsive noise; and DTH drilling is considered to produce both impulsive and continuous noise (NMFS 2020).

The level of sound anticipated from each project component was established using recorded data from several sources in addition to guidance from NMFS. We used the empirical data from those proxy projects and sound levels provided by NMFS with the NMFS Technical Guidance and User Spreadsheet (NMFS 2018, 2020) to determine the distance at which sound levels would attenuate to Level A harassment thresholds (table 2). To estimate the distances at which sounds would attenuate to Level B harassment thresholds (table 2), we used the data from the proxy projects and the sound levels provided by NMFS with the NMFS-recommended transmission loss coefficient of 15 for coastal pile-driving activities in a practical spreading loss model (NMFS 2020) to determine the distance at which sound levels attenuate to 160 dB re 1 micropascal (µPa). The weighting factor adjustment included in the NMFS user spreadsheet accounts for sounds created in portions of an animal's hearing range where they have less sensitivity. We used the weighting factor adjustment for otariid pinnipeds as they are the closest available physiological and anatomical proxy for sea otters. We acknowledge that NMFS has revised their user spreadsheet to include thresholds for auditory injury (NMFS 2024). We are evaluating the auditory injury criteria to determine whether they are appropriate for FWS trust species, as sea otters particularly are not exposed to in-water noise for an entire 24-hour period. We will continue to use the previous version of the user spreadsheet (NMFS 2018) to estimate harassment of sea otters from in-water noise exposure during our evaluation of the auditory injury criteria.

Sound levels for all sources are unweighted and given in dB re 1 µPa. Nonimpulsive sounds are in the form of mean maximum root mean square (RMS) SPL as it is more conservative than SEL_{CUM} or peak SPL for these activities. Impulsive sound sources are in the form of SEL for a single strike (SELss). Sound levels for project activities are listed in table 3, below.

TABLE 3—ST. HERMAN HARBOR SOUND TYPES, LEVELS, AND TIMING

Project component	Pile size and material	Activity	Type of sound	Sound levels	Source	Timing per pile (nonimpulsive sound sources) or strikes per pile (impulsive sound sources)
Construction	61.0-cm (24-in) steel.	Temporary installation—vibratory.	Nonimpulsive	163 dB RMS	NMFS 2023	20 minutes.
		Temporary installation–impact.	Impulsive	190 dB RMS; 177 dB SELss; 210 dB peak.	Caltrans 2015	300 strikes.
		Temporary installation–DTH.	Nonimpulsive and impulsive.	167 dB RMS; 159 dB SELss; 184 dB peak.	Heyvaert and Reyff 2021.	120 minutes/72,000 strikes.
		Temporary removal–vibratory.	Nonimpulsive	163 dB RMS	NMFS 2023	20 minutes.
	61.0-cm (24-in) steel.	Installation-vibratory.	Nonimpulsive	163 dB RMS	NMFS 2023	20 minutes.
		Installation-impact.	Impulsive	190 dB RMS; 177 dB SELss; 210 dB peak.	Caltrans 2015	1,800 strikes.
		Installation-DTH.	Nonimpulsive and impulsive.	167 dB RMS; 159 dB SELss; 184 dB peak.	Heyvaert and Reyff 2021.	150 minutes/90,000 strikes.
	76.2-cm (30-in) steel.	Installation-vibratory.	Nonimpulsive	166 dB RMS	NMFS 2023	20 minutes.
		Installation-impact.	Impulsive	190 dB RMS; 185 dB SELss; 210 dB peak.	Caltrans 2020	1,800 strikes.

TABLE 3—ST. HERMAN HARBOR SOUND TYPES, LEVELS, AND TIMING—Continued

Project component	Pile size and material	Activity	Type of sound	Sound levels	Source	Timing per pile (nonimpulsive sound sources) or strikes per pile (impulsive sound sources)
		Installation-DTH.	Nonimpulsive and impulsive.	174 dB RMS; 164 dB SELss; 194 dB peak.	Denes et al. 2019; Reyff and Heyvaert 2019; Reyff 2020; Heyvaert and Reyff 2021.	150 minutes/90,000 strikes.

Ensonified Areas

Distances to below Level A harassment and Level B harassment thresholds were calculated for each project activity to determine the ensonified area for a given project activity. The City will implement a 10-m (33-ft) physical interaction shutdown zone, regardless of predicted sound levels, to minimize the potential for physical impacts to sea otters. Additionally, this 10-m (33-ft) physical interaction shutdown zone would reduce the number of sea otters exposed to in-water noise levels at or above Level A harassment and Level B harassment thresholds. The 10-m (33-ft) physical interaction shutdown zone will encompass some of the Level A harassment zones (table 4, below).

TABLE 4—ST. HERMAN HARBOR INFRASTRUCTURE PROJECT DISTANCES TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT ZONES AND PROPOSED PHYSICAL INTERACTION SHUTDOWN ZONES

Project component	Pile size and material	Activity	Distance to below Level A harassment threshold (m)	Distance to below Level B harassment threshold (m)	Distance to below physical interaction shutdown zone (m)
Construction	61.0-cm (24-in) steel	Temporary installation—vibratory.	0.6	16	10
		Temporary installation—impact	22.9	1,000	10
		Temporary installation—DTH	55.9	29	10
		Temporary removal—vibratory	0.6	16	10
	61.0-cm (24-in) steel	Installation-vibratory	0.6	16	10
		Installation—impact	67	1,000	10
		Installation—DTH	57.4	29	10
	76.2-cm (30-in) steel	Installation—vibratory	1	25	10
		Installation—impact	258.4	1,000	10
		Installation—DTH	139.6	86	10

We calculated the area ensonified to >232 dB peak or >203 dB SEL_{CUM} re 1µPa for impulsive underwater sound and >219 dB SEL re 1µPa for nonimpulsive (continuous) underwater sound to determine the area in which sea otters may experience Level A harassment during the City's project activities. Next, we multiplied the ensonified area for Level A harassment by the density of sea otters for the project area (2.54 sea otters/km^2) to determine the number of sea otters that may experience Level A harassment.

To estimate the number of sea otters anticipated to experience Level B harassment during the City's project activities, we first separated activities by area of ensonification. For activities that only ensonified areas within the harbor, we subtracted the area of the Level A harassment zone from the area ensonified to >160 dB re 1µPa to determine the area in which sea otters may experience Level B harassment. Next, we multiplied the remaining ensonified area for Level B harassment by the density of sea otters for the project area (2.54 sea otters/km^2) to determine the number of sea otters that may experience Level B harassment. For activities with larger ensonified areas that extended outside the harbor, we split the area between inside and outside the harbor. Inside the harbor, we multiplied the ensonified area for Level B harassment by the density of sea otters within the harbor (2.54 sea otters/km^2). For areas outside the harbor, we multiplied the ensonified area for Level B harassment by the density of sea otters for Near Island Channel and surrounding areas (51.81 sea otters/km^2). The City provided geospatial files representing the area where pile driving and construction would occur and the ensonified water around the construction area. These geospatial files were clipped by land boundaries; therefore, only the area of ensonified water was provided by the applicant. The number of sea otters expected to be exposed to such noise levels that would attenuate to Level A harassment and Level B harassment thresholds during project activities can be found in tables 5, 6, and 7, below.

TABLE 5—ST. HERMAN HARBOR INFRASTRUCTURE PROJECT LEVEL A HARASSMENT EVENTS ANTICIPATED

Project component	Pile size and material	Activity	Maximum number of days of activity	Sea otter density	Level A area (km^2)	Estimated Level A harassment events per day (rounded)	Total estimated Level A harassment events (rounded)
Construction	61.0-cm (24-in) steel	Temporary installation—vibratory.	4	2.54 sea otters/km^2	<0.001	*0	*0
		Temporary installation—impact.	2	.....	0.002	[a]2	4
		Temporary installation—DTH.	2	.....	0.010	[a]2	4
		Temporary removal—vibratory.	4		<0.001	*0	*0
	61.0-cm (24-in) steel	Installation—vibratory	1		<0.001	*0	*0
		Installation—impact	1		0.018	[a]2	2
		Installation—DTH	1		0.013	[a]2	2
	76.2-cm (30-in) steel	Installation—vibratory	9		<0.001	*0	*0
		Installation—impact	9		0.210	[a]2	18
		Installation—DTH	9		0.061	[a]2	18

Note:
* Where the estimated total number of exposures was 0 for 3 or more decimal places (*i.e.,* <0.000X), the total number of exposures was assumed to be 0.
[a] Where the estimated total number of exposures expected was greater than 0.001, we rounded to 2 instead to accommodate potential mom and pup pairs of sea otters for project activities.

TABLE 6—ST. HERMAN HARBOR INFRASTRUCTURE PROJECT LEVEL B HARASSMENT EVENTS ANTICIPATED FROM NON-IMPACT ACTIVITIES *

Project component	Pile size and material	Activity	Maximum number of days of activity	Sea otter density	Level B area (km^2)	Level B area minus Level A area (km^2)	Estimated Level B harassment events per day (rounded)	Total estimated Level B harassment events (rounded)
Construction	61.0-cm (24-in) steel	Temporary installation—vibratory.	4	2.54 sea otters/ km^2	<0.001	<0.001	[a]2	8
		Temporary removal—vibratory.	4	.....	<0.001	<0.001	[a]2	8
	61.0-cm (24-in) steel	Installation—vibratory.	1	.....	<0.001	<0.001	[a]2	2
	76.2-cm (30-in) steel	Installation—vibratory.	9	.....	0.002	0.002	[a]2	18

Note:
* DTH activities are not included in this table because the Level A threshold is larger than the Level B threshold and harassment events are captured in the calculations for Level A (Table 5). Harassment events from impact activities are presented in a separate table because they were calculated differently (Table 7).
[a] Where the estimated total number of exposures expected was greater than 0.001, we rounded to 2 instead to accommodate potential mom and pup pairs of sea otters for project activities.

TABLE 7—ST. HERMAN HARBOR INFRASTRUCTURE PROJECT LEVEL B HARASSMENT EVENTS ANTICIPATED FROM IMPACT ACTIVITIES *

Project component	Pile size and material	Activity	Maximum number of days of activity	Sea otter density inside the harbor	Sea otter density outside the harbor	Level B area inside harbor minus Level A area (km^2)	Level B area outside the harbor (km^2)	Estimated Level B harassment events per day inside harbor (rounded)	Estimated Level B harassment events per day outside harbor (rounded)	Total estimated Level B harassment events (rounded)
Construction	61.0-cm (24-in) steel.	Temporary installation–impact.	4	2.54 sea otters/ km^2.	51.81 sea otters/km^2.	0.398	0.330	[a]2	18	40
	61.0-cm (24-in) steel.	Installation—impact.	1	.....	.....	0.382	0.330	[a]2	18	20
	76.2-cm (30-in) steel.	Installation—impact.	9	.....	.....	0.190	0.330	[a]2	18	180

Note:
* Harassment events from impact activities were calculated using the area of the ensonified zone taken from a shapefile (rather than area of a circle) to account for different sea otter densities inside and outside of the harbor.
[a] Where the estimated total number of exposures expected was greater than 0.001, we rounded to 2 instead to accommodate potential mom and pup pairs of sea otters for project activities.

We assumed that the different types of pile-driving activities would occur sequentially and that the total number of days of work would equal the sum of the number of days required to complete each type of pile-driving activity. While it is possible that on some days more than one type of activity will take place, which would reduce the number of days of exposure, we cannot know this information in advance. As such, the estimated number of days is the maximum possible for the planned work. Where the estimated total number of exposures was 0 for 3 or more

decimal places (*i.e.,* <0.000X), the total number of exposures was assumed to be 0. Where the estimated total number of exposures expected was greater than 0.001, we rounded to 2 instead to accommodate potential mom and pup pairs of sea otters for project activities.

Critical Assumptions

In order to conduct this analysis and estimate the number of takes by Level A harassment and Level B harassment, several critical assumptions were made.

Sound level information from pile-driving activities in a number of locations was used to generate sound level estimates for the specified activities (see sources in table 3). Environmental conditions in these locations, including water depth, substrate, and ambient sound levels may be similar to those in the project location, but are not identical. Further, estimation of ensonification areas were based on sound attenuation models using a practical spreading loss model. These factors may lead to actual sound values differing slightly from those estimated here.

The pile-driving activities described here will also create in-air noise. Because sea otters spend a considerable portion of the day with their heads above water (Esslinger et al. 2014), they will be exposed to the in-air noise produced by construction equipment. However, we have calculated Level A harassment and Level B harassment with the assumption that a sea otter may be harassed only one time per 24-hour period, and in-water noise levels will be more disturbing and extend farther than in-air noise. Thus, while sea otters may be disturbed by noise both in-air and in-water, we have relied on the more conservative in-water estimates.

Level B harassment is equated herein with behavioral responses that indicate harassment or disturbance. There is likely a portion of animals that respond in ways that indicate some level of disturbance but do not experience biologically significant consequences. Our estimates do not account for variable responses by sea otter age and sex.

The estimates of behavioral response presented here do not account for the individual movements of animals in response to the specified activities. Our assessment assumes animals remain stationary (*i.e.,* density does not change) for a 24-hour period, and animals do not move out of ensonified areas in response to noise. Not enough information is available about the movement of sea otters in response to specific disturbances to refine this assumption.

Although sea otters are nonmigratory, they typically move amongst focal areas within their home ranges to rest and forage (Garshelis and Garshelis 1984; Laidre et al. 2009). It is possible that, given the large variability in individual home range sizes and the potential for daily movement in and out of foraging or resting areas, different individual sea otters could be found within the ensonification area each day of the project. Thus, the FWS conservatively assumes that the estimated harassment events may impact different sea otters for project activities at the City's project location. We estimate that 48 takes of 48 sea otters by Level A harassment and 276 takes of 276 sea otters by Level B harassment may occur due to the City's planned activities.

Sum of Harassment From All Sources

The City will conduct pile driving and marine construction activities in St. Herman Harbor beginning November 1, 2026, to October 31, 2027. Over the course of the project, we estimate up to 48 instances of take by Level A harassment of 48 sea otters from the Southwest Alaska stock due to PTS associated with in-water noise exposure during project activities. Additionally, we estimate up to 276 instances of take by Level B harassment of 276 sea otters from the Southwest Alaska stock due to behavioral responses to in-water noise exposure during project activities. A summary of total estimated takes by Level A harassment and Level B harassment during the project is provided in table 8.

TABLE 8—SEA OTTERS EXPECTED TO BE HARASSED; LEVEL A HARASSMENT AND LEVEL B HARASSMENT EVENTS

Location	Number of sea otters exposed to Level A harassment	Total number of Level A harassment events	Number of sea otters exposed to Level B harassment	Total number of Level B harassment events
Kodiak (Southwest AK stock)	48	48	276	276

Determinations and Findings

Sea otters exposed to noise from the specified activities are likely to respond with temporary behavioral modification or displacement. The specified activities could temporarily interrupt the feeding, resting, and movement of sea otters. The activities will occur during a limited amount of time and in a localized area, and the impacts associated with the project are likewise temporary and localized. The anticipated effects are short-term behavioral reactions, displacement of sea otters near active operations, and potential shifts in hearing thresholds.

Sea otters that encounter the specified activities may exert more energy than they would otherwise due to temporary cessation of feeding, increased vigilance (*e.g.,* repeatedly spyhopping), and retreating from the project area. We expect that affected sea otters will tolerate this exertion without measurable effects on health or reproduction. Most of the anticipated takes will be due to short-term Level B harassment in the form of startling reactions, interruption of feeding, resting, and movement, or temporary displacement. Although multiple instances of Level B harassment of individual sea otters are possible, these events are unlikely to have significant consequences for the health, reproduction, or survival of affected sea otters. The potential effects of multiple Level B harassment noise exposures may include short-term behavioral reactions, displacement of sea otters near active operations, and potential temporary shifts in hearing thresholds. We anticipate that the majority of Level B harassment events will be behavioral responses to noise exposure. Sea otters spend over half of their time above the surface during the summer months (Esslinger et al. 2014), and likely no more than 70 percent of their time foraging during winter months (Gelatt et al. 2002); thus, their ears will not be exposed to continuous noise, thereby reducing their likelihood to experience temporary shifts in hearing thresholds. Also, the sound levels from impact pile driving and DTH drilling activities will not reach the peak SPL of instantaneous exposure likely to cause TTS outside the 10-m (33-ft) physical interaction shutdown zone. Considering the sound levels of the specified activities, the limited amount of time over non-consecutive days in which the specified

activities would occur, and the localized area to be impacted by the specified activities, we do not anticipate that the effects of multiple Level B harassment noise exposures would rise to the level of TTS, an injury, or Level A harassment.

While mitigation measures incorporated into the City's request, such as soft-start procedures, zone clearance prior to activity startup, and shutdown zones, will reduce occurrences of Level A harassment to the extent practicable, it is anticipated that some sea otters will experience Level A harassment via exposure to in-water noise above threshold criteria during impact pile driving and DTH drilling activities. Due to sea otters' small body size and low profile in the water, we anticipate that sea otters will at times avoid detection before entering Level A harassment zones for those activities. A small number of takes by Level A harassment would be authorized for impact pile driving and DTH drilling activities, which have Level A harassment zone radii ranging up to 258.4 m (847.8 ft). We propose mitigation measures below that would further limit the potential impacts of the City's activities on sea otters.

Small Numbers

For our small numbers determination, we consider whether the estimated number of sea otters to be subjected to incidental take is small relative to the population size of the species or stock. More specifically, the FWS compares the number of sea otters anticipated to be taken in the year contemplated by the proposed IHA with the population estimate applicable for the year. Here, predicted numbers of sea otters to be taken were determined based on the estimated density of sea otters in the project area and ensonification areas developed using empirical evidence from similar geographic areas. We estimate that the City's specified activities in the specified geographic region will take no more than 324 Southwest Alaska stock sea otters by a combination of Level A harassment and Level B harassment during the 1-year period of this proposed IHA (see *Sum of Harassment from All Sources,* Table 8, above). Take of 324 sea otters is 0.6 percent of the best available estimate of the current annual Southwest Alaska stock size of 51,935 animals (88 FR 53510, August 8, 2023) ((324 ÷ 51,935) × 100 ≈ 0.6), and represents a ''small number'' of sea otters of that stock.

Within the specified geographic region, the area of specified activity is expected to be small relative to the range of sea otters. Sea otters range well beyond the boundaries of the specified geographic region. As such, the specified geographic region itself represents only a subset of the potential area in which this species may occur, and we anticipate that only a small proportion of sea otters would be present within the vicinity of the specified activities.

Therefore, we propose a finding that the City's specified activities will take only small numbers of sea otters because: (1) Only a small proportion of sea otters will overlap with the areas where the specified activities will occur; and (2) the estimated number of Southwest Alaska stock sea otters to be taken will be limited to a total of 324 sea otters over the duration of the proposed IHA, which represents a small proportion (0.6 percent) of the stock of sea otters.

Negligible Impact

We propose a finding that any incidental take by harassment resulting from the specified activities cannot be reasonably expected to, and is not reasonably likely to, adversely affect the sea otters through effects on annual rates of recruitment or survival and will, therefore, have no more than a negligible impact on the Southwest Alaska stock of sea otters. In making this finding, we considered the best available scientific information, including the biological and behavioral characteristics of the species, the most recent information on species distribution and abundance within the 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 specified activities, and the potential responses of marine mammals to this disturbance. In addition, we reviewed applicant-provided materials, information in our files and datasets, published reference materials, and species experts.

Sea otters are likely to respond to the specified activities with short-term behavioral reactions, and they may also be displaced from the close vicinity of active operations or experience potential hearing threshold shifts. These are the types of impacts we expect from Level B harassment and Level A harassment collectively. While Level A harassment has the potential to result in the injury of up to 48 sea otters during the IHA period, this type of harassment is not anticipated to result in long-term impacts that are likely to result in mortality. Most sea otters will respond to disturbance by moving away from the source, which may cause temporary interruption of foraging, resting, or other natural behaviors. Affected sea otters are expected to resume normal behaviors soon after exposure with no lasting consequences to their survival or reproduction. Sea otters may move in and out of the project area during pile-driving activities, leading to as many as 324 sea otters experiencing exposure to noise at levels that may cause harassment. However, it is possible that a sea otter may enter the ensonification area more than once during the project. At most, if the same sea otter enters the ensonification area every day that pile driving occurs, the sea otter would be exposed to pile driving and marine construction noise for up to 42 non-consecutive days.

It is possible that sea otters may be exposed to noise levels equal to or greater than Level A harassment thresholds on multiple days throughout project activities. The potential effects of multiple Level A harassment noise exposures may include a greater reduction in a sea otter's hearing sensitivity if the sea otter is exposed to different sound levels that can cause PTS, but this reduction in hearing sensitivity does not equate to total hearing loss. The reduction in sea otter hearing sensitivity caused by PTS would align with the energy produced by pile-driving activities (*e.g.,* low-frequency less than 2 kHz), which would not impair the majority of a sea otter's hearing range. Sea otters do not rely on sound to orient themselves, locate prey, or communicate underwater. Therefore, we do not anticipate impacts to sea otters' ability to move, forage, or communicate as a result of PTS from multiple Level A harassment noise exposures. Sea otters, especially mothers and pups, do use sound for communication in air (McShane et al. 1995), and sea otters may monitor underwater sound to avoid predators (Davis et al. 1987). However, we anticipate that a sea otter will retain the majority of its hearing range if it experiences PTS from multiple Level A harassment noise exposures and that impacts from PTS will not have long-term consequences to a sea otter's survival and reproduction.

It is possible that sea otters will move away from Level A harassment zones to avoid experiencing PTS. The maximum area that will experience noise levels equal to or greater than Level A harassment thresholds due to pile driving is relatively small (~0.26 km^2), and a sea otter that may be disturbed could escape the noise by moving to nearby quiet areas. Further, sea otters spend over half of their time above the surface during the summer months

(Esslinger et al. 2014), and likely no more than 70 percent of their time foraging during winter months (Gelatt et al. 2002); thus, their ears will not be exposed to continuous noise, thereby reducing their likelihood to experience PTS. Some sea otters may exhibit some of the stronger responses typical of Level B harassment, such as fleeing, interruption of feeding, or flushing from a haulout. These responses could have temporary biological impacts for affected sea otters but are not anticipated to result in measurable changes in survival or reproduction. Therefore, we anticipate the specified activities will not have lasting impacts that could significantly affect an individual's health, reproduction, or survival. The limited extent of anticipated impacts on sea otters is unlikely to adversely affect annual rates of sea otter survival or recruitment.

The total number of sea otters affected, and severity of impact is not sufficient to change the current population dynamics at the stock scale. Although the specified activities may result in a maximum of 324 incidental takes of up to 324 sea otters from the Southwest Alaska stock, we do not expect this level of harassment to affect annual rates of recruitment or survival or result in adverse effects on the stock.

Our proposed finding of negligible impact applies to incidental take associated with the specified activities as mitigated by the avoidance and minimization measures identified in the City's mitigation and monitoring plan. These mitigation measures are designed to minimize interactions with and impacts to sea otters. These measures and the monitoring and reporting procedures are required for the validity of our finding and are a necessary component of the proposed IHA. For these reasons, we propose a finding that the specified project will have a negligible impact on the Southwest Alaska stock of sea otters.

Least Practicable Adverse Impact

We find that the mitigation measures required by this proposed IHA will effect the least practicable adverse impact on the stocks from any incidental take likely to occur in association with the specified activities. In making this finding, we considered the biological characteristics of sea otters, the nature of the specified activities, the potential effects of the activities on sea otters, the documented impacts of similar activities on sea otters, and alternative mitigation measures.

In evaluating what mitigation measures are appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses, we considered the manner and degree to which the successful implementation of the measures is expected to achieve this goal. We considered the nature of the potential adverse impact being mitigated (likelihood, scope, range), the likelihood that the measures will be effective if implemented, and the likelihood of effective implementation. We also considered the practicability of the measures for applicant implementation (*e.g.,* cost, impact on operations).

To reduce the potential for disturbance associated with the activities, the City will implement mitigation measures, including the following:

- Using the smallest diameter piles practicable while minimizing the overall number of piles;
- Using a project design that does not include dredging or blasting;
- Minimizing the use of the impact hammer to the extent possible by using a vibratory hammer to advance piles as deeply as possible;
- Development of a marine mammal monitoring and mitigation plan;
- Visual mitigation monitoring by designated protected species observers (PSOs);
- Halting or delaying activity during environmental conditions that may hinder sea otter detection, such as darkness, adverse weather conditions, high sea states, and other times of limited visibility;
- Maintaining the maximum distance practicable between a vessel and raft of sea otters;
- Operating vessels in such a way as to avoid approaching sea otters or impeding sea otter movements when traveling near the shoreline in shallow water (<20 m [66 ft]) whenever practicable;
- Establishment of shutdown and monitoring zones;
- Site clearance before activity startup;
- Soft-start procedures; and
- Shutdown procedures.

A number of additional potential mitigation measures were considered but preliminarily found to be not practicable. These measures are listed below:

- *Require use of bubble curtains and other noise-dampening methods*—The applicant indicated that implementation of bubble curtains and other noise-dampening methods, such as cofferdams, pile-surrounding casings, sound mitigation screens, and nets around piles would not be practicable because potential sound reduction would be minimal, much of the in water noise would be blocked by land or harbor infrastructure, and most ensonified areas are entirely within the harbor. The FWS preliminarily finds the required use of bubble curtains and other noise-dampening methods is not practicable because these mitigation measures are unduly burdensome to undertake for the project activities.
- *Require pile-driving activities be conducted at lower tidal heights*—The applicant indicated that conducting pile-driving activities at lower tidal heights to reduce transmission of sound into the water column would add delays to the project schedule and impact user access to the harbor. The FWS preliminarily finds that requiring pile-driving activities to be conducted at lower tidal heights was not practicable because this mitigation measure was unduly burdensome to undertake for the project activities.
- *Require use of alternate detection methods*—The FWS preliminarily finds that the required use of alternate detection methods, such as infrared sensors, thermal imaging, or surveys conducted by aircraft, unmanned aircraft system (UAS), or vessel, was not practicable considering that these alternate detection methods would not be as effective as PSOs in reducing impacts to sea otters due to the limited number of project activities and small spatial extent of ensonified areas. The applicant would employ PSOs to monitor the project area for sea otters to reduce impacts to sea otters.

Impact on Subsistence Use

The anticipated harassment will not preclude access to harvest areas or interfere with the availability of sea otters for harvest by Alaska Native Peoples. We therefore propose a finding that the applicant's anticipated harassment would not have an unmitigable adverse impact on the availability of any stock of sea otters for taking for subsistence uses by Alaska Native Peoples during the specified timeframe. In making this proposed finding, we considered the timing and location of the planned activities and the timing and location of subsistence harvest activities in the project area.

The harvest of sea otters is important to Alaska Native Peoples in the communities surrounding Kodiak. The City would be required to contact subsistence communities that may be affected by the pile driving and marine construction activities to discuss potential conflicts caused by location, timing, and methods of the specified activities. The City must make

reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of sea otters are minimized. No concerns have been voiced by the Alaska Native communities regarding the specified activities limiting availability of sea otters for subsistence uses. However, should such a concern be voiced, a POC, which identifies measures to minimize any adverse effects, will be implemented. The POC will ensure that the City will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC will provide the procedures addressing how the City will work with the affected Alaska Native communities and what actions will be taken to avoid interference with subsistence hunting of sea otters, as warranted.

The FWS has not received any reports and is not aware of information that indicates that sea otters are being or would be deterred from hunting areas or impacted in any way that diminishes their availability for subsistence use by the expected level of pile driving and marine construction activity. If there is evidence that these pile driving and marine construction activities are affecting the availability of sea otters for subsistence uses, we would reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of monitoring requirements is to assess the effects of specified activities on sea otters; to ensure that take is consistent with that anticipated in the small numbers, negligible impact, and subsistence use analyses; and detect any unanticipated effects on the species or stock. Monitoring plans document when and how sea otters are observed, the number of sea otters, and their behaviors during the observation. This information allows the FWS to measure encounter rates, examine trends in sea otter activity and distribution in the project area, and estimate the number of sea otters potentially affected by the specified activities. The City would be required to report all observations of sea otters. To the extent possible, PSOs would record group size, age, sex, behavior, duration of observation, and closest approach to the project activity.

As proposed, monitoring activities would be summarized and reported in formal reports. The City would be required to submit monthly reports for all months during which noise-generating work takes place as well as a final monitoring report that must be submitted no later than 90 days after the expiration of the IHA. We would require approval of the monitoring results for continued operation under the IHA.

We find that these proposed monitoring and reporting requirements to evaluate the potential impacts of planned activities would ensure that the effects of the activities remain consistent with the rest of the findings.

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 the proposed action of issuing a final IHA would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this IHA, if finalized, is not required by section 102(2) of NEPA or the Department's NEPA handbook. We are accepting comments on the draft environmental assessment as specified above in **DATES** and **ADDRESSES**.

Endangered Species Act (ESA)

Under the ESA (16 U.S.C. 1536(a)(2)), all Federal agencies are required to insure the actions they authorize are not likely to jeopardize the continued existence of any endangered species or threatened species or result in destruction or adverse modification of critical habitat. Because the Southwest Alaska stock of sea otters is listed as a threatened species under the ESA, prior to finalizing the proposed IHA, if warranted, the FWS will complete intra-Service consultation under section 7 of the ESA on our proposed issuance of this IHA. These evaluations and findings will be made available on the FWS's website at *https://reports.ecosphere.fws.gov/FWSPublicReports/Reports/Index?reportname=BiologicalOpinionReport.* The authorization of incidental take of sea otters and the measures included in the proposed IHA would not affect other listed species or designated critical habitat.

Government-to-Government Consultation

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Alaska Native Tribes and organizations in developing programs for healthy ecosystems. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture and to make information available to Alaska Natives. Our efforts are guided by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 512 DM 5, ''Procedures for Consultation with Indian Tribes,'' 512 DM 6, ''Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act Corporations,'' 510 FW 1, ''The Service's Native American Policy,'' and 510 FW 2, ''The Service's Alaska Native Relations Policy.''

The FWS has evaluated possible effects of the specified activities on federally recognized Alaska Native Tribes and 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 (expiration date August 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). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Proposed Authorization

We propose to authorize the incidental take by Level A harassment and Level B harassment of sea otters from the Southwest Alaska stock. Authorized take may be caused by pile driving and marine construction activities conducted by the City in Kodiak, Alaska, November 1, 2026, to October 31, 2027. If finalized, the IHA would be effective for 1 year from the date of issuance. We do not anticipate

or authorize any lethal take to sea otters resulting from these activities.

A. General Conditions for This IHA

(1) Activities must be conducted in the manner described in the revised request dated July, 2025,and received by the FWS on December 10, 2025, from the City for an IHA and in accordance with all applicable conditions and mitigations measures. The taking of sea otters whenever the required conditions, mitigation, monitoring, and reporting measures are not fully implemented as required by the IHA is prohibited. Failure to follow the measures specified both in the revised request and within this proposed authorization may result in the modification, suspension, or revocation of the IHA.

(2) If project activities cause unauthorized take (*i.e.,* a form of take other than Level A harassment or Level B harassment, or take through methods not described in the IHA), the City must take the following actions:

(i) Cease its activities immediately (or reduce activities to the minimum level necessary to maintain safety);

(ii) Report the details of the incident to the FWS within 24 hours; and

(iii) Suspend further activities until the FWS has reviewed the circumstances and determined whether additional mitigation measures are necessary to avoid further unauthorized taking.

(3) All operation managers, vehicle operators, and machine operators must receive a copy of this IHA and maintain access to it for reference at all times during project work. These personnel must understand, be fully aware of, and be capable of implementing the conditions of the IHA at all times during project work.

(4) This IHA will apply to activities associated with the specified project as described in this document and in the City's revised request. Changes to the specified project without prior authorization may invalidate the IHA.

(5) The City's revised request is approved and fully incorporated into this IHA unless exceptions are specifically noted herein. The request includes:

(i) The City's original request for an IHA (including a Protected Species Monitoring and Mitigation Plan), dated February 26, 2025;

(ii) Updated project geospatial files for ensonification areas, received June 30, 2025; and

(iii) A revised application dated July, 2025 and received by FWS December 10, 2025,

(6) Operators will allow FWS personnel or the FWS's designated representative to visit project worksites to monitor for impacts to sea otters and subsistence uses of sea otters at any time throughout project activities so long as it is safe to do so. ''Operators'' are all personnel operating under the City's authority, including all contractors and subcontractors.

B. Avoidance and Minimization

(7) Construction activities must be conducted using equipment that generates the lowest practicable levels of in-water noise within the range of frequencies audible to sea otters.

(8) If a sea otter enters or appears likely to enter the shutdown zone, in-water activities must be shut down until either the sea otter has been visually observed outside the shutdown zone or at least 15 minutes have elapsed since the last observation time without redetection of the sea otter.

(i) During all in-water activities, regardless of predicted sound levels, a physical interaction shutdown zone of at least 10 m (33 ft) must be enforced.

(9) If the impact driver has been idled for more than 30 minutes, an initial set of three strikes from the impact driver must be delivered (at reduced energy if possible), followed by a 30-second waiting period. This procedure will be conducted a total of three times before full-powered strikes if practicable.

(10) In-water activity must be conducted in daylight. If environmental conditions prevent visual detection of sea otters within the shutdown zone, in-water activities must be stopped until visibility is regained.

C. Mitigation Measures for Vessel Operations

Vessel operators must take every precaution to avoid harassment of sea otters during vessel operations. The applicant must carry out the following measures:

(11) Vessels must maintain a minimum distance of 500 m (0.3 mi) from rafts of 10 or more sea otters unless otherwise needed for safety. If a vessel must transit within 500 m (0.3 mi) from rafts of sea otters, the vessel must travel at a reduced speed and maintain the maximum distance practicable between the vessel and raft of sea otters. Vessels must reduce speed and maintain a minimum distance of 100 m (328 ft) from all sea otters unless otherwise needed for safety.

(12) Vessels must not be operated in such a way as to separate members of a group of sea otters (two or more sea otters) from other members of the group, encircle sea otters, or impede movement of sea otters. Vessels must use established navigation channels or commonly recognized vessel traffic corridors and avoid approaching sea otters or impeding sea otter movements when traveling near the shoreline in shallow water (<20 m or <66 ft) whenever practicable.

(13) When weather conditions require, such as when visibility drops, vessels must adjust speed accordingly to reduce the likelihood of injury to sea otters.

(14) Vessel operators must be provided written guidance for avoiding collisions and minimizing disturbances to sea otters. Guidance will include all measures identified in this section.

D. Monitoring

(15) Operators shall work with PSOs to apply mitigation measures and shall recognize the authority of PSOs up to and including stopping work, except where doing so poses a significant safety risk to personnel.

(16) Duties of the PSOs include watching for and identifying sea otters, recording observation details, documenting presence in any applicable monitoring zone, identifying and documenting potential harassment, and working with operators to implement all appropriate mitigation measures.

(17) A sufficient number of PSOs will be available to meet the following criteria: 100 percent monitoring of shutdown zones during all daytime periods of in-water noise-generating work; a maximum of 4 consecutive hours on watch per PSO; a maximum of 12 hours on watch per day per PSO.

(18) All PSOs will complete a training course designed to familiarize individuals with monitoring and data collection procedures. This training will be completed prior to starting work. A field crew leader with prior experience as a sea otter observer will supervise the PSO team. Initially, new or inexperienced PSOs will be paired with experienced PSOs so that the quality of marine mammal observations and data recording is kept consistent. Resumes for candidate PSOs will be made available to the FWS prior to the start of the project.

(19) The PSOs will be provided with reticule binoculars (7×50 or better), big-eye binoculars or spotting scopes (30×), inclinometers, and range finders. Field guides, instructional handbooks, maps, and a contact list will also be made available.

(20) The PSOs will monitor a pre-clearance zone for 30 minutes prior to the commencement of in-water noise-generating activities and following periods of inactivity of more than 30 minutes to ensure all sea otters are not within the shutdown zone prior to

initiating or resuming in-water noise-generating activities.

(21) The PSOs will collect data using the following procedures:

(i) All data will be recorded onto a field form or database;

(ii) Global positioning system data, sea state, tidal state, wind force, visibility, and weather condition will be recorded at the beginning and end of a monitoring period, at least every hour in between, at the change of a PSO, and upon observation of sea otters;

(iii) Observation records of sea otters will include date; time; the PSOs' locations; sea otter's heading (if moving); weather condition; visibility; number of sea otters; group composition (adults/juveniles); and the location of the sea otters (or distance and direction from the PSO);

(iv) Observation records will also include initial behaviors of the sea otters, descriptions of project activities and in-water noise levels being generated, the position of sea otters relative to applicable monitoring and mitigation zones, any mitigation measures applied, and any apparent reactions to the project activities before and after mitigation;

(v) For all sea otters in or near a mitigation zone, the PSOs will record the distance from the sound source to the sea otter upon initial observation, the duration of the encounter, and the distance at last observation in order to monitor cumulative sound exposures; and

(vi) The PSOs will note any instances of sea otters lingering close to or traveling with vessels for prolonged periods of time.

(22) Monitoring of the shutdown zone must continue for 30 minutes following completion of in-water noise-generating activities.

E. Measures To Reduce Impacts to Subsistence Users

(23) Prior to conducting the work, the City will take the following steps to reduce potential effects on subsistence harvest of sea otters:

(i) Avoid work in areas of known sea otter subsistence harvest;

(ii) Discuss the planned activities with subsistence stakeholders including Southwest Alaska villages and traditional councils;

(iii) Identify and work to resolve concerns of stakeholders regarding the project's effects on subsistence hunting of sea otters; and

(iv) If any concerns remain, develop a POC in consultation with the FWS and subsistence stakeholders to address these concerns.

F. Reporting Requirements

(24) The applicant, the City of Kodiak, must notify the FWS at least 48 hours prior to commencement of activities.

(25) Monthly reports will be submitted to the FWS's Marine Mammals Management office (MMM) for all months during which noise-generating work takes place. The monthly report will contain and summarize the following information: dates, times, weather, and sea conditions (including the Beaufort Scale sea state and wind force conditions) when sea otters were observed; the number, location, distance from the sound source, and behavior of the sea otters; the associated project activities; and a description of the implementation and effectiveness of mitigation measures with a discussion of any specific behaviors the sea otters exhibited in response to mitigation.

(26) A final report will be submitted to the FWS's MMM within 90 days after completion of work or expiration of the IHA. The report will include:

(i) A summary of monitoring efforts (hours of monitoring, activities monitored, number of PSOs, and, if requested by the FWS, the daily monitoring logs);

(ii) A description of all project activities, any additional work yet to be done, factors influencing visibility and detectability of marine mammals (*e.g.,* sea state, fog, glare, and number of PSOs), and factors correlated with the presence and distribution of sea otters (*e.g.,* weather, sea state, and project activities);

(iii) An estimate will be included of the number of sea otters exposed to noise at received levels greater than or equal to Level A harassment and Level B harassment (based on visual observation).

(iv) A description of changes in sea otter behavior resulting from project activities and any specific behaviors of interest; and

(v) A discussion of the mitigation measures implemented during project activities and their observed effectiveness for minimizing impacts to sea otters. Sea otter observation records will be provided to the FWS in the form of electronic database or spreadsheet files.

(27) Injured, dead, or distressed sea otters that are not associated with project activities (*e.g.,* animals known to be from outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must be reported to the FWS within 24 hours of the discovery to either the FWS MMM Office (907–786–3800, business hours) or the Alaska SeaLife Center in Seward (1–888–774–7325, extended hours). Photographs, video, location information, or any other available documentation must be provided to the FWS.

(28) All reports shall be submitted by email to *fw7_mmm_reports@fws.gov.*

(29) The City must notify the FWS upon project completion or end of the work season.

Request for Public Comments

If you wish to comment on this proposed authorization, the associated draft environmental assessment, or related documents, you may submit your comments by either of the methods described in **ADDRESSES**. Please identify the document(s) to which your comments pertain, make your comments as specific as possible, confine them to issues pertinent to the proposed authorization, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. The FWS will consider all comments that are received before the close of the comment period (see **DATES**). The FWS does not anticipate extending the public comment period beyond the 30 days required under section 101(a)(5)(D)(iii) of the MMPA.

Comments, including names and street addresses of respondents, will become part of the administrative record for this proposal. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Peter Fasbender,

Assistant Regional Director for Fisheries and Ecological Services, Alaska Region, U.S. Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2026–3037; FXES111607MRG01–267–FF07CAMM00]

Marine Mammals; Incidental Take During Specified Activities; Proposed Incidental Harassment Authorization for Southcentral Alaska Stock of Northern Sea Otters at the ARRC Seward Alaska Marine Terminal Freight Dock in Seward, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application; proposed incidental harassment authorization; draft environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), in response to a request under the Marine Mammal Protection Act of 1972, as amended, from the Alaska Railroad Corporation, propose to authorize incidental take by harassment of small numbers of Southcentral Alaska stock northern sea otters (*Enhydra lutris kenyoni*) for a period of up to 1 year. The applicant has requested this authorization for take by harassment that may result from activities associated with pile driving and marine construction at the Seward Alaska Marine Terminal Freight Dock in Seward, Alaska. This proposed authorization, if finalized, would be for incidental take by Level A harassment and Level B harassment of northern sea otters from the Southcentral Alaska stock. We invite comments on the proposed incidental harassment authorization and the accompanying draft environmental assessment from the public, Tribes, and local, State, and Federal agencies.

DATES: Comments must be received by December 23, 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 the application package, the draft environmental assessment, and other supporting material at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2026–3037 or you may request these documents from the person listed under **FOR FURTHER INFORMATION CONTACT**.

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–2026–3037 which is the docket number for this 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–2026–3037 U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments at *https://www.regulations.gov.* You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. See Request for Public Comments for more information.

FOR FURTHER INFORMATION CONTACT: Stephanie Burgess, by email at *r7mmmregulatory@fws.gov,* by telephone at 907–786–3800, or by U.S. mail at U.S. Fish and Wildlife Service, MS 341, 1011 East Tudor Road, Anchorage, AK 99503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361, *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of certain marine mammals in response to requests by U.S. citizens (as defined in title 50 of the Code of Federal Regulations (CFR) in part 18, at 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) within a specified geographic region during a period of not more than 1 year. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service (FWS, or we). According to the MMPA, the FWS shall allow this incidental taking by harassment if we find that the total of such taking for the 1-year period:

1. Will affect only small numbers of individuals of the species or stock;
2. Will have no more than a negligible impact on the species or stock; and
3. Will not have an unmitigable adverse impact on the availability of these species or stock for taking for subsistence use by Alaska Natives.

If the requisite findings are made, we issue an authorization that sets forth the following, where applicable:

1. Permissible methods of taking;
2. Means of effecting the least practicable adverse impact on the species or stock and its habitat and the availability of the species or stock for subsistence uses; and
3. Requirements for monitoring and reporting of such taking by harassment, including, in certain circumstances, requirements for the independent peer review of proposed monitoring plans or other research proposals.

The term ''take'' means to ''harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill any marine mammal'' (16 U.S.C. 1362(13)). Harassment for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government means any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as ''Level A harassment''), or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (the MMPA defines this as ''Level B harassment'') (16 U.S.C. 1362(18)).

The terms ''negligible impact'' and ''unmitigable adverse impact'' are defined in 50 CFR 18.27(c) as follows: ''Negligible impact'' is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. ''Unmitigable adverse impact'' means an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine

mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term ''small numbers'' is also defined in 50 CFR 18.27(c). However, we do not rely on that definition here as it conflates ''small numbers'' with ''negligible impacts.'' We recognize ''small numbers'' and ''negligible impacts'' as two separate and distinct considerations when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *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 April 12, 2024, the FWS received a request prepared by PND Engineers, Inc. on behalf of the Alaska Railroad Corporation (hereafter, ARRC or the applicant) for an authorization to take by harassment northern sea otters (*Enhydra lutris kenyoni*) (hereafter, sea otters unless another sea otter subspecies is specified) from the Southcentral Alaska stock. The applicant expects that take by harassment may occur during their expansion and improvement of the existing Seward Alaska Marine Terminal Freight Dock and associated transportation corridor within the Alaska Railroad Terminal Reserve in Seward, Alaska. The FWS requested additional information on project activities, geospatial files of the project impact area, estimated take numbers, and mitigation measures, and the ARRC provided the requested information. We received a revised request on June 15, 2026, and we determined the revised request to be adequate and complete.

Description of Specified Geographic Region and Specified Activities

The specified geographic region is the nearshore waters and intertidal areas surrounding the existing Seward Alaska Marine Terminal Freight Dock (hereafter, project location). The project location is at the head of Resurrection Bay between the Resurrection River delta and the Seward Small Boat Harbor located in Seward, Alaska (figure 1).

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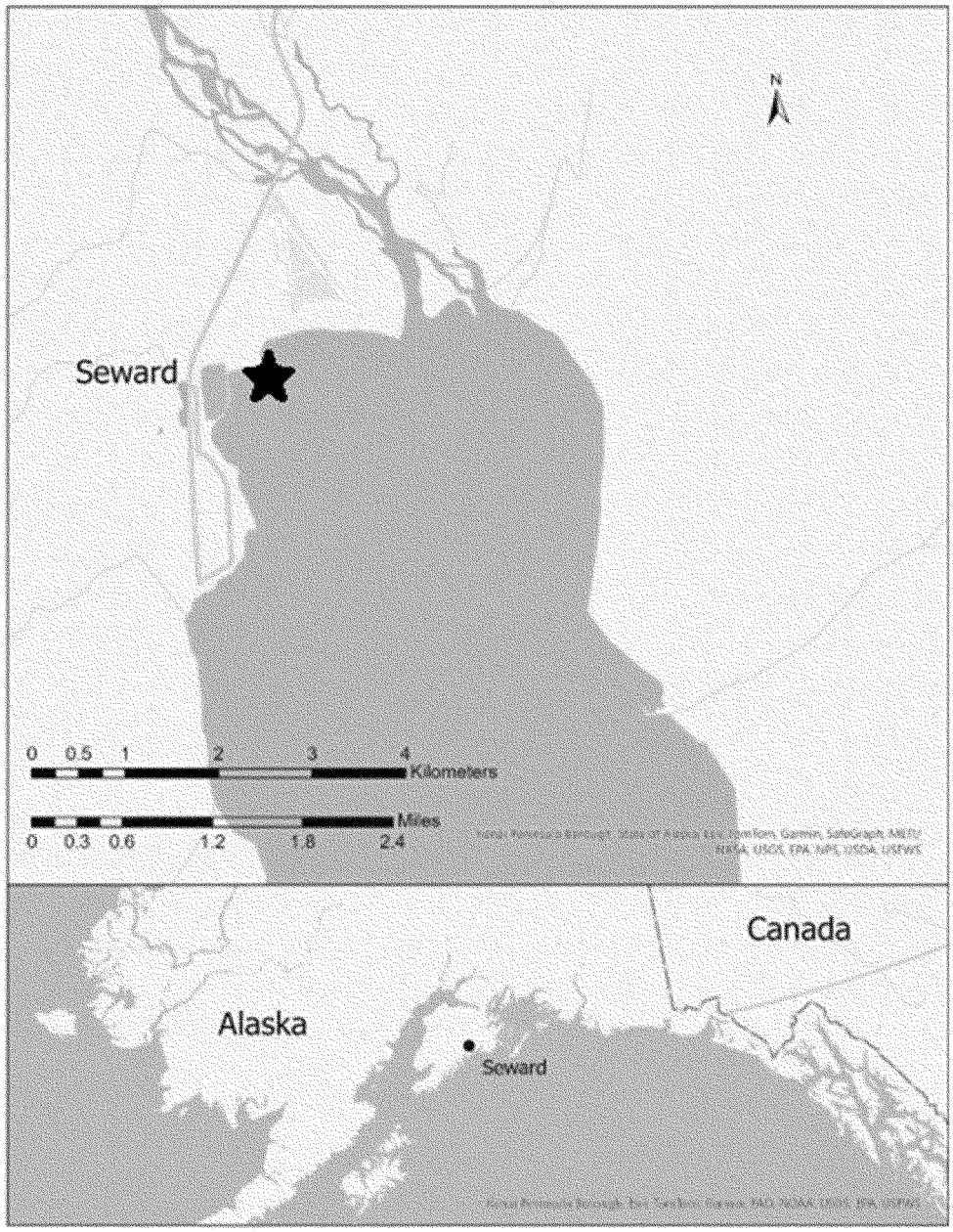

Figure 1. Specified geographic region of the project.

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The specified activity (hereafter project) will include expanding the existing Freight Dock by 114 meters (m) (375 feet [ft]) with a sheet pile bulkhead backed by a rock revetment and installing typical dock components, such as fenders, mooring bollards, sacrificial anodes, and bullrail. The project will also include installation of a mooring dolphin and catwalk, widening the existing uplands, improving upland facilities, and improving the transportation corridor that connects the dock to the road and rail networks. The proposed project activities will improve safety for pedestrians and stevedoring activities, improve transport efficiency for goods, accommodate larger vessels, and ultimately enhance the long-term utility of the Freight Dock.

The applicant, the ARRC, plans to remove four existing dolphin piles that are 61 centimeters (cm) (24 inches [in]) in diameter, and install and remove 60 61.0-cm (24-in) temporary template piles. They will also install 425 new sheet pile pairs, 14 new anchor H-piles, 14 new 76.2-cm (30-in) fender piles, and four new 76.2-cm (30-in) dolphin piles during the in-water components of the dock expansion work. Uplands work will include removal of one existing onshore 61.0-cm (24-in) bollard pile, installation and removal of 2,157 temporary vibrocompaction H-pile probes, and installation of two new 76.2-cm (30-in) bollard piles and three new 76.2-cm (30-in) high mast light piles. Pile removal will be conducted using a vibratory hammer and pile installation will be conducted with a combination of impact and vibratory hammers. Hereafter (unless otherwise specified), the terms ''pile driving'' and ''pile-driving activities'' are used to refer to both pile installation and pile

removal. Project activities are summarized in table 1.

TABLE 1—ARRC SEWARD ALASKA MARINE TERMINAL FREIGHT DOCK PROJECT ACTIVITIES, PILES INSTALLED OR REMOVED, AND DAYS OF ACTIVITY

Location	Project component	Pile size and material	Activity	Total number of piles	Maximum number of piles per day	Maximum number of activity days
In Water	Existing dolphin piles	61.0-cm (24-in) round steel.	Removal—vibratory.	4	4	4
	Temporary template piles.	61.0-cm (24-in) steel pipe.	Installation—vibratory.	60	6	50
	Temporary template piles.	61.0-cm (24-in) steel pipe.	Removal—vibratory.	60	6	50
	New sheet pile pairs	Steel sheet pile	Installation—vibratory.	425	20	75
	New anchor piles	Steel H-piles	Installation—vibratory.	14	2	15
	New fender piles	76.2-cm (30-in) round steel.	Installation—vibratory.	14	4	6
	New dolphin piles	76.2-cm (30-in) round steel.	Installation—vibratory.	4	2	5
	New dolphin piles	76.2-cm (30-in) round steel.	Installation—impact.	4	2	5
Uplands	Existing onshore bollard pile.	61.0-cm (24-in) round steel.	Removal—vibratory.	1	1	1
	Temporary vibrocompaction probes.	Steel H-pile probe.	Installation—vibratory.	2157	20	100
	Temporary vibrocompaction probes.	Steel H-pile probe.	Removal—vibratory.	2157	20	100
	New bollard piles	76.2-cm (30-in) round steel.	Installation—vibratory.	2	1	2
	New high mast light piles	76.2-cm (30-in) round steel.	Installation—vibratory.	3	3	3

Pile-driving activities will occur up to a maximum of 265 non-consecutive days during the 1-year period of the IHA, if finalized. Uplands pile-driving activities will overlap with the in-water work period, but it is unknown to what extent they will overlap. Materials and equipment will be transported to Seward via barge, rail, and road. Project vessels will originate in Seattle, Anchorage, or Unalaska. The applicant will also use a land- and/or barge-based excavator or crane to support construction operations. Additional project details may be reviewed in the application materials available as described under **ADDRESSES** or may also be requested as described under **FOR FURTHER INFORMATION CONTACT**.

Description of Marine Mammals in the Specified Geographic Region

The sea otter is the only marine mammal species under the FWS's jurisdiction likely to be found within the specified geographic region. Information on the range, stocks, and biology of sea otters is included in supplemental information, which can be found as described above in **ADDRESSES**.

Potential Impacts of the Specified Activities on Marine Mammals

Effects of Noise on Sea Otters

We characterize ''noise'' as sound released into the environment from human activities that exceeds ambient levels or interferes with normal sound production or reception by sea otters. The terms ''acoustic disturbance'' and ''acoustic harassment'' are disturbances or harassment events resulting from noise exposure. Potential effects of noise exposure are likely to depend on the sea otter's distance from the sound source, the sound level and intensity the sea otter receives, background noise levels, noise frequency, noise duration, and whether the noise is pulsed or continuous. The actual noise level perceived by individual sea otters will also depend on whether the sea otter is above or below water and atmospheric and environmental conditions. Temporary disturbance of sea otters or localized displacement reactions are the most likely effects to occur from noise exposure.

Sea Otter Hearing

Pile driving and marine construction activities produce sound within sea otters' hearing range. Controlled sound exposure trials on southern sea otters (*Enhydra lutris nereis*) indicate that sea otters can hear frequencies between 125 hertz (Hz) and 38 kilohertz (kHz), with best sensitivity between 1.2 and 27 kHz (Ghoul and Reichmuth 2014). Sea otters are more adept at aerial hearing, and their hearing sensitivity is similar to that of terrestrial carnivores (Reichmuth and Ghoul 2012; Ghoul and Reichmuth 2016; Zellmer et al. 2021). Aerial and underwater audiograms for a captive adult male southern sea otter in the presence of ambient noise suggest the sea otter's hearing was less sensitive to high-frequency (greater than 22 kHz) and low-frequency (less than 2 kHz) sound than that of terrestrial mustelids but was similar to that of a California sea lion (*Zalophus californianus*). However, the sea otter was still able to hear low-frequency sounds, and the detection thresholds for sounds between 0.125 and 1 kHz were between 116 and 101 decibels (dB), respectively. Dominant frequencies of southern sea otter vocalizations are between 3 and 8 kHz, with some energy extending above 60 kHz (McShane et al. 1995; Ghoul and Reichmuth 2012).

Exposure to high levels of sound may cause changes in behavior, masking of communications, temporary or permanent changes in hearing sensitivity, discomfort, and injury to marine mammals. Sea otters do not rely on sound to orient themselves, locate prey, or communicate under water; therefore, masking of communications by anthropogenic noise is less of a concern for sea otters than for other marine mammals. However, sea otters, especially mothers and pups, do use sound for communication in air (McShane et al. 1995), and sea otters may monitor underwater sound to avoid predators (Davis et al. 1987).

Exposure Thresholds

Underwater Sounds

Noise exposure criteria for identifying underwater noise levels capable of causing Level A harassment (injury) to marine mammal species, including sea otters, have been established using the same methods as those previously used by the National Marine Fisheries Service (NMFS) (Southall et al. 2019). These criteria are based on estimated levels of sound exposure capable of causing a permanent shift in hearing sensitivity, that is, a permanent threshold shift (PTS) (NMFS 2018). A PTS occurs when noise exposure causes damage to hair cells within the inner ear system (Ketten 2012). A sea otter that experiences PTS would be permanently unable to hear certain sounds at frequencies similar to those that caused the initial injury. Although the effects of PTS are, by definition, permanent, PTS does not equate to total hearing loss.

Sound exposure thresholds incorporate two metrics of exposure: the peak level of instantaneous exposure likely to cause PTS, and the cumulative sound exposure level (SEL_{CUM}) during a 24-hour period. They also include weighting adjustments for the sensitivity of different species to varying frequencies. The PTS-based injury criteria were developed from theoretical extrapolation of observations of temporary threshold shifts (TTS) detected in lab settings during sound exposure trials (Finneran 2015). A TTS is a noise-induced threshold shift in hearing sensitivity that fully recovers over time (Finneran 2015). Southall et al. (2019) developed TTS thresholds for sea otters, which are included in the ''other marine carnivores'' category, of 188 dB SEL_{CUM} re 1 micropascal (μPa) for impulsive underwater sound and 199 dB SEL_{CUM} for nonimpulsive underwater sound. Based on these analyses, Southall et al. (2019) predict that PTS for sea otters will occur at 232 dB peak sound pressure level (SPL) or 203 dB SEL_{CUM} for impulsive underwater sound and 219 dB SEL_{CUM} for nonimpulsive underwater sound.

The NMFS has revised their sound exposure criteria to include thresholds for auditory injury (NMFS 2024). We are evaluating the auditory injury criteria to determine whether they are appropriate for FWS trust species, as sea otters in particular are not exposed to in-water noise for an entire 24-hour period.

The NMFS (2018) sound exposure criteria do not identify thresholds for avoidance of Level B harassment. For pinnipeds (seals and sea lions), NMFS has adopted a 160-dB threshold for Level B harassment from exposure to impulsive noise and a 120-dB threshold for nonimpulsive noise (High Energy Seismic Survey Team 1999; NMFS 2018). These thresholds were developed from observations of mysticete (baleen) whales responding to airgun operations (*e.g.,* Malme et al. 1983; Malme and Miles 1983; Richardson et al. 1986, 1995). Southall et al. (2007, 2019) assessed behavioral response studies and found considerable variability among pinnipeds. The authors determined that exposures between approximately 90 to 140 dB generally do not appear to induce strong behavioral responses from pinnipeds in water. However, they found behavioral effects, including avoidance, become more likely in the range between 120 and 160 dB, and most marine mammals showed some, albeit variable, responses to sound between 140 and 180 dB. Wood et al. (2012) adapted the approach identified in Southall et al. (2007) to develop a probabilistic scale for marine mammal taxa at which 10 percent, 50 percent, and 90 percent of individuals exposed are assumed to produce a behavioral response. For many marine mammals, including pinnipeds, these response rates were set at 140, 160, and 180 dB SPLs, respectively.

We have evaluated these thresholds and determined that the Level B harassment threshold of 120 dB for nonimpulsive noise is not applicable to sea otters. The 120-dB threshold is based on studies in which gray whales (*Eschrichtius robustus*) were exposed to experimental playbacks of industrial noise (Malme et al. 1983; Malme and Miles 1983). During these playback studies, southern sea otter responses to industrial noise were also monitored (Riedman 1983, 1984). While gray whales exhibited avoidance to industrial noise at the 120-dB threshold, there was no evidence of disturbance reactions or avoidance in southern sea otters. Thus, given the differences in hearing and behavior between sea otters and gray whales, the NMFS 120-dB threshold based on gray whale behavior is not appropriate for predicting sea otter behavioral responses.

Based on the lack of sea otter disturbance response or any other reaction to the playback studies from the 1980s, as well as the absence of a clear pattern of disturbance or avoidance behaviors attributable to underwater sound levels up to about 160 dB resulting from low-frequency broadband noise, we assume 120 dB is not an appropriate behavioral response threshold for sea otters exposed to nonimpulsive underwater noise.

Based on the best available scientific information about sea otters and closely related marine mammals where sea otter data are limited, the FWS has set 160 dB of received underwater sound as a threshold for take by Level B harassment of sea otters in this proposed IHA. Exposure to in-water noise levels between 125 Hz and 38 kHz that are greater than 160 dB—for both impulsive and nonimpulsive sound sources—will be considered by the FWS as Level B harassment. Thresholds for Level A harassment (which entails the potential for injury) for in-water noise levels between 125 Hz and 38 kHz are 232 dB peak SPL or 203 dB SEL_{CUM} for impulsive sounds and 219 dB SEL_{CUM} for nonimpulsive sounds (table 2 below).

Airborne Sounds

Thresholds for Level A harassment for in-air noise levels are 176 dB peak SPL re 20 μPa or 161 dB SEL_{CUM} for impulsive sounds and 177 dB SEL_{CUM} for nonimpulsive sounds (table 2). The NMFS (2018) guidance neither addresses thresholds for preventing injury or disturbance from airborne noise, nor provides thresholds for avoidance of Level B harassment. The NMFS currently recommends 100 dB for all pinnipeds, excluding harbor seals, as the Level B harassment threshold for in-air noise (NMFS 2025). Conveyance of underwater noise into the air is of little concern since the effects of pressure release and interference at the water's surface reduce underwater noise transmission into the air. For activities that create both in-air and underwater noise, we will estimate take based on parameters for underwater noise transmission. Considering sound energy travels more efficiently through water than through air, this estimation will also account for exposures to sea otters at the surface.

Pile-driving activities are intermittent in nature, and there are typically breaks in sound production after the removal or installation of one pile is completed

and before the installation or removal of another pile commences. Furthermore, pile-driving activities will only occur during daylight hours. Additionally, the Level A harassment thresholds for all activities and the Level B harassment thresholds for all but one activity (impact installation of 30-in steel piles) are less than 40 m. The impact installation of 30-in steel piles, with a Level B harassment threshold of 1,000 m will only occur on five days. Due to the combination of intermittent sound production, planned schedule for pile-driving activities, and relatively small harassment thresholds, the FWS does not anticipate that sea otters will experience continuous noise, whether underwater or above water, that they cannot get away from.

Southall et al. (2019) have developed TTS and PTS thresholds for other marine carnivores, which include sea otters, for airborne impulsive and non-impulsive sounds (table 2). For project activities that create only airborne sounds, such as pile driving on land, the sound levels are significantly below the TTS thresholds developed by Southall et al. 2019. Since otariid pinnipeds are the closest available physiological and anatomical proxy for sea otters, we used the NMFS criteria for pinniped harassment from exposure to airborne sound to estimate take by Level B harassment from pile driving on shore.

TABLE 2—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS

[Established by Southall et al. (2019) through modeling and extrapolation for "Other Marine Carnivores", which include sea otters.*]

	TTS			PTS		
	nonimpulsive	impulsive		nonimpulsive	impulsive	
	SEL_{CUM}	SEL_{CUM}	Peak SPL	SEL_{CUM}	SEL_{CUM}	Peak SPL
Air	157	146	170	177	161	176
Water	199	188	226	219	203	232

* Values are weighted for other marine carnivores' hearing thresholds and given in cumulative sound exposure level (SEL_{CUM} dB re (20 micropascal [μPa] in air and SEL_{CUM} dB re 1 μPa in water) for impulsive and nonimpulsive sounds, and unweighted peak sound pressure level (SPL) in air (dB re 20μPa) and water (dB 1μPa) (impulsive sounds only).

Evidence From Sea Otter Studies

Individual sea otters near the project location would likely show a range of responses to noise from pile-driving activities. Some sea otters would likely dive, show startle responses, change direction of travel, or prematurely surface. Sea otters reacting to pile-driving activities may divert time and attention from biologically important behaviors, such as feeding and nursing pups. Sea otter responses to disturbance can result in energetic costs. For example, sea otters spend more time traveling in areas with high levels of disturbance (Curland 1997). Higher energetic costs require increased amounts of prey consumption (Barrett 2019). This increased prey consumption may impact sea otter prey availability and cause sea otters to spend more time foraging and less time resting (Barrett 2019). Some sea otters may abandon the project location and return when the disturbance has ceased. Based on the observed movement patterns of sea otters (Lensink 1962; Kenyon 1969, 1981; Garshelis and Garshelis 1984; Riedman and Estes 1990), we expect some sea otters would respond to pile-driving activities by dispersing to nearby areas of suitable habitat; however, other sea otters, especially territorial adult males, would not leave.

Additional information on the evidence from studies about how sea otters may be affected by noise can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Consequences of Permanent Threshold Shift

Sea otters exposed to noise levels above Level A harassment threshold criteria may experience a permanent shift in the sensitivity of their hearing. Information on the consequences of a PTS in sea otter hearing due to noise exposure can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Consequences of Disturbance

Information on the consequences of disturbance to sea otters can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Vessel Activities

Vessel activity during the project includes the use of barges to transport and stage equipment and materials to support construction operations. Vessels will not be used extensively or over a long duration during project activities. We do not anticipate that sea otters would experience changes in behavior indicative of harassment during vessel operations. Additionally, vessel operators would take every precaution to avoid harassment of sea otters when operating a vessel near sea otters and implement mitigation measures described in the ARRC's request and below in this proposed IHA, which include maintaining a minimum distance of 100 m (328 ft) from all sea otters.

Additional information on vessel activities can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Effects on Sea Otter Habitat and Prey

Information on the potential impacts of the specified activities on sea otter habitat and prey species can be found in the supplemental information to this document (available as described above in **ADDRESSES**). Based on this information, we do not anticipate any harassment to sea otters due to effects on sea otter habitat or prey from the specified activities.

Potential Impacts of the Specified Activities on Subsistence Uses

The project activities will occur in areas rarely used for subsistence harvesting activity. No subsistence harvest of sea otters was documented in close proximity to Seward from 2013 through 2022, and only two sea otters were harvested in the area in 2023. In 2024, there were 10 sea otters harvested in the Seward area, but there are no reports of sea otter harvest near Seward in 2025.

The planned project will occur within the city limits of Seward, where firearm use is prohibited. The area potentially affected by the planned project does not significantly overlap with current subsistence harvest areas. Construction activities will not preclude access to hunting areas or interfere in any way with individuals wishing to hunt. Despite no conflict with subsistence use

being anticipated, the FWS will conduct outreach with potentially affected communities to see whether there are any questions, concerns, or potential conflicts regarding subsistence use in those areas. If any conflicts are identified in the future, the ARRC will develop a plan of cooperation (POC) specifying the steps necessary to minimize any effects the project may have on subsistence harvest.

Estimated Take

Definitions of Incidental Take Under the MMPA

Under the MMPA, ''take'' means ''to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal'' (16 U.S.C. 1362(13)). Below we provide definitions of three types of take of sea otters. This discussion is provided for context and background and does not necessarily reflect what is anticipated to result from the specified activities.

Lethal Take

In the most serious interactions, human actions can result in the mortality of sea otters, which we define here as lethal take.

Level A Harassment

The MMPA defines Level A harassment for nonmilitary readiness activities as ''any act of pursuit, torment, or annoyance which . . . has the potential to injure a marine mammal or marine mammal stock in the wild'' (16 U.S.C. 1362(18)(A)(i), (C)). We interpret this definition to include human activity that may result in PTS in a sea otter's hearing sensitivity or injury to sea otters.

Level B Harassment

The MMPA defines Level B harassment for nonmilitary readiness activities as ''any act of pursuit, torment, or annoyance which . . . has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering'' (16 U.S.C. 1362(18)(A)(ii), (D)). We interpret this definition to include human-caused reactions that disrupt biologically significant behaviors or activities for the affected animal. Such reactions include, but are not limited to, the following:

- Swimming away at a fast pace on belly (*i.e.,* porpoising);
- Repeatedly raising the head vertically above the water to get a better view (spyhopping) while apparently agitated or while swimming away;
- In the case of a pup, repeatedly spyhopping while hiding behind and holding onto its mother's head;
- Abandoning prey or feeding area;
- Ceasing to nurse and/or rest (applies to dependent pups);
- Ceasing to rest (applies to independent animals);
- Ceasing to use movement corridors;
- Ceasing mating behaviors;
- Shifting/jostling/agitation in a raft (*i.e.,* group of 10 or more sea otters) so that the raft disperses;
- Sudden diving of an entire raft;
- Flushing animals off a haulout; or
- TTS in a sea otter's hearing sensitivity.

This list does not encompass all possible behaviors that indicate Level B harassment; other behavioral responses may be indicative of take by Level B harassment. In some circumstances, eliciting behavioral responses that equate to take by Level B harassment repeatedly may result in Level A harassment. Relatively minor changes in behavior such as the animal raising its head or temporarily changing its direction of travel are not likely to disrupt biologically important behavioral patterns, and the FWS does not view such minor changes in behavior as indicative of a take by Level B harassment.

Calculating Take

The FWS does not anticipate the Level A harassment or Level B harassment of sea otters as a result of barge operations or gravel fill placement. Barges will be operated in areas with year-round boat traffic at conservatively slow speeds, significantly reducing the probability of sea otter harassment. Barge movements and gravel fill placement are not anticipated to generate appreciable underwater noise (Dickerson et al. 2001) and all fill placement will be entirely within closed sheet pile cells. Finally, otters are not anticipated to be physically injured by barge movements or fill placement due to the use of protected species observers (PSO) and shutdown zones.

We also assumed that up to two sea otters per day (to account for a potential mother and pup pair) would experience take by Level B harassment on days when only uplands pile-driving activities are occurring due to exposure to in-air noise, given that sea otters are commonly sighted amongst the ARRC docks and close to human activity in that area (PND 2026). The ARRC estimates there will be 64 days of uplands pile-driving activities that do not occur on the same day as in-water pile-driving activities, resulting in up to 128 takes by Level B harassment due to in-air sound exposure.

Sea Otter Density

We assumed all sea otters exposed to underwater sound levels that meet the acoustic exposure criteria defined above in *Exposure Thresholds* would experience take by Level A harassment or Level B harassment. We refer to the area in which sound levels meet or exceed the acoustic exposure criteria defined for either Level A harassment or Level B harassment as the ensonification area. Spatially explicit ensonification areas were established around the planned construction location to estimate the number of sea otters that may be exposed to these sound levels. We determined the number of otters present in the ensonification zones using a density of 2.31 sea otters per square kilometer (km^2) derived from surveys conducted in Prince William Sound, Alaska (Weitzman and Esslinger 2015).

Sound Levels for the Specified Activities

The project activities consist of vibratory pile extraction and pile installation via vibratory pile driving and impact pile driving. Each method generates a different type of noise. Vibratory pile extraction and installation produce nonimpulsive or continuous noise, whereas impact pile installation produces impulsive noise (NMFS 2020).

The level of sound anticipated from each project activity was established using data from several sources in addition to guidance from NMFS. We used the empirical data from those proxy projects and sound levels provided by NMFS with the NMFS Technical Guidance and User Spreadsheet (NMFS 2018, 2020) to determine the distance at which sound levels would attenuate to Level A harassment thresholds (table 2 above). To estimate the distance at which sound levels would attenuate to Level B harassment thresholds, we used the data from the proxy projects and the sound levels provided by NMFS to determine the distance at which sound levels would attenuate to 160 dB. We used the NMFS-recommended transmission loss coefficient of 15 for coastal pile-driving activities in a practical spreading loss model (NMFS 2020) to estimate distances at which sounds would attenuate to Level A harassment and Level B harassment thresholds. The weighting factor adjustment included in the NMFS user spreadsheet accounts for sounds experienced in less sensitive portions of an animal's hearing range.

We used the weighting factor adjustment for otariid pinnipeds as they are the closest available physiological and anatomical proxy for sea otters. We acknowledge that NMFS has revised their user spreadsheet to include thresholds for auditory injury (NMFS 2024). As discussed in *Exposure Thresholds* above, we are evaluating the auditory injury criteria to determine whether they are appropriate for FWS trust species, and we will continue to use the previous version of the user spreadsheet (NMFS 2018, 2020) to estimate harassment of sea otters from in-water noise exposure during our evaluation.

Sound levels for all in-water sources are unweighted and given in dB re 1 µPa. For nonimpulsive sound sources, sound levels are shown in the form of mean maximum root mean square (RMS) SPL. For impulsive sound sources, sound levels are shown in the forms of peak SPL (peak) and sound exposure level for a single strike (SELss). Sound levels for in-water project activities are listed in table 3 below. The estimated in-air sound level for all uplands pile-driving activities is 103 dB (90 FR 21754, May 21, 2025).

TABLE 3—ARRC SEWARD ALASKA MARINE TERMINAL FREIGHT DOCK PROJECT SOUND TYPES, LEVELS, AND TIMING FOR IN-WATER PILE-DRIVING ACTIVITIES

Project component	Pile size and material	Activity	Type of sound	Sound levels (dB re 1 uPa)	Source	Timing per pile (nonimpulsive sound sources) or strikes per pile (impulsive sound sources)
Existing dolphin piles	61.0-cm (24-in) round steel.	Removal-vibratory	Nonimpulsive	163 dB RMS ..	Illingworth & Rodkin 2012; Illingworth & Rodkin 2013; Miner 2020; Caltrans 2020.	90 minutes.
Temporary template piles.	61.0-cm (24-in) steel pipe.	Installation-vibratory	Nonimpulsive	163 dB RMS ..	Illingworth & Rodkin 2012; Illingworth & Rodkin 2013; Miner 2020; Caltrans 2020.	60 minutes.
Temporary template piles.	61.0-cm (24-in) steel pipe.	Removal-vibratory	Nonimpulsive	163 dB RMS ..	Illingworth & Rodkin 2012; Illingworth & Rodkin 2013; Miner 2020; Caltrans 2020.	60 minutes.
New sheet pile pairs ..	Steel sheet pile	Installation-vibratory	Nonimpulsive	160.7 dB RMS	PND 2016; Caltrans 2015.	30 minutes.
New anchor piles	Steel H-piles	Installation-vibratory	Nonimpulsive	150 dB RMS ..	Caltrans 2015; Caltrans 2020.	60 minutes.
New fender piles	76.2-cm (30-in) round steel.	Installation-vibratory	Nonimpulsive	167 dB RMS ..	Illingworth & Rodkin 2012; Caltrans 2020.	60 minutes.
New dolphin piles	76.2-cm (30-in) round steel.	Installation-vibratory	Nonimpulsive	167 dB RMS ..	Illingworth & Rodkin 2012; Caltrans 2020.	60 minutes.
New dolphin piles	76.2-cm (30-in) round steel.	Installation-impact	Impulsive	190 dB RMS; 177 dB SELss; 210 dB peak.	Caltrans 2015	1,800 strikes.

Ensonification Areas

Distances to where sound levels fall below Level A harassment and Level B harassment thresholds were calculated for each in-water project activity to determine the ensonification area for that activity (table 4). The applicant has proposed implementing acoustic shutdown zones that will encompass the majority of both Level A harassment thresholds and Level B harassment thresholds (table 4) in order to minimize take of sea otters. The ARRC would also implement a 10-m (33-ft) physical interaction shutdown zone, regardless of predicted sound levels, to minimize the potential for physical impacts to sea otters.

TABLE 4—ARRC SEWARD ALASKA MARINE TERMINAL FREIGHT DOCK PROJECT DISTANCES TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT ZONES AND PROPOSED ACOUSTIC SHUTDOWN ZONES FOR IN-WATER PILE-DRIVING ACTIVITIES

Project component	Pile size and material	Activity	Distance to below Level A harassment threshold (m)	Distance to below Level B harassment threshold (m)	Distance to below acoustic shutdown zones (m)
Existing dolphin piles	61.0-cm (24-in) round steel	Removal-vibratory	1.3	15.85	20

TABLE 4—ARRC SEWARD ALASKA MARINE TERMINAL FREIGHT DOCK PROJECT DISTANCES TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT ZONES AND PROPOSED ACOUSTIC SHUTDOWN ZONES FOR IN-WATER PILE-DRIVING ACTIVITIES—Continued

Project component	Pile size and material	Activity	Distance to below Level A harassment threshold (m)	Distance to below Level B harassment threshold (m)	Distance to below acoustic shutdown zones (m)
Temporary template piles	61.0-cm (24-in) steel pipe	Installation-vibratory	1.3	15.85	20
Temporary template piles	61.0-cm (24-in) steel pipe	Removal-vibratory	1.3	15.85	20
New sheet pile pairs	Steel sheet pile	Installation-vibratory	1.3	11.13	20
New anchor piles	Steel H-piles	Installation-vibratory	0.1	2.15	10
New fender piles	76.2-cm (30-in) round steel	Installation-vibratory	1.8	29.29	30
New dolphin piles	76.2-cm (30-in) round steel	Installation-vibratory	1.2	29.29	30
New dolphin piles	76.2-cm (30-in) round steel	Installation-impact	36.4	1000	310

We calculated the area ensonified to >232 dB peak SPL or >203 dB SEL_{CUM} re 1µPa for impulsive underwater sound and >219 dB SEL_{CUM} re 1µPa for nonimpulsive underwater sound to determine the area in which sea otters may experience Level A harassment for each of the ARRC's in-water pile-driving activities. Our ensonification area calculations showed that the project activity sound levels would not reach the 232 dB peak SPL threshold for causing instantaneous PTS in sea otter hearing sensitivity. We multiplied the ensonification area for Level A harassment by the density of sea otters for the project location (see *Sea Otter Density*) and the number of project activity days to determine the number of Level A harassment events for each project activity.

To estimate the number of Level B harassment events during the ARRC's in-water pile-driving activities, we subtracted the area of the Level A harassment zone from the area ensonified to >160 dB re 1µPa to determine the area in which sea otters may experience Level B harassment for each project activity. Our ensonification area calculations showed that the project activity sound levels would not reach the 226 dB peak SPL threshold for causing instantaneous TTS in sea otter hearing sensitivity outside the 10-m (33-ft) physical interaction shutdown zone. We multiplied the ensonified area for Level B harassment outside the ensonified area of Level A harassment by the density of sea otters for the project location (see *Sea Otter Density*) and the number of project activity days to determine the number of Level B harassment events for each project activity.

To calculate the areas in water that will be ensonified by pile-driving activities, we used the area of a circle (πr^2) where the radius (r) is the distance to below the Level A harassment threshold or the Level B harassment threshold. The number of Level A harassment and Level B harassment events estimated during in-water project activities can be found in tables 5 and 6 below, respectively.

TABLE 5—ARRC SEWARD ALASKA MARINE TERMINAL FREIGHT DOCK PROJECT IN-WATER LEVEL A HARASSMENT EVENTS ESTIMATED

Project component	Pile size and material	Activity	Maximum number of activity days	Sea otter density (sea otters/km^2)	Level A area (km^2)	Estimated sea otters affected by Level A sound per day	Estimated sea otters affected by Level A sound per day (rounded)	Total estimated Level A harassment events
Existing dolphin piles	61.0-cm (24-in) round steel.	Removal-vibratory	4	2.31	0.000	0.000	0	0
Temporary template piles	61.0-cm (24-in) steel pipe	Installation-vibratory.	50		0.000	0.000	0	0
Temporary template piles	61.0-cm (24-in) steel pipe	Removal-vibratory	50		0.000	0.000	0	0
New sheet pile pairs	Steel sheet pile	Installation-vibratory.	75		0.000	0.000	0	0
New anchor piles	Steel H-piles	Installation-vibratory.	15	0.000	0.000	0	0	
New fender piles	76.2-cm (30-in) round steel.	Installation-vibratory.	6	0.000	0.000	0	0	
New dolphin piles	76.2-cm (30-in) round steel.	Installation-vibratory.	5	0.000	0.000	0	0	
New dolphin piles	76.2-cm (30-in) round steel.	Installation-impact	5	0.004	0.010	[a] 2	10	

[a] Where the estimated total number of harassment events expected was equal to or greater than 0.001, we rounded to 2 instead to accommodate potential mother and pup pairs of sea otters for project activities.

TABLE 6—ARRC SEWARD ALASKA MARINE TERMINAL FREIGHT DOCK PROJECT IN-WATER LEVEL B HARASSMENT EVENTS ESTIMATED

Project component	Pile size and material	Activity	Maximum number of activity days	Sea otter density (sea otters/km^2)	Level B area (km^2)	Level B area minus Level A area (km^2)	Estimated sea otters affected by Level B sound per day	Estimated sea otters affected by Level B sound per day (rounded)	Total estimated Level B harassment events
Existing dolphin piles	61.0-cm (24-in) round steel.	Removal-vibratory.	4	2.31	0.001	0.001	0.002	[a] 2	8
Temporary template piles.	61.0-cm (24-in) steel pipe.	Installation-vibratory.	50		0.001	0.001	0.002	[a] 2	100
Temporary template piles.	61.0-cm (24-in) steel pipe.	Removal-vibratory.	50		0.001	0.001	0.002	[a] 2	100
New sheet pile pairs	Steel sheet pile	Installation-vibratory.	75		0.000	0.000	0.000	0	0
New anchor piles	Steel H-piles	Installation-vibratory.	15		0.000	0.000	0.000	0	0
New fender piles	76.2-cm (30-in) round steel.	Installation-vibratory.	6		0.003	0.003	0.006	[a] 2	12
New dolphin piles	76.2-cm (30-in) round steel.	Installation-vibratory.	5		0.003	0.003	0.006	[a] 2	10
New dolphin piles	76.2-cm (30-in) round steel.	Installation-impact.	5		3.140	3.136	7.244	8	40

[a] Where the estimated total number of harassment events expected was equal to or greater than 0.001, we rounded to 2 instead to accommodate potential mother and pup pairs of sea otters for project activities.

Critical Assumptions

We estimate that 398 takes by Level B harassment and 10 takes by Level A harassment of up to 347 sea otters may occur due to the ARRC's planned pile driving and marine construction activities. In order to conduct this analysis and estimate the potential amount of take by harassment, several critical assumptions were made.

Sound level information from pile-driving activities in a number of locations was used to generate sound level estimates for the specified activities (see sources in table 3 above). Environmental conditions in these locations, including water depth, substrate, and ambient sound levels may be similar to those in the project location, but are not identical. Further, ensonification area estimates were based on sound attenuation models using a practical spreading loss model. These factors may lead to actual sound values differing slightly from those estimated here.

We assumed that the different types of pile-driving activities will occur sequentially and that the total number of activity days will equal the sum of the number of days required to complete each type of pile-driving activity. While it is possible that on some days more than one type of activity will take place, which would reduce the number of days of exposure, we cannot know this information in advance. As such, the estimated number of activity days is the maximum possible for the planned work.

The in-water pile-driving activities described here will also create in-air noise. Because sea otters spend over half of their day with their heads above water (Esslinger et al. 2014), they will be exposed to the in-air noise produced by construction equipment. However, we have calculated Level A harassment and Level B harassment with the assumption that a sea otter may be harassed only one time per 24-hour period, and in-water noise levels would be more disturbing and extend farther than in-air noise from the same activities. Thus, while sea otters may be disturbed by noise both in-air and in-water, we have relied on the more conservative in-water estimates for in-water pile-driving activities.

Level B harassment is equated herein with behavioral responses that indicate harassment or disturbance. There is likely a portion of animals that respond in ways that indicate some level of disturbance but do not experience biologically significant consequences. Our estimates do not account for variable responses by sea otter age and sex.

The behavioral response estimates presented here do not account for the individual movements of animals in response to the specified activities. Our assessment assumes animals remain stationary (that is, the density does not change) for a 24-hour period, and animals do not move out of ensonification areas in response to noise. Not enough information is available about the movement of sea otters in response to specific disturbances to refine this assumption. Individual sea otters could potentially be exposed repeatedly to noise above ambient sound levels, but we do not anticipate that temporary behavioral disturbances due to sound exposure would be additive, nor do we anticipate that multiple exposures to Level B harassment sound levels would rise to the level of take by Level A harassment.

We used the sea otter density for the Seward area from surveys and analyses conducted by Weitzman and Esslinger et al. (2015). Methods and assumptions for these surveys can be found in the original publication.

A limited number of individual sea otters occupy the project location depending on multiple factors, such as habitat suitability, prey availability, environmental stressors, predation, subsistence harvest levels, and human activity (Tinker et al. 2019; Eisaguirre et al. 2021). Although sea otters are non-migratory, they typically move amongst focal areas within their home ranges to rest and forage (Garshelis and Garshelis 1984; Laidre et al. 2009). The project area is located at the north, and furthest inland, end of Resurrection Bay, which has a length of just under 30 kilometers (~18.6 miles) and an area of roughly 150 km^2 (~58 square miles). The width and length of Resurrection Bay make it unlikely that there would be 100% daily turnover of individual animals in the project area. Similarly, if sea otters from adjacent coastline were to enter Resurrection Bay to seek calmer waters during rough weather, we would not expect those animals to travel far enough inshore to reach the areas ensonified by the ARRC's pile-driving activities. It is possible that, given the large variability in individual sea otter home range sizes and the potential for daily movement in and out of foraging or resting areas, different individual sea

otters could be found within the ensonification area each day of the project. Thus, we assumed that the estimated harassment events may impact different sea otters up to the maximum number of individual sea otters estimated to be exposed to the ARRC's project activities.

To find the maximum number of individual sea otters that might be exposed to the ARRC's project activities, we multiplied the area of Resurrection Bay by the expected density of sea otters. This resulted in ~347 animals (150 km^2 * 2.31 sea otters per km^2 = 346.5). Thus, the FWS assumes that the 408 estimated harassment events may impact up to 347 different sea otters.

For our take estimate analysis, we subtracted the Level A harassment ensonification area from the Level B harassment ensonification area for each project activity to estimate the total number of Level B harassment events. This approach avoids overestimating the number of Level B harassment events. We rounded the total numbers of Level A harassment and Level B harassment events up to the nearest whole number considering that harassment events are not fractional units. Where the estimated total number of harassment events was between 0.001 and 1, we rounded up to 2 harassment events per day of activity to account for the potential of mother and pup pairs of sea otters encountering project activities.

Sum of Harassment From All Sources

The applicant plans to conduct pile driving and marine construction activities in Seward Alaska for up to a 1-year period. Over the course of the project, we estimate up to ten instances of take by Level A harassment of sea otters from the Southcentral Alaska stock due to PTS associated with cumulative in-water noise exposure during project activities. Project activity sound levels would not reach the 232 dB peak SPL threshold for causing instantaneous PTS in sea otter hearing sensitivity based on our ensonification area calculations. Using soft-start procedures, zone clearance prior to activity startup, and shutdown zones is likely to decrease both the number of sea otters exposed to noise above Level A harassment thresholds and the exposure time of any sea otters entering the Level A harassment zone. This reduces the likelihood of hearing sensitivity losses that might impact the health, reproduction, or survival of affected sea otters. Despite the implementation of mitigation measures, it is anticipated that some sea otters may experience Level A harassment via exposure to in-water noise above threshold criteria during pile-driving activities.

Over the course of the project, we estimate up to 398 instances of take by Level B harassment of sea otters from the Southcentral Alaska stock due to behavioral responses associated with noise exposure during project activities. Although multiple instances of Level B harassment of individual sea otters are possible, these events are unlikely to have significant consequences for the health, reproduction, or survival of affected sea otters, and are not anticipated to aggregate to Level A harassment. The potential effects of multiple Level B harassment noise exposures may include short-term behavioral reactions, displacement of sea otters near active operations, and, in rare cases, potential temporary shifts in hearing thresholds. We anticipate that the likelihood of sea otters experiencing a TTS is low during the project. Project activity sound levels would not reach the peak SPL threshold for causing instantaneous TTS in sea otter hearing sensitivity outside of the 10-m (33-ft) physical interaction shutdown zone based on our ensonification area calculations. Therefore, sea otters would experience TTS as a result of cumulative noise exposure, which is unlikely due to sea otter behavioral patterns. Considering the sound levels of the specified activities, the limited amount of time over non-consecutive days in which the specified activities will occur, and the localized area to be impacted by the specified activities, we do not anticipate that the effects of multiple Level B harassment noise exposures would rise to the level of TTS, an injury, or Level A harassment.

Determinations and Findings

Sea otters exposed to noise from the specified activities are likely to respond with temporary behavioral modification or displacement. The specified activities could temporarily interrupt the feeding, resting, and movement of sea otters. The activities will occur during a limited amount of time and in a localized area, and the impacts associated with the project are likewise temporary and localized. The anticipated effects are short-term behavioral reactions, displacement of sea otters near active operations, and potential shifts in hearing thresholds.

Sea otters that encounter the specified activities may exert more energy than they would otherwise due to temporary cessation of feeding, increased vigilance (for example, repeatedly spyhopping), increased foraging to compensate for disturbance, and retreating from the project location. We expect that affected sea otters would tolerate this exertion without measurable effects on health or reproduction. Most of the anticipated takes would be due to short-term Level B harassment in the form of startling reactions, interruption of feeding, resting, and movement, or temporary displacement. We anticipate that the likelihood of sea otters experiencing a TTS due to noise exposure is low during the project based on the project activity sound levels and sea otter behavioral patterns. While mitigation measures incorporated into the ARRC's request would reduce occurrences of Level A harassment to the extent practicable, a small number of takes by Level A harassment would be authorized for the specified activities, which have Level A harassment zone radii ranging up to 36.4 m (119.4 ft).

Small Numbers

For our small numbers determination, we consider whether the estimated number of sea otters to be subjected to incidental take is small relative to the population size of the species or stock. More specifically, the FWS compares the number of sea otters anticipated to be taken in the year contemplated by the proposed IHA with the population estimate applicable for the year. Here, predicted numbers of sea otters to be taken were determined based on the estimated density of sea otters in the project location and ensonification areas developed using empirical evidence from similar geographic areas. We estimate that the ARRC's specified activities in the specified geographic region would take no more than 347 Southcentral Alaska stock sea otters by Level A harassment and Level B harassment during the 1-year period of this proposed IHA (see *Sum of Harassment from All Sources*). Take of 347 animals is 1.61 percent of the best available estimate of the current Southcentral Alaska stock size of 21,617 animals (Esslinger et al. 2021) ((347 ÷ 21,617) × 100 ≈ 1.61), and represents a ''small number'' of sea otters of that stock.

Further, the specified activity area is small relative to the range of the Southcentral Alaska stock of sea otters. The Southcentral Alaska stock of sea otters ranges well beyond the nearshore waters surrounding the existing Seward Alaska Marine Terminal Freight Dock at the head of Resurrection Bay in Seward, meaning this specified geographic region represents only a small subset of the potential area in which this population may occur.

Therefore, we propose a finding that the ARRC's specified activities would take only small numbers of sea otters

because: (1) Only a small proportion of sea otters would overlap with the areas where the specified activities will occur; and (2) the estimated number of Southcentral Alaska stock sea otters to be taken would be limited to a total of 347 sea otters over the duration of the proposed IHA, which represents a small proportion (1.61 percent) of the stock of sea otters.

Negligible Impact

We propose a finding that any incidental take by harassment resulting from the specified activities cannot be reasonably expected to, and is not reasonably likely to, adversely affect sea otters through effects on annual rates of recruitment or survival and would, therefore, have no more than a negligible impact on the Southcentral Alaska stock of sea otters. In making this finding, we considered the best available scientific evidence including the biological and behavioral characteristics of the species, the most recent information on species distribution and abundance within the specified geographic region, the current and expected future status of the stock (including existing and foreseeable human and natural stressors), the potential disturbance sources caused by the specified activities, and the potential sea otter responses to this disturbance. In addition, we reviewed applicant-provided materials, our own files and datasets, published reference materials, and input from species experts. We propose this finding based on the following: (1) we anticipate that the impacts on sea otters potentially resulting from the specified activities are limited to short-term behavioral reactions, displacement near active operations and, in rare cases, hearing threshold shifts; (2) the potential impacts from the specified activities would not have long-term consequences to a sea otter's survival and reproduction; (3) the total number of sea otters affected and the impact severity are not expected to affect annual rates of recruitment or survival or result in adverse effects on the stock; and (4) we propose mitigation measures that are designed to minimize interactions with and impacts to sea otters.

We anticipate that the impacts on sea otters potentially resulting from the specified activities are limited to short-term behavioral reactions, displacement near active operations, and, in rare cases, hearing threshold shifts. Most sea otters would respond to disturbance by moving away from the source, which may cause temporary interruption of foraging, resting, or other natural behaviors. Affected sea otters are expected to resume normal behaviors soon after exposure with no lasting consequences to their survival or reproduction. Level A harassment from cumulative in-water noise exposure has the potential to result in the injury (hearing threshold shift) of up to ten sea otters during the IHA period. We anticipate a low likelihood of sea otters experiencing hearing threshold shifts due to cumulative in-water noise exposure, however, based on the project activity sound levels and sea otter behavioral patterns. Sea otters spend over half of their time above the surface during the summer months (Esslinger et al. 2014), and likely no more than 70 percent of their time foraging during winter months (Gelatt et al. 2002); thus, their ears would not be exposed to underwater noise for a prolonged time period, thereby reducing their likelihood of experiencing hearing threshold shifts. Based on this information, we anticipate that the vast majority of harassment events will be limited to short-term behavioral reactions and displacement near active operations. These behavioral responses could have temporary biological impacts for affected sea otters but are not anticipated to result in measurable changes in survival or reproduction. Should individual sea otters remain in the immediate project location and be repeatedly harassed, the most biologically consequential repeated behavioral responses would be cessation of nursing or changes to foraging, grooming, or resting. However, the project location is surrounded by suitable sea otter habitat, providing ample opportunity for undisturbed nursing, foraging, grooming, or resting in nearby coves. While individual sea otters could potentially be exposed repeatedly to noise above ambient sound levels, the FWS does not anticipate that multiple exposures to Level B harassment sound levels would rise to the level of take by Level A harassment.

We anticipate that the potential impacts from the specified activities would not have long-term consequences to a sea otter's survival and reproduction. The most severe impact on sea otters potentially resulting from the specified activities is multiple Level A harassment noise exposures. The potential effects of multiple Level A harassment noise exposures may include a greater reduction in a sea otter's hearing sensitivity, but this reduction in hearing sensitivity does not equate to total hearing loss. The reduction in sea otter hearing sensitivity caused by PTS would align with the energy produced by pile-driving activities (for example, low-frequency less than 2 kHz), which would not impair the majority of a sea otter's hearing range. Sea otters do not rely on sound to orient themselves, locate prey, or communicate underwater. Therefore, we do not anticipate PTS from multiple Level A harassment noise exposures would impact sea otters' ability to move, forage, or communicate. Sea otters, especially mothers and pups, do use sound for communication in air (McShane et al. 1995), and sea otters may monitor underwater sound to avoid predators (Davis et al. 1987). However, we anticipate that a sea otter would retain the majority of its hearing range if it experiences PTS from multiple Level A harassment noise exposures and that impacts from PTS would not have long-term consequences to a sea otter's survival and reproduction.

The total number of sea otters affected and the impact severity are not sufficient to change the current population dynamics at the stock scale. Although the specified activities may result in a maximum of 408 incidental takes of up to 347 sea otters from the Southcentral Alaska stock, we do not expect this level of harassment to affect annual rates of recruitment or survival or result in adverse effects on the stock.

Our proposed finding of negligible impact applies to incidental take associated with the specified activities as mitigated by the avoidance and minimization measures identified in the ARRC's mitigation and monitoring plan. These mitigation measures are designed to minimize interactions with and impacts on sea otters. These mitigation measures and the monitoring and reporting procedures are required for the validity of our finding and are a necessary component of the proposed IHA. For these reasons, we propose a finding that the specified project would have a negligible impact on the Southcentral Alaska stock of sea otters.

Least Practicable Adverse Impact

We propose a finding that the mitigation measures required by this proposed IHA would effect the least practicable adverse impact on the Southcentral Alaska stock of sea otters from any incidental take likely to occur in association with the specified activities. In making this finding, we considered the biological characteristics of sea otters, the nature of the specified activities, the potential effects of the activities on sea otters, the documented impacts of similar activities on sea otters, and alternative mitigation measures.

In evaluating what mitigation measures are appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses, we considered the manner and degree to which the successful implementation of the measures is expected to achieve this goal. We considered the nature of the potential adverse impact being mitigated (likelihood, scope, range), the likelihood that the measures would be effective if implemented, and the likelihood of effective implementation. We also considered the practicability of the measures for applicant implementation (for example, the cost and impact on operations).

To reduce the potential for disturbance associated with the activities, the ARRC would implement mitigation measures, including the following:

- Using the smallest diameter piles practicable while minimizing the overall number of piles;
- Using a project design that does not include dredging or blasting;
- Minimizing the use of the impact hammer to the extent possible by using a vibratory hammer to advance piles as deeply as possible;
- Development of a marine mammal monitoring and mitigation plan;
- Visual mitigation monitoring by designated PSOs;
- Halting or delaying activity during environmental conditions that may hinder sea otter detection, such as darkness, adverse weather conditions, high sea states, and other times of limited visibility;
- Maintaining the maximum distance practicable between a vessel and raft of sea otters;
- Operating vessels in such a way as to avoid approaching sea otters or impeding sea otter movements when traveling near the shoreline in shallow water (<20 m [66 ft]) whenever practicable;
- Establishment of shutdown and monitoring zones;
- Site clearance before activity startup;
- Soft-start procedures; and
- Shutdown procedures.

Several additional potential mitigation measures were considered but determined to be not practicable and/or not effective. These measures are listed below:

- *Require use of bubble curtains and other noise-dampening methods*—The applicant indicated that implementation of bubble curtains and other noise-dampening methods such as cofferdams, pile-surrounding casings, sound mitigation screens, and nets around piles would not be effective to reduce sound around filled sheet-pile docks that cannot be enclosed like a standalone pile.
- *Require use of alternate detection methods*—The FWS determined that the required use of alternate detection methods such as infrared sensors; thermal imaging; or surveys conducted by aircraft, unmanned aircraft system, or vessel was not practicable considering that these alternate detection methods would be less effective than PSOs in reducing impacts on sea otters due to the limited number of project activities and small spatial extent of ensonification areas. The applicant would employ PSOs to monitor the project location for sea otters to reduce impacts on sea otters.

Impact on Subsistence Use

The anticipated harassment will not preclude access to harvest areas or interfere with the availability of sea otters for harvest by Alaska Native Peoples. Additionally, the existing ARRC Seward Alaska Marine Terminal Freight Dock is located within the City of Seward, Alaska, where firearm use is prohibited. We therefore propose a finding that the ARRC's anticipated harassment would not have an unmitigable adverse impact on the availability of any stock of sea otters for taking for subsistence uses by Alaska Native Peoples during the specified timeframe. In making this proposed finding, we considered the timing and location of the planned activities and the timing and location of subsistence harvest activities in the project location.

The planned specified activities will occur in areas rarely used for subsistence harvesting activity. Despite no conflict with subsistence use being anticipated, the FWS will conduct outreach with potentially affected communities to see whether there are any questions, concerns, or potential conflicts regarding subsistence use in those areas. If any conflicts are identified in the future, the ARRC will develop a POC specifying the steps necessary to minimize any effects the project may have on subsistence harvest. The POC would ensure that the ARRC would not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC would provide the procedures addressing how the ARRC would work with the affected Alaska Native communities and what actions would be taken to avoid interference with subsistence hunting of sea otters, as warranted.

The FWS has not received any reports and is not aware of information that indicates that sea otters are being or would be deterred from hunting areas or impacted in any way that diminishes their availability for subsistence use by the expected level of pile driving and marine construction activity. If there is evidence that these pile driving and marine construction activities are affecting the availability of sea otters for subsistence uses, we would reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of monitoring requirements is to assess the effects of specified activities on sea otters; to ensure that take is consistent with that anticipated in the small numbers, negligible impact, and subsistence use analyses; and to detect any unanticipated effects on the species or stock. Monitoring plans document when and how sea otters are observed, the number of sea otters, and their behaviors during the observation. This information allows the FWS to measure encounter rates, examine trends in sea otter activity and distribution in the project location, and estimate the number of sea otters potentially affected by the specified activities. The ARRC is required to report all observations of sea otters. To the extent possible, PSOs would record group size, age, sex, behavior, duration of observation, and closest approach to the project activity.

As proposed, monitoring activities would be summarized and reported in formal reports. The ARRC must submit monthly reports for all months during which noise-generating work takes place as well as a final monitoring report that must be submitted no later than 90 days after the expiration of the IHA. We would require approval of the monitoring results for continued operation under the IHA.

We propose a finding that these monitoring and reporting requirements to evaluate the potential impacts of planned activities would ensure that the effects of the activities remain consistent with the rest of the findings.

References Cited

A list of the references cited in this notice may be found at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2026–3037.

Required Determinations

National Environmental Policy Act

We have prepared a draft environmental assessment in accordance with the National

Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We have preliminarily concluded that the proposed action of issuing a final IHA would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this IHA, if finalized, is not required by section 102(2) of NEPA. We are accepting comments on the draft environmental assessment as specified above in **DATES** and **ADDRESSES**.

Endangered Species Act

Under the Endangered Species Act (ESA; 16 U.S.C. 1536(a)(2)), all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. The specified activities would occur entirely within the range of the Southcentral Alaska stock of northern sea otters, which is not listed as threatened or endangered under the ESA. The authorization of incidental take of northern sea otters and the measures included in the proposed IHA would have no effect on other listed species or their designated critical habitat. Consultation under the ESA is not required because the proposed action would have no effect on listed species.

Government-to-Government Consultation

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Alaska Native Tribes and organizations in developing programs for healthy ecosystems. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture, and to make information available to Alaska Natives. Our efforts are guided by *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments,* 512 DM 5—*Procedures for Consultation with Indian Tribes,* 512 DM 6—*Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act Corporations,* 510 FW 1, *The Service's Native American Policy,* and 510 FW 2, *The Service's Alaska Native Relations Policy.*

The FWS has evaluated possible effects of the specified activities on federally recognized Alaska Native Tribes and Alaska Native Claims Settlement Act Corporations. We have evaluated the potential effects of the proposed action and determined that it would not have substantial direct effects on any federally-recognized Tribes or Alaska Native Claims Settlement Corporations. However, we invite continued discussion, either about the project and its impacts or about our coordination and information exchange, throughout the IHA/POC process.

Paperwork Reduction Act

This authorization does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB has previously approved the information collection requirements associated with IHAs and assigned OMB Control Number 1018–0194 (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 the incidental take by Level A harassment and Level B harassment of sea otters from the Southcentral Alaska stock. Authorized take would be limited to disruption of behavioral patterns, displacement of sea otters near active operations, or hearing threshold shifts that may be caused by pile driving and marine construction activities conducted by the ARRC in Seward, Alaska, for a period of up to 1 year.

A. General Conditions for This IHA

(1) Activities must be conducted in the manner described in the revised request dated June 15, 2026, from the ARRC for an IHA and in accordance with all applicable conditions and mitigation measures. The taking of sea otters whenever the required conditions, mitigation, monitoring, and reporting measures are not fully implemented as required by the IHA is prohibited. Failure to follow the measures specified both in the revised request and within this proposed authorization may result in the modification, suspension, or revocation of the IHA.

(2) If project activities cause a form of take other than Level A harassment or Level B harassment, or take of one or more sea otters through methods not described in the IHA, the ARRC must take the following actions:

(i) Cease its activities immediately (or reduce activities to the minimum level necessary to maintain safety);

(ii) Report the details of the incident to the FWS within 24 hours; and

(iii) Suspend further activities until the FWS has reviewed the circumstances and determined whether additional mitigation measures are necessary to avoid further unauthorized taking.

(3) All operation managers, vehicle operators, and machine operators must receive a copy of this IHA and maintain access to it for reference at all times during project work. These personnel must understand, be fully aware of, and be capable of implementing the conditions of the IHA at all times during project work.

(4) This IHA will apply to activities associated with the specified project as described in this document and in the ARRC's revised request. Changes to the specified project without prior authorization may invalidate the IHA.

(5) The ARRC's revised request is approved and fully incorporated into this IHA unless exceptions are specifically noted herein. The request includes:

(i) The ARRC's revised request for an IHA, dated June 15, 2026; and

(ii) The ARRC's revised Protected Species Monitoring and Mitigation Plan, dated May 14, 2026.

(6) Operators will allow FWS personnel or the FWS's designated representative to visit project worksites to monitor for impacts on sea otters and subsistence uses of sea otters at any time throughout project activities so long as it is safe to do so. ''Operators'' are all personnel operating under the ARRC's authority, including all contractors and subcontractors.

B. Avoidance and Minimization

(7) Construction activities must be conducted using equipment that generates the lowest practicable levels of in-water noise within the range of frequencies audible to sea otters.

(8) During all pile-driving activities, regardless of predicted sound levels, a physical interaction shutdown zone of at least 10 m (33 ft) must be enforced. If a sea otter enters or appears likely to enter the shutdown zone, pile-driving activities must be shut down until either the sea otter has been visually observed outside the shutdown zone or at least 15 minutes have elapsed since the last observation time without redetection of the sea otter.

(9) For impact pile-driving activities, a soft-start procedure must be implemented at the start of each day's impact pile-driving activities and at any time following cessation of impact pile driving for more than 30 minutes without monitoring by PSOs. The soft-start procedure requires an initial set of three strikes from the impact driver at

reduced energy if possible, followed by a 30-second waiting period. This procedure must be conducted a total of three times before full-powered strikes if practicable.

(10) Pile-driving activities must be conducted in daylight. If environmental conditions prevent visual detection of sea otters approaching the shutdown zone, pile-driving activities must be stopped until visibility is regained.

C. Mitigation Measures for Vessel Operations

Vessel operators must take every precaution to avoid harassment of sea otters during vessel operations. The applicant must carry out the following measures:

(12) Vessels must maintain a minimum distance of 500 m (0.3 mi) from rafts of 10 or more sea otters unless otherwise needed for safety. If a vessel must transit within 500 m (0.3 mi) from rafts of sea otters, the vessel must travel at a reduced speed and maintain the maximum distance practicable between the vessel and raft of sea otters. Vessels must reduce speed and maintain a minimum distance of 100 m (328 ft) from all sea otters unless otherwise needed for safety.

(13) Vessels must not be operated in such a way as to separate members of a group of sea otters (two or more sea otters) from other members of the group, encircle sea otters, or impede movement of sea otters. Vessels must use established navigation channels or commonly recognized vessel traffic corridors and avoid approaching sea otters or impeding sea otter movements when traveling near the shoreline in shallow water (<20 m or <66 ft) whenever practicable.

(14) When weather conditions require, such as when visibility drops, vessels must adjust speed accordingly to reduce the likelihood of injury to sea otters.

(15) Vessel operators must be provided written guidance for avoiding collisions and minimizing disturbances to sea otters. Guidance will include all measures identified in this section.

D. Monitoring

(16) Operators shall work with PSOs to apply mitigation measures and shall recognize the authority of PSOs up to and including stopping work, except in situations where doing so poses a significant safety risk to personnel.

(17) Duties of the PSOs include watching for and identifying sea otters, recording observation details, documenting presence in any applicable monitoring zone, identifying and documenting potential harassment, and working with operators to implement all appropriate mitigation measures.

(18) A sufficient number of PSOs will be available to meet the following criteria: 100 percent monitoring of shutdown zones during all daytime periods of in-water noise-generating work; a maximum of 4 consecutive hours on watch per PSO; a maximum of 12 hours on watch per day per PSO.

(19) All PSOs will complete training on the project's Protected Species Monitoring and Mitigation Plan designed to familiarize individuals with monitoring and data collection procedures. This training will be completed prior to starting work. A field crew leader with prior experience as a sea otter observer will supervise the PSO team. Initially, new or inexperienced PSOs will be paired with experienced PSOs so that the quality of marine mammal observations and data recording is kept consistent. Resumes for candidate PSOs will be made available to the FWS prior to the start of the project.

(20) The PSOs will be provided with reticule binoculars (7×50 or better), big-eye binoculars or spotting scopes (30×), inclinometers, and range finders. Field guides, instructional handbooks, maps, and a contact list will also be made available.

(21) The PSOs will monitor a pre-clearance zone for 30 minutes prior to the commencement of in-water noise-generating activities and following periods of inactivity of more than 30 minutes to ensure no sea otters are within the shutdown zone prior to initiating or resuming in-water noise-generating activities.

(22) The PSOs will collect data using the following procedures:

(i) All data will be recorded onto a field form or database.

(ii) Global positioning system data, sea state, tidal state, wind force, visibility, and weather condition will be recorded at the beginning and end of a monitoring period, at least every hour in between, at the change of a PSO, and upon observation of sea otters.

(iii) Observation records of sea otters will include date, time, the PSOs' locations, sea otter's heading (if moving), weather condition, visibility, number of sea otters, group composition (adults/juveniles), and the location of the sea otters (or distance and direction from the PSO).

(iv) Observation records will also include initial behaviors of the sea otters, descriptions of project activities and in-water noise levels being generated, the position of sea otters relative to applicable monitoring and Level A harassment or Level B harassment zones, any mitigation measures applied, and any apparent reactions to the project activities before and after mitigation.

(v) For all sea otters in or near a Level A harassment or Level B harassment zone, the PSOs will record the distance from the sound source to the sea otter upon initial observation, the duration of the encounter, and the distance at last observation in order to monitor cumulative sound exposures.

(vi) The PSOs will note any instances of sea otters lingering close to or traveling with vessels for prolonged periods of time.

(23) Monitoring of the shutdown zone must continue for 30 minutes following completion of pile-driving activities.

E. Measures To Reduce Impacts to Subsistence Users

(24) Prior to conducting the work, the ARRC will take the following steps to reduce potential effects on subsistence harvest of sea otters:

(i) Avoid work in areas of known sea otter subsistence harvest;

(ii) Discuss the planned activities with subsistence stakeholders including Southcentral Alaska villages and traditional councils;

(iii) Identify and work to resolve concerns of stakeholders regarding the project's effects on subsistence hunting of sea otters; and

(iv) If any concerns remain, develop a POC in consultation with the FWS and subsistence stakeholders to address these concerns.

F. Reporting Requirements

(25) The applicant, ARRC, must notify the FWS at least 48 hours prior to commencement of activities.

(26) Monthly reports will be submitted to the FWS's Marine Mammals Management office (MMM) for all months during which noise-generating work takes place. The monthly report will contain and summarize the following information: dates, times, weather, and sea conditions (including the Beaufort Scale sea state and wind force conditions) when sea otters were observed; the number, location, distance from the sound source, and behavior of the sea otters; the associated project activities; and a description of the implementation and effectiveness of mitigation measures with a discussion of any specific behaviors the sea otters exhibited in response to mitigation.

(27) A final report will be submitted to the FWS's MMM within 90 days after completion of work or expiration of the IHA. The report will include:

(i) A summary of monitoring efforts (hours of monitoring, activities monitored, number of PSOs, and, if requested by the FWS, the daily monitoring logs).

(ii) A description of all project activities, any additional work yet to be done, factors influencing visibility and detectability of marine mammals (*e.g.,* sea state, fog, glare, and number of PSOs), and factors correlated with the presence and distribution of sea otters (*e.g.,* weather, sea state, and project activities).

(iii) An estimate will be included of the number of sea otters exposed to noise at received levels greater than or equal to Level A harassment and Level B harassment (based on visual observation).

(iv) A description of changes in sea otter behavior resulting from project activities and any specific behaviors of interest.

(v) A discussion of the mitigation measures implemented during project activities and their observed effectiveness for minimizing impacts on sea otters. Sea otter observation records will be provided to the FWS in the form of electronic database or spreadsheet files.

(28) Injured, dead, or distressed sea otters that are not associated with project activities (*e.g.,* animals known to be from outside the project location, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must be reported as soon as possible and within 24 hours of the discovery to both the FWS's MMM (907–786–3800) and the Alaska SeaLife Center in Seward (1–888–774–7325). Photographs, video, location information, or any other available documentation must be provided to the FWS.

(29) All reports shall be submitted by email to *fw7_mmm_reports@fws.gov.*

(30) The ARRC must notify the FWS upon project completion or end of the work season.

Request for Public Comments

If you wish to comment on this proposed authorization, the associated draft environmental assessment, or related documents, you may submit your comments by either of the methods described above in **ADDRESSES.** Please identify the document(s) to which your comments pertain, make your comments as specific as possible, confine them to issues pertinent to the proposed authorization, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. The FWS will consider all comments that are received before the close of the comment period (see **DATES** above). The FWS does not anticipate extending the public comment period beyond the 30 days required under section 101(a)(5)(D)(iii) of the MMPA.

Comments, including names and street addresses of respondents, will become part of the administrative record for this proposal. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Peter Fasbender,

Assistant Regional Director for Fisheries and Ecological Services, Alaska Region, U.S. Fish and Wildlife Service.

[FR Doc. 2026–23734 Filed 11–20–26; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR8355000, 234R5065C6, RX.59389832.1009676; OMB Control Numbers 1006–0005, 1006–0006, and 1006–0023]

Agency Information Collection Activities; Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation; Certification Summary Form, Reporting Summary Form for Acreage Limitation; Forms to Determine Compliance by Certain Landholders; 43 CFR Part 426 and 43 CFR Part 428

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation, are proposing to renew three information collections without change.

DATES: Interested persons are invited to submit comments on or before January 22, 2027.

ADDRESSES: Send your comments on the information collection request (ICR) by email to Janice Perez, Bureau of Reclamation, National Programs Directorate—Project Development and Program Execution, at *janiceperez@usbr.gov.* Please reference the corresponding Office of Management and Budget (OMB) Control Number listed below in the subject line of your comments.

- *1006–0005;* Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation.
- *1006–0006:* Certification Summary Form for Acreage Limitation, or Reporting Summary Form for Acreage Limitation.
- *1006–0023:* Forms to Determine Compliance by Certain Landholders.

FOR FURTHER INFORMATION CONTACT: Janice Perez by email at *janiceperez@usbr.gov,* or by telephone at (303) 817–4477. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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.

Renewal, Without Change, of OMB Control No. 1006–0005

Title of Collection: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

OMB Control Number: 1006–0005.

Form Numbers: Form 7–2180, Form 7–2180EZ, Form 7–2181, Form 7–2184, Form 7–2190, Form 7–2190EZ, Form 7–2191, Form 7–2194, Form 7–21TRUST, Form 7–21PE, Form 7–21PE–IND, Form 7–21FARMOP, Form 7–21VERIFY, Form 7–21FC, Form 7–21XS, Form 7–21XSINAQ, Form 7–21CONT–I, Form 7–21CONT–L, Form 7–21CONT–O, and Form 7–21INFO.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Landholders and farm operators of certain lands in our projects, whose landholdings exceed specified RRA forms submittal thresholds.

Total Estimated Number of Annual Respondents: 5,544.

Total Estimated Number of Annual Responses: 5,654.

Estimated Completion Time per Response: See table below.

Total Estimated Number of Annual Burden Hours: 5,087 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Form 7–2180	60	1,967	2,006	2,006
Form 7–2180EZ	45	218	222	167
Form 7–2181	78	1,076	1,097	1,426
Form 7–2184	45	10	10	8
Form 7–2190	60	133	136	136
Form 7–2190EZ	45	32	33	25
Form 7–2191	78	81	83	108
Form 7–2194	45	4	4	3
Form 7–21PE	75	141	144	180
Form 7–21PE–IND	12	20	20	4
Form 7–21TRUST	60	398	406	406
Form 7–21VERIFY	12	688	702	140
Form 7–21FC	30	372	379	190
Form 7–21XS	30	304	310	155
Form 7–21FARMOP	78	100	102	133
Totals	.....	5,544	5,654	5,087

Abstract: This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. This information collection requires certain landholders (direct or indirect landowners or lessees) and farm operators to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. The forms in this information collection are submitted to districts that use the information to establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. In addition, forms are submitted by certain farm operators to provide information concerning the services they provide and the nature of their farm operating arrangements. All landholders whose entire westwide landholdings total 40 acres or less are exempt from the requirement to submit RRA forms. Landholders who are ''qualified recipients'' have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold category where the land is held. Only farm operators who provide multiple services to more than 960 acres held in trusts or by legal entities are required to submit forms.

Renewal, Without Change, of OMB Control No. 1006–0006

Title of Collection: Certification Summary Form, Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

OMB Control Number: 1006–0006.

Form Numbers: Form 7–21SUMM–C and Form 7–21SUMM–R.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Contracting entities that are subject to the acreage limitation provisions of Federal reclamation law.

Total Estimated Number of Annual Respondents: 120.

Total Estimated Number of Annual Responses: 150.

Estimated Completion Time per Respondent: See table below.

Total Estimated Number of Annual Burden Hours: 6,000 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

Form No.	Burden estimate per form (in hours)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
7–21SUMM–C and associated tabulation sheets	40	113	141	5,640
7–21SUMM–R and associated tabulation sheets	40	7	9	360
Totals		120	150	6,000

Abstract: This information collection is required under the RRA, 43 CFR part 426, and 43 CFR part 428. The forms in this information collection are to be used by district offices to summarize individual landholder (direct or indirect landowner or lessee) and farm operator certification and reporting forms. This information allows us to establish water user compliance with Federal reclamation law.

Renewal, Without Change, of OMB Control No. 1006–0023

Title of Collection: Forms to Determine Compliance by Certain Landholders, 43 CFR part 426.

OMB Control Number: 1006–0023.

Form Numbers: Form 7–2536, Form 7–2537, Form 7–2565, and Form 7–2578.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Entity landholders, trusts, public entities, and religious or charitable organizations identified by Reclamation that are subject to the acreage limitation provisions of Federal reclamation law.

Total Estimated Number of Annual Respondents: 125.

Total Estimated Number of Annual Responses: 125.

Estimated Completion Time per Response: See table below.

Total Estimated Number of Annual Burden Hours: 15 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Generally, these forms will be submitted only once per identified entity, trust, public entity, or religious or charitable organization. Each year, we expect new responses in accordance with the following numbers.

Total Estimated Annual Nonhour Burden Cost: None.

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Limited Recipient Identification Sheet	5	50	50	4
Trust Information Sheet	5	50	50	4
Public Entity Information Sheet	15	15	15	4
Religious or Charitable Identification Sheet	15	10	10	3
Totals		125	125	15

Abstract:

Identification of limited recipients—Some entities that receive Reclamation irrigation water may believe they are under the Reclamation Reform Act of 1982 (RRA) forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these entities may in fact have a different RRA forms submittal threshold than what they believe it to be due to the number of natural persons benefiting from each entity and the location of the land held by each entity. In addition, some entities that are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land) may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The information obtained through completion of the Limited Recipient Identification Sheet (Form 7–2536) allows us to establish entities' compliance with Federal reclamation law. The Limited Recipient Identification Sheet is disbursed at our discretion.

Trust review—In order to administer section 214 of the RRA and 43 CFR 426.7, we are required to review and approve all trusts. Land held in trust generally will be attributed to the beneficiaries of the trust rather than the trustee if the criteria specified in the RRA and 43 CFR 426.7 are met. We may extend the option to complete and submit for our review the Trust Information Sheet (Form 7–2537) instead of actual trust documents when we become aware of trusts with a relatively small landholding (40 acres or less in districts subject to the prior law provisions of Federal reclamation law, 240 acres or less in districts subject to the discretionary provisions of Federal reclamation law). If we find nothing on the completed Trust Information Sheet that would warrant the further review of a particular trust, that trustee will not be burdened with submitting trust documents to us for in-depth review. The Trust Information Sheet is disbursed at our discretion.

Acreage limitation provisions applicable to public entities—Land farmed by a public entity can be considered exempt from the application of the acreage limitation provisions provided the public entity meets certain criteria pertaining to the revenue generated through the entity's farming activities (43 CFR 426.10 and the Act of July 7, 1970, Pub. L. 91–310). We are required to ascertain whether public entities that receive Reclamation irrigation water meet such revenue criteria regardless of how much land the public entities hold (directly or indirectly own or lease) [43 CFR 426.10(a)]. In order to minimize the burden on public entities, standard RRA forms are submitted by a public entity only when the public entity holds more than 40 acres subject to the acreage limitation provisions westwide, which makes it difficult to apply the revenue criteria as required to those public entities that hold less than 40 acres. When we become aware of such public

entities, we request those public entities complete and submit for our review the Public Entity Information Sheet (Form 7–2565), which allows us to establish compliance with Federal reclamation law for those public entities that hold 40 acres or less and, thus, do not submit a standard RRA form because they are below the RRA forms submittal threshold. In addition, for those public entities that do not meet the exemption criteria, we must determine the proper rate to charge for Reclamation irrigation water deliveries. The Public Entity Information Sheet is disbursed at our discretion.

Acreage limitation provisions applicable to religious or charitable organizations—Some religious or charitable organizations that receive Reclamation irrigation water may believe that they are under the RRA forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these organizations may in fact have a different RRA forms submittal threshold than what they believe it to be depending on whether these organizations meet all of the required criteria for full special application of the acreage limitations provisions to religious or charitable organizations [43 CFR 426.9(b)]. In addition, some organizations that (1) do not meet the criteria to be treated as a religious or charitable organization under the acreage limitation provisions, and (2) are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land), may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The Religious or Charitable Organization Identification Sheet (Form 7–2578) allows us to establish certain religious or charitable organizations' compliance with Federal reclamation law. The Religious or Charitable Organization Identification Sheet is disbursed at our discretion.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Heidi Morrow,

Director, National Programs, Project Development and Program Execution.

[FR Doc. 2026–23756 Filed 11–20–26; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–468 and 731–TA–1166–1167 (Third Review)]

Magnesia Carbon Bricks From China and Mexico; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing duty order on magnesia carbon bricks from China and the antidumping duty orders on magnesia carbon bricks from China and Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: October 5, 2026.

FOR FURTHER INFORMATION CONTACT: Rachel Devenney (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 5, 2026, the Commission determined that the domestic interested party group response to its notice of institution (91 FR 40590, July 2, 2026) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).[2]

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on January 13, 2027. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before 5:15 p.m. on January 20, 2027 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by January 20, 2027. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] Commissioner Peter-Anthony Pappas voted to conduct full reviews. Commissioner Samuel T. Negatu did not participate in these proceedings.

[3] The Commission has found the responses submitted on behalf of the Magnesia Carbon Bricks Fair Trade Committee, an ad hoc association composed of Magnesita Refractories Company, Resco Products, Inc., and HarbisonWalker International, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 19, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–23810 Filed 11–20–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–812 and 731–TA–1814 (Preliminary)]

Plastic Balloons From China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty and antidumping duty investigation Nos. 701–TA–812 and 731–TA–1814 (Preliminary) pursuant to the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of plastic balloons from China, provided for in subheadings 9503.00.00 and 9505.90.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by January 4, 2027 The Commission's views must be transmitted to Commerce within five business days thereafter, or by January 11, 2027.

DATES: November 18, 2026.

FOR FURTHER INFORMATION CONTACT: Michael Magill ((202) 205–3402), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on November 18, 2026, by Anagram International, LLC, Eden Prairie, MN and Betallic, LLC Hazelwood, MO.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. 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 duty 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 these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on December 9, 2026. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before noon on December 7, 2026. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission's Public Calendar (Calendar (USITC) | United States International Trade Commission). A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on December 14, 2026, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than 4:00 p.m. on December 8, 2026. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website

at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 18, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–23751 Filed 11–20–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1517]

Certain Transformers and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Granting Joint Motion To Terminate the Investigation Based on Settlement; Termination of the Investigation in Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 10), granting a joint motion to terminate the investigation based on settlement. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 19, 2026, based on a complaint filed on behalf of Ayr Energy, Inc. of Mountain View, California (''Complainant''). 91 FR 53,631 (Aug. 19, 2026). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain transformers and components thereof by reason of misappropriation of trade secrets, false advertising, unfair competition, trademark infringement, false designation of origin, and common law trademark infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States or to prevent the establishment of such an industry. The Commission's notice of investigation named the following respondents: Zetwerk Manufacturing Businesses Private Limited of Bangalore, India; Zetwerk Manufacturing USA Inc. of San Francisco, California; Kryfs Power Components Ltd. of Bandra (W), India; and Unimacts Global, LLC of Lexington, Massachusetts (collectively, ''Respondents''). The Office of Unfair Import Investigations (''OUII'') was also named as a party in this investigation.

On September 28, 2026, the Complainant and Respondents filed a joint motion to terminate the investigation in its entirety based on settlement. OUII filed a response in support of the motion.

On October 22, 2026, the ALJ issued the subject ID (Order No. 10), granting the joint motion to terminate the investigation based on settlement. The ID found the motion and the revised public version of the settlement agreement comply with the Commission Rules (19 CFR 210.21(b)). ID at 1–2. The motion certifies that ''there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of the Investigation.'' *Id.* at 2. The ID also found that termination of this investigation by settlement will not adversely affect the public interest. *Id.* at 3. No petitions for review were filed.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The Commission vote for this determination took place on November 19, 2026.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: November 19, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–23813 Filed 11–20–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Athletic Footwear, DN 3954;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be

accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of New Balance Athletics, Inc. on November 18, 2026. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain athletic footwear. The complaint names as respondents: Wenzhou Zibo Trading Co., Ltd. of China; and Wenzhou Bobo International Trade. Co., Ltd. of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business (5:15 p.m.) [1], eight calendar days after publication of this notice in the **Federal Register**. Complainant(s) may file replies to any written submissions no later than three calendar days after the date on which the written submissions were due. Notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure, the deadlines for written submissions and replies shall be counted by calendar days starting with the first calendar day following the **Federal Register** publication date or the due date for written submissions, respectively. The provisions of § 201.14(a) regarding the last day of the period still apply concerning the due date of any filings. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3954'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.) [2] Please note the Secretary's Office will accept only electronic filings unless an exemption is granted. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, [3] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[4]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.
Issued: November 19, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–23816 Filed 11–20–26; 8:45 am]

BILLING CODE 7020–02–P

[1] *See* 19 CFR 201.3(c).

[2] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf.*

[3] All contract personnel will sign appropriate nondisclosure agreements.

[4] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Stipulation of Settlement Under the Clean Water Act

On November 19, 2026, the Department of Justice lodged a proposed Stipulation of Settlement with the United States District Court for the District of New Jersey in the lawsuit entitled *United States* v. *Unico Marine Services, LLC,* Civil Action No. 24–8841.

The United States filed this lawsuit under the Clean Water Act. The United

States' complaint seeks injunctive relief and civil penalties for the unauthorized discharge of oily bilge water into the Atlantic Ocean off the coast of New Jersey from an articulated towing vessel and related violations of the Coast Guard's pollution control regulations. The defendant has since sold the articulated barge and towing vessel and represents that it is no longer in the maritime shipping business. The settlement requires the defendant to pay a $350,000 civil penalty.

The publication of this notice opens a period for public comment on the Stipulation of Settlement. Comments should be addressed to the Assistant Attorney General, Energy and Natural Resources Division, and should refer to *United States* v. *Unico Marine Services, LLC,* D.J. Ref. No. 90–5–1–1–12753. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the Stipulation of Settlement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the Stipulation of Settlement, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Eric D. Albert,

Assistant Section Chief, Environmental Enforcement Section, Energy and Natural Resources Division.

[FR Doc. 2026–23809 Filed 11–20–26; 8:45 am]

BILLING CODE 4410–15–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities: Reinstatement With Change of a Previously Approved Information Collection; Comment Request

AGENCY: Merit Systems Protection Board.

ACTION: 30-Day notice and request for comments.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is seeking to reinstate with change a previously approved information collection request (ICR), identified by OMB Control No. 3124–0017, in accordance with the Paperwork Reduction Act (PRA). MSPB will submit the ICR to the Office of Management and Budget (OMB) for review and clearance. MSPB's ICR expired on September 30, 2026. This information collection is part of MSPB's statutory mission to adjudicate appeals of certain Federal agency personnel and retirement actions and certain alleged violations of law. The information collection instruments consist of the Initial Appeal Form in different collection mediums: paper; PDF; and electronically through MSPB's electronic filing system, e-Appeal. Through this collection and approval process, MSPB is complying with normal clearance procedures. The purpose of this notice is to allow 30 days for public comment after submission of the collection to OMB.

DATES: Consideration will be given to all comments received by December 23, 2026.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. All comments must reference OMB Control No. 3124–0017.

FOR FURTHER INFORMATION CONTACT: Gina K. Grippando, Clerk of the Board and Senior Agency Official for Privacy, at *privacy@mspb.gov.* You may submit written questions to the Office of the Clerk of the Board by email to *privacy@mspb.gov.* Please include OMB Control No. 3124–0017 in the subject line.

SUPPLEMENTARY INFORMATION: MSPB is authorized to adjudicate appeals of certain Federal agency personnel and retirement actions and certain alleged violations of law. *See* 5 U.S.C. 7701(a); 5 U.S.C. 1204. The Board has published its regulations for processing appeals at 5 CFR parts 1201, 1208, and 1209, which include the information required to be submitted to initiate a new appeal. Individuals must provide this information in writing and are not required to use a particular format.

The purpose of collecting the information is to ensure that individuals submit the required information to file an appeal, as set forth in MSPB's regulations. While no specific format is required, MSPB provides an appeal form, MSPB Form 185 (Initial Appeal Form), to assist individuals in the efficient and timely submission of the information.

As set forth in statute and regulation, MSPB is a quasi-judicial agency of limited jurisdiction. The Board's regulations require that appellants provide certain information when filing an appeal so that the Board can determine whether it has jurisdiction over the appeal and whether the appeal has been filed within the applicable time limit. Although an appeal may be filed in any format, including letter form, the Initial Appeal Form is designed to assist individuals in submitting the required information, and to ensure that individuals file appeals that meet the jurisdictional requirements of MSPB. The information required to file an appeal is set forth at 5 CFR 1201.24, 1208.13, 1208.23, and 1209.6. Once obtained, this information allows MSPB to docket the appeal for assignment, typically to an administrative judge to adjudicate the appeal. If this information is not collected, the process of determining whether MSPB has jurisdiction over any given appeal and any subsequent adjudication will be less efficient and more time consuming.

Appeal Form 185

The Initial Appeal Form (Form 185) for this reinstatement is substantially similar to the recently expired Initial Appeal Form with the following updates. The Instructions include edits to remove references to field offices and an update to the Privacy Act Statement to reflect the current system of records notice for appeals and case records. Part 2—Agency Personnel Action or Decision (non-retirement) includes updates to address changes in laws or regulations, including recent regulatory revisions that went into effect on September 2, 2026. Specifically, it removes the following check boxes: ''Termination during probationary or initial service period'' and ''Negative suitability determination.'' It also modifies the check box that currently states ''Separation, demotion or furlough for more than 30 days by reduction in force (RIF)'' to state ''Reduction-in-force (RIF) action in the Foreign Service.'' And it adds a new check box for ''Failure to restore to duty from Uniformed Service or work-related compensable injury.'' Appendix B includes updates to remove the Denver Field Office and add to the Western Regional Office the following states:

Arizona, Colorado, Kansas (except Kansas City), Montana, Nebraska, New Mexico, North Dakota, South Dakota, Utah and Wyoming. There are also non-substantive formatting updates throughout the Initial Appeal Form.

Law Firm Point of Contact Collection Form

There are no changes to the previously approved form.

e-Appeal Technical Support Collection Form

There are no changes to the previously approved form.

Title: Information Collection Submission for ''E-Appeal/U.S. Merit Systems Protection Board Appeal Form.''

OMB Control No.: 3124–0017.

Type of Information Collection: Reinstatement with Change of a previously approved information collection.

ICR Status: This ICR expired on September 30, 2026. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Abstract of Proposed Collection: This information collection is necessary to ensure that individuals submit the required information to file an appeal, as set forth in MSPB's regulations, including information about the appellant and the personnel action or decision that is being appealed.

Affected Public: Individuals and Households.

Estimated Total Number of Respondents: 5,000.

Estimated Frequency of Responses: Once per year.

Estimated Total Average Number of Responses for Each Respondent: 1.

Estimated Total Annual Burden Hours: 7,500.

Estimated Total Cost: $294,075.

Comments: Submit comments as indicated in the **ADDRESSES** caption above. MSPB is soliciting comments to: (a) evaluate whether the collection of information is necessary for the proper performance of the functions of MSPB, including whether the information shall have practical utility; (b) evaluate the accuracy of MSPB's estimate of the burden of the collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; (d) 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) evaluate the estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Gina K. Grippando,

Clerk of the Board.

[FR Doc. 2026–23760 Filed 11–20–26; 8:45 am]

BILLING CODE 7400–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 26–12]

Proposed Agency Information Collection Request; Comment Request; Reinstatement With Change of a Previously Approved Collection: Restricted Data Use Application

AGENCY: Millennium Challenge Corporation.

ACTION: 60 Day notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Millennium Challenge Corporation (MCC) invites public comment on a proposed reinstatement with change of a previously approved information collection that the agency will submit to the Office of Management and Budget (OMB) for approval. This document describes the collection of information for which the MCC intends to seek OMB approval. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection request to OMB.

DATES: Comments are due by January 22, 2027.

ADDRESSES: Please send all written comments by email to Christopher Ice, Chief Information Officer, *icece@mcc.gov.* Include the docket number or OMB Control Number in the subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documentation, may be directed to Christopher Ice, Chief Information Officer, MCC, via email at *icece@mcc.gov,* or by telephone at 202–521–2652.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of MCC's functions; (b) the accuracy of the estimated burden of the proposed collection; (c) ways for MCC to enhance the quality, utility, and clarity of the information to be collected; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection and your comments will become a matter of public record.

Title of Information Collection: MCC Restricted Data Use Application.

OMB Control Number: 0414–0001.

Type of Review: Reinstatement with changes of a previously approved information collection.

Respondents/Affected Public: Researchers, including university and college faculty and students, who will use this data for statistical analysis.

Total Estimated Number of Respondents: Approximately 10 new respondents are expected annually to access MCC-funded restricted data.

Frequency: One application per respondent for each restricted data package requested.

Estimated Average Burden per Response: 60 minutes.

Estimated Total Annual Burden: 10 hours total.

Estimated Total Annual Cost to Public: There are no costs to respondents other than their time.

Respondents' Obligation: Voluntary reply.

Abstract: MCC is requesting reinstatement, with changes, of a previously approved information collection under OMB Control Number 0414–0001. This collection expired on April 30, 2025. The agency seeks to reinstate the collection with several substantive modifications designed to simplify the application process for respondents and the review process for the agency. Specifically, MCC would no longer require documentation of review by an institutional review board unless a research project uses additional data sources that could permit subjects to be reidentified; and MCC would conduct

reviews of restricted data applications internally to reduce processing time. These changes are expected to result in a net decrease of 0.5 hours in the public burden per user, or 25 hours total for all anticipated annual users.

MCC is committed to providing public access to high-value data collected as part of the development, implementation, and evaluation of MCC-funded programs, while being equally committed to protecting the confidentiality of individuals and organization from which the data are collected. To achieve these twin aims, MCC publishes de-identified public files of data on its website. In addition, MCC makes restricted data files available in cases where the de-identification efforts for public files would significantly impair the analytical potential of the data or where the data contain highly sensitive information that cannot be shared as a public file. Researchers may apply to access and use restricted data, provided that they meet eligibility criteria and agree to the terms of access and use established by MCC, including agreeing to follow strict requirements for maintaining data confidentiality.

The MCC Restricted Data Research Application Form and accompanying restricted data use agreement collect information that will be used by MCC to evaluate whether respondents qualify for access to MCC's restricted data. The application, which will be submitted electronically, requires the provision of specific information by the respondent, such as (i) the name, contact information, and CV/Resume/Biosketch for each person that will access the restricted data, (ii) a research proposal describing the need for the data and how it will be used, including the use of any ''linkage data'' that might identify respondents, and (iii) a signed restricted data use agreement. Should MCC determine that institutional review board review is necessary because the applicant proposes using linkage data, they will be asked to provide evidence of institutional review board approval or exemption of the research proposal.

(Authority: Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

Dated: November 18, 2026.

Brian Finkelstein,

Acting Vice President, General Counsel, and Corporate Secretary.

[FR Doc. 2026–23759 Filed 11–20–26; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

60-Day Notice for the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery''

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection for Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**.

ADDRESSES: Send comments to Sunil Iyengar, National Endowment for the Arts, via email (*research@arts.gov*).

SUPPLEMENTARY INFORMATION: The NEA is particularly interested in comments which:

- 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 submissions of responses.

Dated: November 18, 2026.

RaShaunda Thomas,

Director (Acting), Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2026–23738 Filed 11–20–26; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; System of Records

AGENCY: National Labor Relations Board (NLRB).

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, and Office of Management and Budget (OMB) Circular No. A–108, the National Labor Relations Board (''NLRB'' or ''Agency'') proposes to establish a new system of records: NLRB–38, Reasonable Accommodation Records. This system will support the Agency's Reasonable Accommodation program. This system of records allows the Agency to collect and maintain records on current and former employees who request or receive reasonable accommodation on the basis of disability and religion under the Agency's Reasonable Accommodation program as required, respectively, by the Rehabilitation Act of 1973, as amended, and Title VII of the Civil Rights Act, as amended.

DATES: Written comments on the system's routine uses must be submitted on or before December 23, 2026. The routine uses in this action will become effective on December 23, 2026 unless written comments are received that require a contrary determination.

ADDRESSES: All persons who desire to submit written comments for consideration by the Agency in connection with this proposed notice of the amended system of records shall mail them to the Agency's Senior Agency Official for Privacy, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, or submit them electronically to *privacy@nlrb.gov*. Comments may also be submitted electronically through *http://www.regulations.gov,* which contains a

copy of this proposed notice and any submitted comments.

FOR FURTHER INFORMATION CONTACT: Ibrahim M. Ibrahim, Privacy and Information Security Specialist, Office of the Chief Information Officer, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–3733, or at *privacy@nlrb.gov.*

SUPPLEMENTARY INFORMATION: This system allows the Agency to collect and maintain records on employees with a medical condition or disability and/or a sincerely held religious belief, practice, or observance who have requested or received reasonable accommodation.

Section 501 of the Rehabilitation Act of 1973, as amended, prohibits discrimination in employment based on disability and requires Federal agencies to provide reasonable accommodation to qualified employees and applicants with disabilities, unless doing so would impose an undue hardship. The purpose of reasonable accommodation is to provide modifications or adjustments to: (1) the job application process that enable a qualified applicant with a disability to enjoy equal employment opportunities; (2) the work environment; and/or (3) the way a position is customarily performed.

Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*), and implementing regulations at 29 CFR 1605.2, require Federal agencies to reasonably accommodate an employee's or applicant's sincerely held religious belief, practice, or observance when it conflicts with a work requirement, unless doing so would impose an undue hardship.

SYSTEM NAME AND NUMBER:

NLRB–38, Reasonable Accommodation Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are stored within a government-certified cloud solution overseen by the Agency's Office of the Chief Information Officer (OCIO) based in Washington, DC, Headquarters. The Agency's address is available on its website (*www.nlrb.gov*).

SYSTEM MANAGER(S):

Director, Office of Human Resources, National Labor Relations Board. The Agency's address is available on its website (*www.nlrb.gov*).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*); Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, 793, 794, and 794d); Executive Order 13164, *Requiring Federal Agencies To Establish Procedures To Facilitate the Provision of Reasonable Accommodation* (July 26, 2000); 5 CFR part 339; 29 CFR part 1605 (Guidelines on Discrimination Because of Religion); 29 CFR part 1614 (Federal Sector Equal Employment Opportunity); 29 CFR part 1630 (Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act); and 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

This system of records supports the Agency's collection, maintenance, and use of records about employees who request or receive reasonable accommodation from the Agency for medical or religious reasons. This system of records also allows the Agency to track and report the processing of requests for reasonable accommodation to comply with applicable law and regulations, to inform and determine appropriate workplace accommodation for particular employees, and to preserve and maintain the confidentiality of medical and religious information consistent with the above-referenced authorities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include current employees who request or receive reasonable accommodation under the Rehabilitation Act of 1973, as amended, and/or Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e. This system also includes former employees who previously requested or received a reasonable accommodation during their employment with the Agency. Covered individuals also include authorized individuals or representatives (*e.g.,* family members, attorneys) acting on behalf of an applicant for employment or an employee in connection with a reasonable accommodation request. This system does not cover applicants for employment. However, it may include records relating to reasonable accommodation needs identified during the employment application process to the extent such records are incorporated into an employee's reasonable accommodation file upon entry on duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include the name and work contact information of the individual seeking accommodation and the individual's supervisor; the requester's reasonable accommodation request and supporting documentation (including information concerning the nature of the disability or religious belief and the need for the requested accommodation); the nature/type of accommodation(s) sought; the date the accommodation request was initiated; the requester's status (*i.e.,* current or former employee); the requester's job position (*i.e.,* occupational series, grade level, and agency component) and work/duty location; and whether the request was granted or denied and, if denied, the reason for the denial.

RECORD SOURCE CATEGORIES:

Information is obtained from Agency employees and/or their medical practitioners or authorized individuals acting on behalf of employees who are requesting or have received medical/disability and/or religious accommodation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system may be disclosed outside the NLRB as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To a federal, state, or local agency (including a bar association or other legal licensing authority), charged with the responsibility for investigating, defending, or pursuing violations of law or rule (civil, criminal, or regulatory in nature), in any case in which there is an indication of a violation or potential violation of law or rule;

2. In a federal, state, or local proceeding or hearing, which is administrative, judicial, or regulatory, in accordance with the procedures governing such disclosure and proceeding or hearing, including, but not limited to, National Labor Relations Board Rule 29 CFR 102.118, and such records are determined by the Agency to be arguably relevant to the litigation;

3. To the Agency's legal representative, including the Department of Justice and other outside counsel, where the Agency is a party in litigation or has an interest in litigation, including when any of the following is a party to litigation or has an interest in such litigation: (a) the Agency, or any office thereof; (b) any employee of the Agency in his or her official capacity; (c) any employee of the Agency in his or her individual capacity, where the Department of Justice has agreed or is considering a request to represent the employee; or (d) the United States,

where the Agency determines that litigation is likely to affect the Agency or any of its offices;

4. To individuals who need the information in connection with the processing of an internal Agency grievance when such records are determined by the Agency to be arguably relevant to the internal Agency grievance;

5. To an arbitrator to resolve disputes under a negotiated Agency grievance arbitration procedure when such records are determined by the Agency to be arguably relevant to the internal Agency grievance;

6. To a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the constituent about whom the records are maintained;

7. To the following Federal agencies: (a) the Office of Management and Budget in order to obtain advice regarding the Agency's obligations under the Privacy Act, or to assist with the Agency's budget requests; (b) the Department of Justice in order to obtain advice regarding the Agency's obligations under the Freedom of Information Act; or (c) the National Archives and Records Administration, in records management inspections conducted under the authority of 44 U.S.C. 2904, 2906;

8. To appropriate agencies, entities, and persons when:

a. The National Labor Relations Board determines that the use of information from this system of records is reasonably necessary and otherwise compatible with the purpose of collection to assist another federal recipient agency or entity in (a) responding to a suspected or confirmed breach of private information, or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security resulting from a suspected or confirmed breach; or

b. The National Labor Relations Board suspects or has confirmed there has been a breach of this system of records; and (a) the NLRB has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the NLRB (including its information systems, programs, and operations), the Federal Government, or national security; and (b) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the NLRB's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for NLRB, when necessary to accomplish an agency function related to this system of records. Individuals provided with information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Agency employees;

10. To the National Archives and Records Administration (NARA), pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906, as well as to NARA's Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS's offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies; and

11. To the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority (FLRA), Equal Employment Opportunity Commission (EEOC), Office of Special Counsel (OSC), Office of Personnel Management (OPM), or another appropriate federal agency or entity when needed by that agency or entity to evaluate, process, adjudicate, and/or arbitrate a claim or appeal filed by an Agency employee or applicant arising out of or relating to the employee's or applicant's request for reasonable accommodation.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Staff may retrieve records by the name of the employee.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with General Records Schedule 2.3, Employee Relations Records, Item 020, which provides for destruction three years after an employee's separation from the agency or, in the case of litigation, all appeals are concluded, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic system-based access controls are in place to prevent data misuse. Access to electronic information is controlled by administrators who determine users' authorized access based on each user's office and position within the office. Access criteria, procedures, controls, and responsibilities are documented and consistent with the policies stated in applicable guidance from the NLRB Office of the Chief Information Officer. All network users are also warned at the time of each network login that the system is for use by authorized users only and that unauthorized or improper use is a violation of law.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to their own records in this system should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.119(b)–(c).

CONTESTING RECORD PROCEDURES:

Individuals may request amendment of a record in this system pertaining to their own records by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.119(d). As that subsection explains, the requester must provide verification of identity as described in 29 CFR 102.119(e), and the request must set forth the specific amendment requested and the reason for the requested amendment.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether this system contains a record pertaining to such individual by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.119(a).

EXEMPTIONS PROMULGATED FOR THE SYSTEM: NONE.

HISTORY:

None.

Dated: Washington, DC, November 19, 2026.

By direction of the Board.

Farah Z. Qureshi,

Deputy Executive Secretary.

[FR Doc. 2026–23779 Filed 11–20–26; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; System of Records

AGENCY: National Labor Relations Board (NLRB).

ACTION: Rescindment of systems of records notices; notice of modified systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, and Office of Management and Budget (OMB) Circular No. A–108, the National Labor Relations Board (''NLRB'' or ''Agency'') is rescinding eight existing systems of records notices (SORNs) and modifying five others. The NLRB has identified eight SORNs that duplicate government-wide systems of records or have been superseded by other NLRB-specific systems. Records formerly covered by these SORNs are now maintained as part of corresponding government-wide systems or replacement NLRB systems. Additionally, the NLRB is adding two routine uses to five other systems of records to address breach responses consistent with Office of Management and Budget (OMB) Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information* (Jan. 3, 2017).

DATES: Written comments on the system's routine uses must be submitted on or before December 23, 2026. The routine uses in this action will become effective on December 23, 2026 unless written comments are received that require a contrary determination.

ADDRESSES: All persons who desire to submit written comments for consideration by the Agency in connection with this proposed notice shall mail them to the Agency's Senior Agency Official for Privacy, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, or submit them electronically to *privacy@nlrb.gov.* Comments may also be submitted electronically through *http://www.regulations.gov,* which contains a copy of this proposed notice and any submitted comments.

FOR FURTHER INFORMATION CONTACT: Ibrahim M. Ibrahim, Privacy and Information Security Specialist, Office of the Chief Information Officer, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–3733, or at *privacy@nlrb.gov.*

SUPPLEMENTARY INFORMATION: First, the NLRB is rescinding the following systems:

1. NLRB–2, Applicant Files for Attorney and Field Examiner Positions, 64 FR 23362 (Apr. 30, 1999).

This system is proposed for rescindment because recruitment and hiring records are now covered by the Office of Personnel Management (OPM) GOVT–5, Recruiting, Examining, and Placement Records, 79 FR 16834 (Mar. 26, 2014); modification published at 86 FR 68291 (Dec. 1, 2021) and 87 FR 5874 (Feb. 2, 2022).

2. NLRB–5, Employment and Performance Records, Attorneys and Field Examiners, 65 FR 60214 (Oct. 10, 2000).

This system is proposed for rescindment because the records it contained are now covered by government-wide or other NLRB SORNs, as follows:

- Personnel records (non-payroll, non-performance), such as copies of personnel records and official personnel files, are covered by OPM/GOVT–1, General Personnel Records, 77 FR 73694 (Dec. 11, 2012); modification published at 87 FR 5874 (Feb. 2, 2022) and 88 FR 56058 (Aug. 17, 2023).
- Performance records, such as evaluation reports and career development appraisals, are covered by OPM/GOVT–2, Employee Performance File System Records, 71 FR 35347 (June 19, 2006); modification published at 87 FR 5874 (Feb. 2, 2022).
- Any adverse-action records (*e.g.,* performance-based reductions in grade, removal actions, and terminations of probationers) are covered by OPM/GOVT–3, Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers, 71 FR 35350 (June 19, 2006); modification published at 87 FR 5874 (Feb. 2, 2022).
- Job application files (copies of employment applications and employment interview reports) are now covered by OPM/GOVT–5, Recruiting, Examining, and Placement Records, 79 FR 16834 (Mar. 26, 2014); modifications published at 86 FR 68291 (Dec. 1, 2021) and 87 FR 5874 (Feb. 2, 2022).

3. NLRB–6, Employment and Performance Records, Nonprofessionals and Nonlegal Professional Employees, 65 FR 60214 (Oct. 10, 2000).

This system is proposed for rescindment for the same reasons as NLRB–5, with records now maintained under the following:

- Personnel records (non-payroll, non-performance), such as copies of personnel records and official personnel files, are covered by OPM/GOVT–1, General Personnel Records, 77 FR 73694 (Dec. 11, 2012); modifications published at 87 FR 5874 (Feb. 2, 2022) and 88 FR 56058 (Aug. 17, 2023).
- Performance records, such as evaluation reports and career development appraisals, are covered by OPM/GOVT–2, Employee Performance File System Records, 71 FR 35347 (June 19, 2006); modification published at 87 FR 5874 (Feb. 2, 2022).
- Any adverse-action records (*e.g.,* performance-based reductions in grade, removal actions, and terminations of probationers) are covered by OPM/GOVT–3, Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers, 71 FR 35350 (June 19, 2006); modification published at 87 FR 5874 (Feb. 2, 2022).
- Job application files (copies of employment applications and employment interview reports) are now covered by OPM/GOVT–5, Recruiting, Examining, and Placement Records, 79 FR 16834 (Mar. 26, 2014); modifications published at 86 FR 68291 (Dec. 1, 2021) and 87 FR 5874 (Feb. 2, 2022).

4. NLRB–8, Health Maintenance Program Records, 53 FR 17262 (May 16, 1988).

This system is proposed for rescindment because these records are covered by OPM/GOVT–10, Employee Medical File System Records, 75 FR 35099 (June 21, 2010); modification published at 87 FR 5874 (Feb. 2, 2022).

5. NLRB–9, Occupational Injury and Illness Records, 53 FR 17262 (May 16, 1988).

This system is proposed for rescindment because these records are now covered under the Department of Labor's SORN, DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File, 81 FR 25776 (Apr. 29, 2016).

6. NLRB–12, Pre-Filing Communications, 53 FR 17262 (May 16, 1988).

This system is proposed for rescindment because pre-filing communications are now maintained in NLRB's NxGen case management system and covered by NLRB–33, Next Generation Case Management System (NxGen), 89 FR 24869 (Apr. 9, 2024).

7. NLRB–14, Equal Employment Opportunity Program Management System, 53 FR 17262 (May 16, 1988).

This system is proposed for rescindment because its records are covered by government-wide systems of records. NLRB–14's Equal Employment Opportunity (EEO) complaint, investigation, adjudication, settlement, and litigation records maintained are covered by EEOC/GOVT–1, Equal Employment Opportunity in the Federal Government Complaint and Appeals

Records, 67 FR 49338 (July 30, 2002); modification published at 81 FR 81116 (Nov. 17, 2016). NLRB–14's demographic and EEO-related workforce data used for affirmative employment and EEO reporting purposes are covered by OPM/GOVT–7, Applicant Race, Sex, National Origin, and Disability Status Records, 71 FR 35351 (June 19, 2006); modification published at 87 FR 5874 (Feb. 2, 2022).

8. NLRB–15, Employee Counseling Services Program Records, 53 FR 17262 (May 16, 1988).

This system is proposed for rescindment because the Employee Assistance Program (EAP) records are now covered under the Department of Health and Human Services (HHS)/ National Personnel System Center SORN, Employee Assistance Program (EAP) Records, HHS/OS/ASAM/OHR, 62 FR 10569 (Mar. 7, 1997); modification published at 67 FR 4965 (Feb. 1, 2002).

Second, the NLRB is adding two routine uses to five systems of records to address breach responses consistent with OMB M–17–12. The breach response routine uses will be added at the following locations:

System number and name	Designation of new routine uses	**Federal Register** citation
NLRB–3, Biographical Data File–Presidential Appointees.	Add (6) and (7)	64 FR 41167 (July 29, 1999).
NLRB–4, Claim Records	Add (9) and (10)	64 FR 69802 (Dec.14, 1999).
NLRB–7, Grievances, Appeals, Complaints, and Related Litigation Records.	Add (10) and (11)	53 FR 17262 (May 16, 1988).
NLRB–17, Personnel Security Files	Add (8) and (9)	81 FR 83284 (Nov. 21, 2016).
NLRB–18, Office of Inspector General Investigative Files.	Add as the last two unnumbered routine uses	68 FR 34656 (June 10, 2003).

The remainder of these systems of records remains unchanged. The following routine uses are added to each system of records listed above:

( ) Appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records; (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with [the agency's] efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

( ) Another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

HISTORY:

The history for each system is provided in the individual SORN citations listed above.

Dated: November 19, 2026.

By direction of the Board.

Farah Z. Qureshi,

Deputy Executive Secretary.

[FR Doc. 2026–23780 Filed 11–20–26; 8:45 am]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–0760]

Interim Staff Guidance: NRC Application Pathway for Reactor Designs Previously Authorized by U.S. Department of Energy or Department of War

AGENCY: Nuclear Regulatory Commission.

ACTION: Final guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Interim Staff Guidance (ISG), DANU–ISG–2026–02, ''NRC Application Pathway for Reactor Designs Previously Authorized by U.S. Department of Energy or Department of War.'' The purpose of this guidance is to provide a roadmap to NRC requirements, and associated implementing guidance, in select foundational areas to support streamlined NRC reviews of certain applications that propose to address the accomplishment of safety functions by leveraging pertinent information from prior U.S. Department of Energy (DOE) or Department of War (DOW) authorizations of demonstration reactors.

DATES: This guidance is effective on November 23, 2026.

ADDRESSES: Please refer to Docket ID NRC–2026–0760 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–2026–0760. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: *Bridget.Curran@nrc.gov.* For technical questions, contact the individual(s) listed in the ''For Further Information Contact'' section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ISG, titled ''NRC Application Pathway for Reactor Designs Previously Authorized by U.S. Department of Energy or Department of War,'' is available in ADAMS under Accession No. ML26239A071.
- *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: Jackie Harvey, Office of Advanced

Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7534; email: *Jacquelyn.Harvey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 17, 2026, the NRC issued a **Federal Register** notice (91 FR 20717) soliciting public comment on its draft ISG, ''NRC Application Pathway for Reactor Designs Previously Authorized by U.S. Department of Energy or Department of War.'' The NRC received 56 unique comment submissions from individuals and organizations. The NRC considered these comments in developing the final version of the ISG and has prepared a summary and analysis of public comments (''Comment Response Document for the draft ISG: NRC Application Pathway for Reactor Designs Previously Authorized by U.S. Department of Energy or Department of War'') received on the draft ISG (ADAMS Accession No. ML26239A068).

II. Discussion

On May 23, 2025, President Donald J. Trump signed Executive Order (E.O.) 14300, ''Ordering the Reform of the Nuclear Regulatory Commission.'' Section 5, ''Reforming and Modernizing the NRC's Regulations,'' requires the NRC to undertake a review and wholesale revision of its regulations and guidance documents as guided by the policies set forth in section 2 of E.O. 14300. Section 5(d) of the E.O. requires the NRC to establish an expedited pathway to approve reactor designs that the U.S. DOE or DOW have tested and that have demonstrated the ability to function safely.[1] The NRC is addressing section 5(d) of this E.O. primarily through two activities, as summarized later in this document. This **Federal Register** notice includes one such activity. Specifically, the NRC is issuing an ISG that would facilitate the development and review of applications for an NRC approval that seeks to leverage a prior DOE or DOW authorization.

The purpose of this ISG is to provide a roadmap to NRC requirements and associated guidance for areas in select, foundational areas of reactor facility safety and the protection of public health and safety. Due to the broad range of technology types and deployment options that may be authorized by DOE and DOW, this roadmap compiles NRC application requirements to aid developers while they are establishing their DOE or DOW authorization request and related NRC commercial licensing strategy. Importantly, this roadmap is not intended to be a comprehensive recitation of all applicable NRC requirements for a given requested approval. Nevertheless, this ISG is intended to assist prospective NRC applicants in determining how they can best maximize the overlap between what would be required to satisfy both sets of requirements (*i.e.,* NRC requirements and DOE or DOW requirements, as applicable). In so doing, the NRC may be able to leverage more information that has been previously reviewed and accepted by DOE or DOW when the NRC staff performs its subsequent review of a commercial application. In addition, this ISG is also intended to support a streamlined NRC review of applications in areas that include pertinent information regarding the accomplishment of safety functions related to DOE- or DOW-authorized reactor facilities, in which the NRC staff would appropriately adjust the focus and depth of that review when implementing the whole-of-government ''leveraging'' concept introduced by E.O. 14300.

While not the subject of this **Federal Register** notice, the other primary activity addressing section 5(d) of E.O. 14300 was the initiation of a separate rulemaking that amends NRC requirements in part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' and part 53, ''Risk-Informed, Technology-Inclusive Regulatory Framework for Commercial Nuclear Plants,'' to explicitly establish a pathway for streamlined reviews for licensing commercial reactor designs that have previously received DOE or DOW authorization and that have been tested and have demonstrated the ability to function safely. No change was needed for 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' as it references the part 50 requirement that is being modified in the rulemaking. The final rule for that activity, ''NRC Reviews of Reactor Designs Previously Authorized by U.S. Department of Energy or Department of War,'' is being published separately from this action. The information in this ISG supports NRC reviews of applications under 10 CFR part 50 or part 52 pursuing the explicit pathway established by the rulemaking.

Other efforts that aid in the implementation of section 5(d) of E.O. 14300 include the NRC's issuance of an addendum to the previously existing Memorandum of Understanding (MOU) between the NRC and DOE, titled ''Coordinating DOE and NRC Technical Expertise and Knowledge on Advanced Nuclear Reactor and Advanced Reactor Fuel Technologies'' (ADAMS Accession No. ML25303A288). In particular, the addendum addresses coordination of DOE and NRC technical readiness and sharing of technical expertise and knowledge on advanced nuclear reactor and advanced reactor fuel technologies. The addendum also enables the documented safety analyses for DOE-authorized nuclear facilities that have been tested and that have demonstrated the ability to function safely to be leveraged to streamline and expedite future NRC licensing activities pursuant to E.O. 14300, section 5(d). Future planned activities may include the development of a crosswalk between the NRC regulations and guidance summarized in this ISG and associated DOE authorization process requirements, and consideration and development of other MOUs, as appropriate.

III. Backfitting, Forward Fitting, and Issue Finality

This ISG provides guidance for the development and NRC staff review of applications for licenses, permits, certifications, or approvals under 10 CFR parts 50 and 52 that include consideration of relevant information gathered from a design that has been previously authorized by DOE or DOW as a utilization facility and that has been tested and has demonstrated the ability to function safely. Issuance of this ISG does not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; does not constitute forward fitting as that term is defined and described in MD 8.4; and does not affect the issue finality of any approval issued under 10 CFR part 52. The guidance is for voluntary use by future applicants and is not imposed on any current licensees or applicants or existing or requested approvals under 10 CFR parts 50 or 52, and therefore its issuance does not constitute a backfit, forward fit, or a change affecting issue finality.

IV. Congressional Review Act

This ISG 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

[1] Consistent with E.O. 14347, ''Restoring the United States Department of War,'' this **Federal Register** notice refers to the ''Department of War'' and ''Department of Defense'' interchangeably.

it to be a major rule as defined in the Congressional Review Act.

V. Executive Order (E.O.) 12866

The Office of Information and Regulatory Affairs (OIRA) determined that this final ISG is a significant regulatory action under E.O. 12866. Accordingly, the NRC submitted this final ISG to OIRA for review.

Authority: 42 U.S.C. 2011 *et seq.*

Dated: November 18, 2026.

For the Nuclear Regulatory Commission.

Mehdi Reisi Fard,

Director, Division of Advanced Reactor Engineering, Office of Advanced Reactors.

[FR Doc. 2026–23753 Filed 11–20–26; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–0001]

Sunshine Act Meetings

TIME AND DATE: Week of November 23, 2026.

PLACE: Via Teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Week of November 23, 2026

Monday, November 23, 2026

2:30 p.m. Affirmation Session (Public Meeting) (Tentative); Global Laser Enrichment, LLC (Paducah Laser Enrichment Facility); Memorandum and Order Closing the Record of the Proceeding (Tentative); (Contact: Wesley Held: 301–287–3591)

ADDITIONAL INFORMATION: By a vote of 5–0 on November 18 and 19, 2026, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and 10 CFR 9.107 this item be affirmed with less than one week notice to the public. This item will be affirmed in the meeting being held on November 23, 2026. The public is invited to attend the Commission's meeting live; via teleconference. Details for joining the teleconference in listen only mode can be found at *https://www.nrc.gov/pmns/mtg.*

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 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.*

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.

Members of the public may request to receive this information 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.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: November 19, 2026.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2026–23819 Filed 11–19–26; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–07045; NRC–2026–4951]

Radiant Industries, Inc.; Special Nuclear Materials License Application for a Fuel Packing Facility; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a finding of no significant impact (FONSI) and accompanying environmental assessment (EA) regarding the NRC's consideration of a license application from Radiant Industries, Inc. (Radiant). Radiant is requesting a special nuclear material license for a facility in Oak Ridge, Tennessee. If granted, the license would allow Radiant to receive tri-structural isotropic (TRISO) particle fuel for fueling the Kaleidos self-contained, 1-megawatt electric reactors. This phase of the planned operational activities would only include packaging TRISO compacts into monoliths. Based on the EA, the NRC staff has concluded that there will be no significant impacts to environmental resources from the requested license, and therefore, a FONSI is appropriate.

DATES: The EA and FONSI referenced in this document are available on November 23, 2026.

ADDRESSES: Please refer to Docket ID NRC–2026–4951 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–2026–4951. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: *Bridget.Curran@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Mocko, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1631; email: *Rob.Mocko@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuing a special nuclear material license for a facility in Oak Ridge, Tennessee. Radiant is seeking a license under part 70 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Special Nuclear Material.'' The license would allow Radiant to

receive TRISO for fueling the Kaleidos self-contained, 1-megawatt electric reactors. As required by 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC prepared an EA. Based on the results of the EA, the NRC has determined not to prepare an environmental impact statement (EIS) for the license application and is issuing a FONSI.

A special nuclear material license would allow Radiant to receive, store, and load fresh fuel into fuel monoliths at a designated area of the project site. Site operation for future activities could include fresh fuel storage; reactor fueling, testing, refueling, and staging; and spent fuel storage. However, the proposed licensing action is limited to fresh fuel receipt and storage and loading TRISO compacts into monoliths.

On May 1, 2026, the NRC notified Radiant by letter of its acceptance and docketing of Radiant's application that included an environmental report. The acceptance letter included observations of the application. On June 12, 2026, Radiant responded to the NRC's observations. The NRC staff issued a request for additional information (RAI) for the environmental review on June 24, 2026. Radiant responded to the RAI by letter dated June 29, 2026. Radiant also updated the application's environmental report.

II. Environmental Assessment

Description of the Proposed Action

The NRC's proposed action is the issuance of a special nuclear material license to Radiant for a facility in Oak Ridge, Tennessee. NRC would issue the license under 10 CFR part 70 for the project, locally known as the R–50 Site in the city of Oak Ridge, Roane County, Tennessee. If granted, the license would allow Radiant to receive TRISO fuel for the Kaleidos self-contained 1-megawatt electric reactors. This phase of the planned operational activities is limited to fresh fuel receipt and storage, loading TRISO compacts into monoliths, and staging. Potential later phases may include reactor fueling, testing, and storage prior to deployment to potential customer sites. Additional activities must be licensed separately and may require environmental reviews.

The location for the proposed action was selected by Radiant following an evaluation of several potential domestic locations and a subsequent screening process. The Oak Ridge property selection was based on several factors, which included the following: engaging with States and municipalities with the regulatory structure and interest in the nuclear industry; favorable site features that would reduce the environmental impacts of the proposed action; favorable site features that would reduce potential risks from accident scenarios due to natural conditions (seismic, flooding, wildfire); utility availability and transportation accessibility; and, availability of employees and community resources to support those employees.

Purpose and Need for the Proposed Action

The purpose of and need for the proposed agency action—issuance of a special nuclear material license—is to allow Radiant to receive TRISO fuel to the project site and then construct and store fuel monoliths that can be used in small modular reactors. Small modular reactors are an excellent source of electric generation for sites that would benefit from a self-contained reactor due to location, lack of supporting infrastructure and the difficulty of developing conventional electrical generation. Radiant's goal is to develop the site and obtain additional authority, through licensing requests, to mass-produce self-contained nuclear reactors for electrical generation using its own Kaleidos technology. There is a strong demand for small modular reactor technology at remote locations such as Arctic communities, defense installations and remote mining operations. This technology would provide those communities with dependable and sustainable power.

Environmental Impacts of the Proposed Action

The NRC staff considered the potential impacts of the proposed action on land use; visual and scenic resources; climatology, meteorology, and air quality; noise; geology and soils; water resources; ecological resources; historic and cultural resources; socioeconomics; public and occupational health; transportation; and waste management.

The NRC staff determined that the proposed action would result in limited environmental impacts. Construction activities, including grading, excavation, building construction, and installation of supporting infrastructure, would result in localized and temporary increases in noise, air emissions, traffic, and soil disturbance. Construction would occur primarily on previously disturbed industrial land, and applicable permitting requirements, erosion and sediment controls, stormwater management measures, and other best management practices would minimize potential impacts. Operational activities would occur primarily within enclosed industrial facilities and would involve receipt, storage, handling, and packaging of fresh TRISO fuel. The NRC staff does not expect these activities to result in significant impacts to land use, visual resources, air quality, noise, geology and soils, or transportation.

The proposed action would not require groundwater withdrawals or direct discharges to surface waters. Potential effects on water resources would primarily involve erosion and sediment transport during construction and would be minimized through implementation of applicable stormwater management and erosion-control measures. Ecological impacts would primarily consist of limited habitat loss, including clearing approximately 0.6 acres of trees, and temporary noise-related disturbance to wildlife. The NRC staff determined that impacts to ecological resources would be small, based on the previously disturbed nature of the site, the limited construction footprint, and avoidance of wetland and riparian areas. The NRC staff also considered Federally protected species and habitats in its environmental review and conducted consultation under Section 7 of the Endangered Species Act.

The NRC staff evaluated potential impacts to historic and cultural resources in coordination with the Tennessee State Historic Preservation Officer (TN SHPO), the National Park Service, the U.S. Department of Energy (DOE), and Federally recognized Indian Tribes. The TN SHPO concurred with the NRC staff's determination of no adverse effect. The proposed action is also expected to result in limited socioeconomic and transportation effects associated with construction employment, routine facility operations, and the movement of workers and materials. These activities would occur within an established industrial area with existing transportation infrastructure and available regional services.

Potential public and occupational health impacts would be minimized through engineered facility controls, administrative procedures, radiation protection programs, and compliance with applicable Federal, State, and local requirements. The NRC staff separately evaluated radiological impacts and postulated accidents associated with the proposed activities. Waste generated during construction and operation would include conventional construction debris, routine operational waste, and potentially small quantities of radioactive waste associated with fuel

handling and maintenance. These materials would be appropriately characterized, managed, and transferred to authorized recycling, treatment, or disposal facilities, as applicable.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the ''no-action alternative.'' Under the no-action alternative, the NRC would not issue a license to Radiant because regulatory requirements have not been met. Consequently, the facility would not be built and production of the fuel monoliths needed for small modular reactors would not be available to the market. Remote industrial activities, small communities, emergency operations and military installations would continue existing operations depending on diesel fuel for electricity. If the project is not built at the R–50 Site, the environment would remain the same.

Agencies and Persons Consulted

The NRC submitted the draft EA to the State Liaison Officer at the Tennessee Department of Radiological Health (Department) for their review and comment on October 1, 2026. The Department responded on October 19, 2026, with no comments. National Historic Preservation Act (NHPA) consultation was conducted pursuant to 36 CFR 800.8(c). The NRC staff initiated consultation with 18 Federally recognized Indian Tribes with potential historic and ancestral ties to the project vicinity: (1) Absentee Shawnee Tribe, (2) Alabama-Coushatta Tribe of Texas, (3) Alabama-Quassarte Tribal Town, (4) Cherokee Nation, (5) Chickasaw Nation, (6) Coushatta Tribe of Louisiana, (7) Delaware Nation, (8) Eastern Band of Cherokee Indians, (9) Eastern Shawnee Tribe of Oklahoma, (10) Jena Band of Choctaw Indians, (11) Kialegee Tribal Town, (12) Muscogee Nation, (13) Poarch Band of Creek Indians, (14) Seminole Nation of Oklahoma, (15) Seminole Tribe of Florida, (16) Shawnee Tribe, (17) Thlopthlocco Tribal Town, and (18) United Keetoowah Band of Cherokee Indians. These consultations were conducted to make sure the Tribes were afforded an opportunity to identify their concerns, provide advice on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, and, if necessary, participate in the resolution of any adverse effects to such properties. The Muscogee Nation responded with a request for additional information that was subsequently provided by the NRC staff. The Chickasaw Nation responded that the project was located outside their area of interest. The Shawnee Tribe responded that they are not aware of any cultural resources that would be negatively impacted by the project and asked to be updated on the project.

The NRC staff also initiated consultation with the TN SHPO, National Park Service, and DOE, and informed the Advisory Council on Historic Preservation of its intent to use the National Environmental Policy Act process to satisfy NRC's Section 106 responsibilities pursuant to paragraph 800.8(c) of title 36 of the *Code of Federal Regulations* (36 CFR) (all consulting parties were similarly notified). The TN SHPO responded stating that no archaeological resources would be affected and that there would be no adverse effect to the Manhattan Project National Historic Park. The DOE responded stating that they do not need to participate in consultation. The Advisory Council responded reminding the NRC staff of responsibilities pursuant to 36 CFR 800.8(c). The National Park Service responded that they have no comments at this time and requested confirmation that the NRC staff are conducting Tribal consultations.

Subsequently, the NRC staff's determination of no adverse effect and the draft historic and cultural resources section of the EA was made publicly available and available to the TN SHPO, the National Park Service, and 18 Federally recognized Tribes. Responses were received from the Shawnee Tribe; request to be informed if there is a discovery situation) and the Delaware Nation; declining to participate in consultation). Also, the TN SHPO responded with their concurrence on the NRC staff's finding of no adverse effect.

On August 28, 2026, the NRC staff accessed the U.S. Fish and Wildlife Service (FWS) Information for Planning and Consultation system and obtained a species list for the proposed action area. The review identified Federally listed species and/or other species of conservation concern with the potential to occur within the action area. NRC staff used the Tennessee Determination Key to analyze the impacts to gray bat (*Myotis grisescens*), spotfin chub (*Erimonax monachus*), Virginia spiraea (*Spiraea virginiana*), White fringeless orchid (*Platanthera integrilabia*) and the species-specific determination keys to analyze the impacts to the tricolored bat (*Perimyotis subflavus*) and the Indiana bat (*Myotis sodalis*). Based on the NRC staff's answers and the assistance of the Tennessee determination key, NRC determined that the impacts to all six species would be ''Not Likely to Adversely Affect (NLAA).''

For species listed above with a determination of ''Not Likely to Adversely Affect (NLAA),'' no further action is necessary, unless the FWS contacts the NRC within 30 calendar days to clarify details of the action or request additional information. The 30-day review period ended on September 27, 2026, and the NRC staff received no comments from the FWS.

III. Finding of No Significant Impact

Based on its review of the special nuclear material license request, in accordance with the requirements of 10 CFR part 51, the NRC staff has determined that issuing the requested license would not significantly affect the quality of the human environment. No significant radiological or non-radiological impacts are expected from the proposed action. Therefore, the NRC staff has determined that pursuant to 10 CFR 51.31, ''Determinations based on environmental assessment,'' preparation of an EIS is not required for the proposed action, and pursuant to 10 CFR 51.32, ''Finding of no significant impact,'' a FONSI is appropriate. In accordance with 10 CFR 51.32(a)(4), this FONSI incorporates the EA set forth in this notice by reference.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS.

Document description	ADAMS accession No.
NRC acceptance of Radiant Application, dated May 1, 2026	ML26111A377.
Radiant response to NRC observations, dated June 12, 2026	ML26165A001.
Updated Radiant application, environmental report, after RAI's, dated July 1, 2026	ML26181A042.
Environmental Report Radiant R–50 Site Oak Ridge, Tennessee, dated August 12, 2026	ML26226A441.
Radiant submitted license application, dated February 2026, March 2026, and April 2026	ML26058A374 package, ML26074A001 package, ML26085A468.

Document description	ADAMS accession No.
NRC RAI request, dated June 2026	ML26169A217 package.
RAI response, dated June 29, 2026	ML26181A047.
Final EA, dated November 4, 2026	ML26258A146.
FWS species for the proposed action area, dated August 28, 2026	ML26258A127.
Determination keys to analyze the impacts to the tricolored bat, dated August 28, 2026	ML26258A125.
Determination keys to analyze the impacts to the Indiana bat, dated August 28, 2026	ML26258A128.
Determination Key to analyze the impacts to gray bat, spotfin chub, Virginia spiraea, and White fringeless orchid, dated August 28, 2026.	ML26258A129.
NRC Correspondence with the FWS, dated September 2026	ML26268A126.
NRC consultation with the TN SHPO, dated June 2026	ML26132A143 package.
Preliminary consultation with the TN SHPO, dated June 4, 2026	ML26159A003.
Section 106 National Park Service email correspondence dated June 18, 2026	ML26173A083.
Section 106 consultation letter to Tennessee SHPO dated July 16, 2026	ML26190A217.
Section 106 consultation letter to National Park Service dated July 16, 2026	ML26190A216.
Section 106 consultation letters to 17 Federally recognized tribes dated July 16, 2026	ML26190A060 package.
Section 106 response from Shawnee Tribe dated August 3, 2026	ML26218A016.
Section 106 response from Delaware Nation dated August 10, 2026	ML26225A091.
Concurrence from the TN SHPO, dated July 17, 2026	ML26202A085.
Submittal to the State Liaison Officer at the Tennessee Department of Radiological Health, dated October 1, 2026.	ML26280A184.
State response (from Liaison Officer at the Tennessee Department of Radiological Health), dated October 19, 2026.	ML26293A120.
NHPA consultation with 18 Federally recognized Indian Tribes, dated June 2026	ML26132A010 package.
Tribal Responses, dated June 8, 2026, June 8, 2026, June 8, 2026, June 12, 2026	ML26160A031, ML26160A058, ML26160A033, ML26168A466.

Authority: 42 U.S.C. 2011 *et seq.*

Dated: November 18, 2026.

For the Nuclear Regulatory Commission.

Robert Sun,

Chief, Environmental Review Materials Branch, Division of Storage of Fuel, Transportation, and Environmental, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2026–23754 Filed 11–20–26; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Charter Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Charter of the Advisory Committee on Reactor Safeguards (ACRS).

SUMMARY: The Nuclear Regulatory Commission has determined that renewal of the charter for the ACRS until December 2, 2028, is in the public interest in connection with the statutory responsibilities assigned to the ACRS. This action is being taken in accordance with the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Russell E. Chazell, Office of the Secretary, NRC, Washington, DC 20555; telephone: (301) 415–7469 or at *russell.chazell@nrc.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Reactor Safeguards was established by Section 29 of the Atomic Energy Act (AEA) of 1954, as amended. Its purpose is to provide advice to the Commission with regard to the hazards of proposed or existing reactor facilities, to review each application for a construction permit or operating license for certain facilities specified in the AEA, and such other duties as the Commission may request. The AEA, as amended by Public Law 100–456, also specifies that the Defense Nuclear Safety Board may obtain the advice and recommendations of the ACRS.

Membership on the Committee includes individuals experienced in reactor operations and management; probabilistic risk assessment; analysis of reactor accident phenomena; design of nuclear power plant structures, systems and components; materials science; and mechanical, civil, and electrical engineering.

Dated at Rockville, Maryland, this 19th day of November, 2026.

For the U.S. Nuclear Regulatory Commission.

Russell Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2026–23761 Filed 11–20–26; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2027–39 and K2027–41; MC2027–40 and K2027–42]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via

the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

None. *See* Section III for Summary Proceedings.

III. Summary Proceeding(s)

1. *Docket No(s).:* MC2027–39 and K2027–41; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1134, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 18, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s).:* MC2027–40 and K2027–42; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1135, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 18, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,

Legal Assistant.

[FR Doc. 2026–23783 Filed 11–20–26; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage Negotiated Service Agreements; Priority Mail, USPS Ground Advantage, and Parcel Select Negotiated Service Agreements

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 23, 2026.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), it filed with the Postal Regulatory Commission the following requests:

Date filed with Postal Regulatory Commission	Negotiated service agreement product category and No.	MC docket No.	K docket No.
11/09/26	PM–GA 1126	MC2027–29	K2027–30
11/10/26	PM–GA 1127	MC2027–30	K2027–31
11/13/26	PM–GA 1128	MC2027–32	K2027–32
11/13/26	PM–GA 1129	MC2027–33	K2027–33
11/13/26	PM–GA 1130	MC2027–34	K2027–34
11/13/26	PM–GA 1131	MC2027–35	K2027–36
11/16/26	PM–GA–PS 11	MC2027–36	K2027–38
11/17/26	PM–GA 1132	MC2027–37	K2027–39
11/17/26	PM–GA 1133	MC2027–38	K2027–40
11/18/26	PM–GA 1134	MC2027–39	K2027–41

Documents are available at *www.prc.gov.*

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2026–23737 Filed 11–20–26; 8:45 am]

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[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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106927; File No. SR–DTC–2026–012]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Modernize the Direct Registration System

November 18, 2026.

On September 29, 2026, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2026–012, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change would amend the Deposits Guide [3] and the Fee Guide [4] in connection with DTC's modernization of its Direct Registration Service (''DRS'').[5] The proposed rule change was published for comment in the **Federal Register** on October 5, 2026.[6] The Commission has received comments regarding the substance of the changes proposed in the proposed rule change.[7]

On November 6, 2026, DTC filed Partial Amendment No. 1 to the proposed rule change to postpone the implementation date of the proposed rule change until no later than June 30, 2027, with specific implementation date announced by Important Notice at least 14 days in advance.[8] Partial Amendment No. 1 does not substantively change the proposed rule change. The proposed rule change, as modified by Partial Amendment No. 1, is hereinafter referred to as the ''Proposed Rule Change.'' The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons, and for the reasons discussed below, the Commission is approving the Proposed Rule Change, on an accelerated basis.

I. Background

DTC serves as a central securities depository [9] and operates a securities settlement system. DTC's activities include holding securities in physical or dematerialized form, maintaining securities accounts for Participants, providing central safekeeping and asset services, transfers and pledges of securities, and settling transactions by book entry (free of payment or delivery-versus-payment),[10] as well as processing instructions for corporate action offers, elections, solicitations, or tabulations.

DRS is a DTC service that allows investors to hold DRS-eligible securities (''DRS Securities'') [11] in two ways. Investors may hold them indirectly through DTC's book-entry holding model, commonly called holding in ''street name.'' Alternatively, they may hold them directly on the books of the issuer's transfer agent, if that transfer agent is a DTC DRS Agent (''DRS Agent''),[12] commonly called direct registration. DRS allows investors to move DRS Securities between the two holding structures without the issuance of a paper certificate. DRS transfers are processed through three types of instructions: DRS Profile Deposit Requests, DRS Deliver Orders, and DRS Withdrawal by Transfer instructions.

DRS Profile Deposit Requests. A DRS Profile Deposit Request is used to move DRS Securities from an investor's account at a DRS Agent, where the shares are registered in the investor's name, to a Participant's account at DTC, where the shares are registered in the name of DTC's nominee, Cede & Co. (''Cede''), *i.e.,* to move from direct registration to holding in street name.[13] To initiate the transfer, the Participant must submit a DRS Profile Deposit Request to DTC, which the DRS Agent must then approve.[14] Upon the DRS Agent's approval, the shares are re-registered to Cede and moved from the DRS Agent to DTC, which credits the shares to the Participant's account.[15] If the DRS Agent rejects the request, the transaction status is updated with the reason for the rejection, and the Participant is notified. DRS Profile Deposits must be covered by Profile Surety [16] in order to be processed by DTC.[17]

DRS Deliver Orders. Alternatively, an investor may transfer DRS Securities to its account with a Participant by instructing the DRS Agent directly.[18] The DRS Agent then creates a DRS Deliver Order without a DRS Profile Deposit Request, which is completed through DTC's standard Deliver Order process.[19] The receiving Participant is not required to approve or accept the DRS Deliver Order but may reject it after receipt.[20]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Deposits Guide is a Procedure of DTC *available at www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Settlement.pdf.* DTC's Procedures are binding on DTC and each Participant in the same manner that they are bound by the DTC Rules.

[4] The DTC Fee Guide is *available at www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/DTC-Fee-Schedule.pdf.*

[5] Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[6] *See* Securities Exchange Act Release No. 106552 (Sep. 30, 2026), 91 FR 63327 (Oct. 5, 2026) (File No. SR–DTC–2026–012) (''Notice of Filing'').

[7] Comments on the proposed rule changes are *available at https://www.sec.gov/rules-regulations/public-comments/sr-dtc-2026-012.*

[8] DTC submitted a courtesy copy of Partial Amendment No. 1 to the proposed rule change through the Commission's electronic public comment letter mechanism. Accordingly, Partial Amendment No. 1 to the proposed rule change has been publicly available on the Commission's website since November 6, 2026 *available at https://www.sec.gov/rules-regulations/public-comments/sr-dtc-2026-012.*

[9] A ''central securities depository'' means a securities depository who: (1) acts as a custodian of securities in connections with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates; or, (2) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates. *See* 17 CFR 240.17ad–22(a) (referencing the definition of ''securities depository'' described in Section 3(a)(23)(A) of the Act, 15 U.S.C. 78c(a)(23)(A)).

[10] ''Delivery Versus Payment'' means a Delivery against a settlement debit to the Account of the Receiver. *See* Rule 1, *supra* note 5 (definition of ''Delivery Versus Payment''). *See also* The Depository Trust Company, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures (Mar. 2023) (''Disclosure Framework''), at 18, *available at https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf.*

[11] ''DRS Securities'' are securities accepted by DTC as Eligible Securities pursuant to DTC Rule 5 and made eligible for, and participating in, DRS through the FAST Program. *See* DTC Rule 5, Section 1, *supra* note 5.

[12] A ''DRS Agent'' means a transfer agent that participates in DRS or a transfer agent that participates in the direct registration service of the Transferee. *See* Rule 32(A), *supra* note 5 (definition of ''DRS Agent'').

[13] *See* Notice of Filing at 63328, *supra* note 6.

[14] *Id.*

[15] *Id.*

[16] The Profile Surety Program is a DTC-administered program under which a Participant submitting a DRS Profile Deposit Request must obtain a surety bond supporting the Participant's indemnity relating to the instruction. The indemnity covers, among other things, the Participant's representations that it has authority and consent for the instruction and that the information provided is accurate and complete. A Participant may obtain the surety bond from the surety provider selected by DTC to administer the program or from another qualifying surety provider selected by the Participant, provided that the bond satisfies DTC's requirements. *See* Securities Exchange Act Release No. 42704 (Apr. 19, 2000), 65 FR 24242 (Apr. 25, 2000) (SR–DTC–00–04) (establishing Profile and the related screen-based indemnities); *also see* Securities Exchange Act Release No. 43586 (Nov. 17, 2000), 65 FR 70745 (Nov. 27, 2000) (SR–DTC–00–09) (establishing the Profile Indemnity Surety Program).

[17] *See* Notice of Filing at 63327, *supra* note 6.

[18] *See* Notice of Filing at 63328, *supra* note 6.

[19] *Id.*

[20] *Id.*

DRS Withdrawal by Transfer. A DRS Withdrawal by Transfer instruction, which can only be initiated by the Participant, moves shares in the opposite direction, *i.e.,* from holding in street name to direct registration.[21] An investor seeking to move shares out of Cede's name and into the investor's account at the DRS Agent must therefore request the withdrawal through its Participant.[22] The Participant then submits the instruction, requesting that the shares be removed from their free position at DTC and credited, in the investor's name, to the investor's account at the DRS Agent.[23] If the DRS Agent approves the request, the shares are moved out of Cede's name and into the investor's name and credited to the investor's DRS account on the DRS Agent's books.[24] If the DRS Agent rejects the request, the Participant is notified, and the transaction status is updated with the reason for the rejection.[25]

Currently, Participants and DRS Agents submit, review, approve, and complete DRS transfers through multiple steps and manual operational processes.[26] They also rely on a combination of legacy applications, including the Participant Terminal System (''PTS'') and the Participant Browser Service (''PBS'') functions, as well as CCF batch-file processing. According to DTC, these processes can extend transaction processing timeframes and increase operational complexity.[27]

Certain fees that DRS Agents impose on Participants in connection with DRS transactions (''pass-through fees'') are currently collected through DTC's centralized billing service (''Centralized Billing'').[28] These include fees associated with completed Deposits and Withdrawal at Custodian (''DWAC'') transactions and fees associated with incomplete DRS Profile Deposit Requests that DRS Agents reject.[29] DTC assesses a five-percent collection charge in connection with this existing service.[30] All other DRS Agent pass-through fees are collected and remitted outside DTC, with DRS Agents invoicing Participants directly.[31]

II. Description of the Proposed Rule Change

The Proposed Rule Change would amend the Deposits Guide and the Fee Guide in connection with DTC's modernization of DRS. According to DTC, the modernization is designed to support a more automated and streamlined DRS transaction lifecycle, reducing transaction processing times from days to minutes.[32] DTC acknowledges, however, that DRS processing would continue to rely on actions and timelines outside its control.[33] For example, once an instruction is submitted into the DRS workflow, it would remain subject to applicable validations and to any action required of the DRS Agent.[34] Accordingly, the modernization is designed to reduce processing latency at DTC, but it would not eliminate the actions DRS Agents must take to complete a transfer.[35]

Specifically, the Proposed Rule Change would update the Deposits Guide to (i) add a DRS section describing the availability of DRS through DTC's Securities Processing Application (''SPA'') via the DTCC Portal, as well as through an application programming interface (''API'') or message queue (''MQ'') based messaging; (ii) describe the processing of DRS Profile Deposit Requests, DRS Deliver Orders, and DRS Withdrawal by Transfer instructions; (iii) document the existing requirement that DRS Profile Deposits require Profile Surety to be processed by DTC; (iv) describe pass-through fees, as defined below, and the use of DTC's Centralized Billing to collect and remit such fees, including an associated DTC charge for applicable DRS Profile Deposit Requests; (v) describe the assignment of Transaction Status values in SPA and maintenance of an audit trail of status changes, including where to get additional information on DRS functionality; and (vi) provide a navigation table for SPA functionality.

The Proposed Rule Change would update the Fee Guide to (i) expand DTC's existing Centralized Billing service for DRS transactions to require DRS Agents' use of Centralized Billing when an agent elects to impose a fee in connection with a DRS transaction (*i.e.,* a pass-through fee), and (ii) establish a DTC charge for when DTC collects and remits a pass-through fee in connection with certain DRS Profile Deposit Request transactions.

A. Amendments to the Deposits Guide

The Proposed Rule Change would amend the Deposits Guide to add a new section titled ''Direct Registration System (DRS)'' (the ''DRS Section''). The DRS Section would describe how Participants and DRS Agents would access and process DRS transfers following the modernization. DRS transfer processing would be available through DTC's SPA via the DTCC Portal, with users provisioned for SPA access through their firm's designated Super Access Coordinator. Machine-to-machine processing would be available through an API or MQ based messaging, which DTC states would provide a real-time processing solution and allow firms to automate the input and output of transaction instructions.[36] DTC states that these access methods would enable Participants and DRS Agents to submit, review, approve, reject, and monitor DRS transfer instructions more efficiently and effectively.[37] The DRS Section would also identify the processing methods available for DRS transactions after implementation.

The DRS Section would further describe the processing of each type of DRS instruction: DRS Profile Deposit Requests; DRS Deliver Orders; and DRS Withdrawal by Transfer instructions. The DRS Section would explain that a Participant could initiate a DRS Profile Deposit Request to have shares held in an investor's name at a DRS Agent registered in Cede's name moved to the Participant's account at DTC. Upon approval by the DRS Agent, SPA would automatically create the related Deliver Order to credit the DRS Securities to the Participant's account at DTC, eliminating the separate step the DRS Agent currently must take to initiate the Deliver Order.[38] If the DRS Agent rejects the request, the Participant would be notified, and the Transaction Status would be updated to reflect the rejection and its reason. Alternatively, an investor could still instruct its DRS Agent directly to transfer DRS Securities to the investor's account with a Participant, in which case the DRS Agent would continue to create a Deliver Order without a DRS Profile Deposit Request.

The DRS Section would also explain that a Participant could submit a DRS Withdrawal by Transfer instruction requesting the DRS Agent approve the

[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *See* Securities Exchange Act Release No. 53679 (Apr. 19, 2006), 71 FR 24770 (Apr. 26, 2006) (SR–DTC–2006–05) (establishing Centralized Billing as the method to automate and streamline the billing and collection of fees associated with DRS transactions).
[29] *See* Notice of Filing at 63328, *supra* note 6.
[30] *See* Notice of Filing at 63329, *supra* note 6.
[31] *See* Notice of Filing at 63328, *supra* note 6.
[32] *Id.*
[33] *See* Notice of Filing at 63329, *supra* note 6.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *See* Notice of Filing at 63328, *supra* note 6.
[38] *See* Notice of Filing at 63329, *supra* note 6.

removal of shares from the Participant's free position at DTC, their re-registration in the investor's name, and credited to the investor's account at the DRS Agent. As with a DRS Profile Deposit Request, a rejection would be reflected in the Transaction Status, along with its reason, and the Participant would be notified.

The DRS Section would also document the existing requirement that DRS Profile Deposits be covered by Profile Surety to be processed by DTC. DTC states that the Proposed Rule Change would not alter the scope of transactions subject to this requirement.[39]

In addition, the DRS Section would describe DRS Agent pass-through fees and their collection and remittance through Centralized Billing.[40] DTC states that, at the request of Participants and DRS Agents, Centralized Billing would be expanded to support the collection of applicable fees associated with approved DRS Profile Deposit Requests, completed DRS Deliver Orders, and DRS Withdrawal by Transfer instructions that DRS Agents approve or reject.[41] A DRS Agent would remain free to decide whether to impose a pass-through fee. If it elects to do so, however, collection and remittance of the fee through Centralized Billing would be mandatory for both the DRS Agent and the Participant. DTC states that this requirement would eliminate the current bifurcated process, under which some fees are collected through DTC while others are invoiced and paid outside DTC.[42] The DRS Section further describes how pass-through fees collected through Centralized Billing would be reflected in the Participant's monthly invoice and would also be available in daily billing reports.

DTC states that Participants would continue to pay the standard DTC fees set forth in the Fee Guide for the underlying deposit or withdrawal transaction, and DTC would not assess any additional fee for the use of DRS in connection with the expanded Centralized Billing functionality.[43] DTC further states that they currently assess a five-percent collection charge under its existing DRS Centralized Billing service, and it would apply that same charge when it collects and remits a pass-through fee in connection with certain DRS Profile Deposit transactions.[44] DTC also states that the expansion would not increase the percentage of the existing collection charge.[45]

The DRS Section would also describe the Transaction Status values and audit-trail information available through SPA. SPA would assign each instruction a Transaction Status indicating its disposition within its lifecycle and would maintain an audit trail of status changes. DTC states this functionality would apply to instructions submitted or acted upon through the DTCC Portal, API, or MQ-based messaging, except that certain Transaction Status values associated with maker/checker functionality would apply only to transactions processed through the DTCC Portal.[46] DTC explains that the maker/checker control is specific to manual transaction input through the DTCC Portal and does not apply to API or MQ-based messaging.[47] Finally, the DRS Section would include a navigation table identifying the applicable SPA Portal navigation paths, and it would direct users to DTCC Learning for the SPA function user guide and MQ specifications and to the DTCC API Marketplace for API information.

Although not associated with any change to rule text, DTC states that the modernization would also retire certain PTS and PBS functions that currently support DRS processing, as well as CCF batch-file processing as an operational method for certain DRS transactions.[48] Participants and DRS Agents that currently use the applicable PTS or PBS functions would instead use SPA via the DTCC Portal, while those that currently use CCF batch-file processing would instead process DRS transactions through SPA via the DTCC Portal, API, or MQ-based messaging. DTC states that retiring these methods would eliminate legacy DRS processing in favor of the more automated processing methods described above.[49]

B. Amendments to the Fee Guide

The Proposed Rule Change would add six items to the Fee Guide to implement the expansion of Centralized Billing for DRS transactions. Four of the entries would support DTC's collection of pass-through fees imposed by DRS Agents and paid by Participants. Two of these, ''DRS Profile Deposit Participant Initiated Fee Collection'' and ''DRS Profile Deposit Manual Movement Fee Collection,'' would cover pass-through fees associated with DRS Profile Deposits. The other two, ''DRS Withdrawal by Transfer Fee Collection—Approval'' and ''DRS Withdrawal by Transfer Fee Collection—Rejection,'' would cover pass-through fees associated with the approval or rejection of electronic DRS Withdrawal by Transfer instructions. DTC states that these entries would facilitate its collection and remittance of fees established by the applicable DRS Agent but would not establish the amount of those fees.[50] Because each DRS Agent, rather than DTC, would determine the underlying fee, the amount of each pass-through fee would vary.[51]

The remaining two entries, ''DRS Profile Deposit Participant Initiated Movement Collection Charges LPA'' and ''DRS Profile Deposit Participant Manual Movement Collection Charges LPA,'' would reflect DTC's collection charges for processing pass-through fees in connection with DRS Profile Deposits. For purposes of these entries, ''LPA'' refers to the limited participant account of the applicable DRS Agent. DTC states that these charges would compensate it for providing centralized collection and remittance functionality.[52] As noted above, each charge would equal five percent of the pass-through fee collected and would be deducted from the amount DTC remits to the DRS Agent.[53]

III. Description of Partial Amendment No. 1

In Partial Amendment No. 1, DTC proposed to amend the implementation timeframe of the proposal.[54] In its original filing with the Commission, DTC previously stated that the Proposed Rule Change would be effective on November 13, 2026 and if DTC was unable to implement on that date, it would be implemented no later than

[39] *Id.*

[40] Pass-through fees are fees that a DRS Agent imposes and determines in connection with a DRS transaction and that the applicable Participant pays; they are not fees charged by DTC. *See* Notice of Filing at 63329, *supra* note 6. *See also* Securities Exchange Act Release No. 51870 (June 17, 2005), 70 FR 36678 (June 24, 2005) (SR–DTC–2005–03) (approving DTC's collection from Participants of fees and charges for services provided by other entities).

[41] *See* Notice of Filing at 63328–63329, *supra* note 6.

[42] *See* Notice of Filing at 63329, *supra* note 6.

[43] *Id.*

[44] *Id. See also* DTC Fee Guide at 14, *supra* note 4.

[45] *See* Notice of Filing at 63329, *supra* note 6.

[46] *See* Notice of Filing at 63328 n. 17, *supra* note 6.

[47] *See* Notice of Filing at 63332, *supra* note 6.

[48] *See* Notice of Filing at 63328, *supra* note 6.

[49] *Id.*

[50] *See* Notice of Filing at 63330, *supra* note 6.

[51] *Id.*

[52] *Id.*

[53] *See also id.*

[54] Partial Amendment No. 1, *supra* note 8. Upon approval, DTC states that they would add a legend to the Fee Guide and the Deposits Guide stating that the changes have been approved by the Commission but not yet implemented, identifying the implementation date and file number of the proposed rule change, and noting that the legend would be removed automatically upon implementation.

January 2027.[55] Pursuant to Partial Amendment No. 1, the Proposed Rule Change would be effective no later than June 30, 2027.

IV. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[56] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission finds that the Proposed Rule Change is consistent with Sections 17A(b)(3)(F), 17A(b)(3)(D), and 17A(b)(3)(I) of the Act[57] and Rule 17ad–22(e)(21)[58] as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that a clearing agency's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions.[59]

As described above in Section I, DRS transfers currently depend on a mix of legacy applications, scheduled batch-file transmissions, and manual steps. For example, a DRS Agent must take separate actions to initiate a Deliver Order after approving a DRS Profile Deposit Request. Each additional manual step and reliance on manually scheduled file transmission introduces an opportunity for delay and error between the time an investor seeks to move DRS Securities and the time the transfer is completed. As described above in Section II.A, by making DRS available through SPA via the DTCC Portal and through API and MQ-based messaging, the Proposed Rule Change would give Participants and DRS Agents a means to submit, review, approve, reject, and monitor DRS instructions on a more automated basis. In addition, the automatic creation of the related Deliver Order upon a DRS Agent's approval of a DRS Profile Deposit Request would remove a step from the transfer lifecycle entirely. Together, these changes should shorten the time required to complete DRS transfers and reduce the risk of errors associated with manual and batch-based processing.

As DTC acknowledges,[60] the processes in the Proposed Rule Change would not eliminate actions required of DRS Agents, and the timing of a DRS transfer would continue to depend, in part, on the DRS Agent's review and processing of transfer requests submitted by its customers. Similarly, the amendments in the Proposed Rule Change would not eliminate the actions required of Participants, and the timing of a DRS transfer would continue to depend, in part, on the Participant's review and processing of transfer requests submitted by its customers. Nonetheless, reducing processing latency within DTC's own systems should help DRS transfers settle more promptly once the DRS Agent has acted.

The Transaction Status and audit-trail functionality should likewise support more accurate processing. Assigning each instruction a status that reflects its disposition throughout its lifecycle, and maintaining a record of status changes, would give Participants and DRS Agents clearer visibility into where an instruction stands and why an instruction was rejected. This visibility should help users identify and resolve problems more quickly. The fact that certain maker/checker status values would apply only to transactions processed through the DTCC Portal does not detract from this benefit, because the maker/checker control relates specifically to manual input through the Portal.

Additionally, the retirement of certain PTS and PBS functions and of CCF batch-file processing for certain DRS transactions would consolidate DRS processing onto the modernized access methods. Maintaining parallel legacy processing channels alongside the new infrastructure would perpetuate the operational complexity that the modernization is designed to address. Consolidating processing onto a single set of automated methods should therefore reduce operational risk. By reducing that risk and eliminating the delays associated with legacy and batch-based processing, the retirement of these methods should help ensure that DRS transfers are completed more promptly and accurately, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

Finally, documenting in the Deposits Guide the processing of each DRS instruction type, the existing Profile Surety requirement, and the available access methods and technical resources should give Participants and DRS Agents a clear, centralized reference for how DRS operates. Clearer procedures should reduce the likelihood of processing errors. By helping Participants and DRS Agents submit and act on DRS instructions correctly, the documentation should reduce rejections and the need for resubmissions that could delay completion of DRS transfers, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

One commenter makes several recommendations relating to the speed and operations of DRS processing.[61] First, the commenter states that the Proposed Rule Change contains no processing standard, operating hours, or reporting that would allow market participants or the Commission to determine whether DTC's objective of reducing processing times ''from days to minutes'' is achieved.[62] The commenter therefore recommends that DTC: publish target processing times and operating hours for the DRS steps within its control; periodically report actual DRS processing times, broken out by stage (*i.e.,* Participant submission, DTC validation, DRS Agent action, and completion); and extend comparable modernization and standards to DWAC processing, which are not addressed in the Proposed Rule Change.[63]

In response, DTC states that these comments raise broader business and operational considerations that would need to be evaluated through DTC's established stakeholder engagement and governance processes, and are otherwise beyond the scope of the Proposed Rule Change which does not establish public service-level commitments or propose the additional product and processing enhancements proposed by the commenter (including related to DWAC processing).[64]

The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the Exchange Act and the rules thereunder.[65] The absence of a commitment to publish target processing times and operating hours for DRS steps; periodically report actual DRS processing times; and extend

[55] *See* Notice of Filing at 63330, *supra* note 6.

[56] 15 U.S.C. 78s(b)(2)(C).

[57] 15 U.S.C. 78q–1(b)(3)(F), (D), and I.

[58] 17 CFR 240.17ad–22(e)(21).

[59] 15 U.S.C. 78q–1(b)(3)(F).

[60] *See* Notice of Filing at 63329, *supra* note 6.

[61] *See* Securitize Letter.

[62] *Id.* at 4.

[63] *Id.* at 5.

[64] *See* DTC Response at 2 (describing DTC's industry engagement and consideration of business suggestions and stating that any such considerations must account for the views and priorities of the representative stakeholders and ultimately remain subject to DTC's internal governance and then approval by the Commission as a proposed rule change).

[65] 15 U.S.C. 78s(b)(2)(C)(I).

comparable modernization and standards to DWAC processing does not render the Proposed Rule Change inconsistent with the Exchange Act or the rules thereunder. However, despite the lack of published timeframes or actual reporting, the Transaction Status and audit-trail functionality would give Participants and DRS Agents visibility into the status of each individual instruction as it moves through its lifecycle, which should allow market participants to better understand where delays, if any, are occurring in the DRS process.

Second, the commenter states that DTC should address the Participant initiation step and ensure an efficient return path to street name. The commenter states that only a Participant may initiate a DRS Withdrawal by Transfer instruction, and that the Proposed Rule Change sets no expectation for how promptly a Participant must submit that instruction once its customer requests it.[66] The commenter recommends that DTC either (i) establish such an expectation or (ii) explain whether a DRS Agent could initiate a withdrawal on the investor's documented authorization, subject to confirmation by the Participant.[67] In response, DTC states that the Proposed Rule Change is limited to modernizing DTC's existing DRS processing.[68] DTC states that these comments raise broader business and operational considerations that would need to be evaluated through DTC's established stakeholder engagement and governance processes, and are otherwise beyond the scope of the Proposed Rule Change which does not prescribe how Participants receive or process instructions from their customers or propose the additional product and processing enhancements proposed by the commenter (including the ability for a DRS Agent to initiate a withdrawal on the investor's documented authorization).[69]

The Proposed Rule Change does not alter the existing requirement that a DRS Withdrawal by Transfer instruction be initiated by a Participant. It also does not purport to govern the arrangements between Participants and their customers. The commenter's suggestion that DRS Agents be permitted to initiate withdrawals would represent a change to the structure of DRS that is not part of the Proposed Rule Change. In support of its recommendation that DTC establish an expectation for prompt Participant submission of customer-requested withdrawal instructions, the commenter points to FINRA Rule 11870, which sets specific deadlines for broker-dealers to process customer account transfers.[70] However, that requirement is imposed by FINRA, the self-regulatory organization responsible for regulating the conduct of its broker-dealer members toward their customers, not by a clearing agency.

The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the Exchange Act and the rules thereunder.[71] The absence of such requirements on Participants does not render the Proposed Rule Change inconsistent with the Exchange Act or the rules thereunder. Nonetheless, as stated above, the Transaction Status and audit-trail functionality would give Participants and DRS Agents visibility into the status of each individual instruction as it moves through its lifecycle, which should allow market participants to better understand where delays, if any, are occurring in the DRS process.

For these reasons, the Commission finds that the Proposed Rule Change should promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[72]

B. Consistency With Section 17A(b)(3)(D) of the Act

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[73]

As described above in Section II, the Proposed Rule Change would add four Fee Guide entries through which DTC would collect pass-through fees on behalf of DRS Agents. These entries would not establish the amount of any pass-through fee, and DTC would not increase the fees determined by DRS Agents. Instead, DTC would act as a collection and remittance mechanism for amounts that a DRS Agent elects to impose. A pass-through fee would be collected only from a Participant whose DRS transaction gives rise to that fee. Allocating the fee to the Participant that initiates or receives the relevant transaction ties the cost directly to the activity that generates it. The Commission therefore finds that the pass-through fee entries provide for an equitable allocation of fees.

Additionally, as described above in Section II.B, the Proposed Rule Change would also add two Fee Guide entries reflecting a five-percent DTC collection charge for pass-through fees collected in connection with certain DRS Profile Deposit transactions. The Commission understands that this charge is not a new charge.[74] DTC already applies the same percentage under its existing DRS Centralized Billing service, and the Proposed Rule Change would extend that existing rate to additional transactions without increasing it.

This collection charge would apply only when DTC performs the collection and remittance function. It would be calculated on a uniform basis as a percentage of the applicable DRS Agent fee, and it would be deducted from the amount remitted to the DRS Agent. Further, the charge is calculated consistently, matches the rate already in place for comparable services, and compensates DTC for a service it provides.

For these reasons, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(D) of the Exchange Act.

C. Consistency With Section 17A(b)(3)(I) of the Act

Section 17A(b)(3)(I) of the Exchange Act 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 Exchange Act.[75]

DTC acknowledges that the Proposed Rule Change could impose a burden on competition in two respects. First, Participants and DRS Agents that currently use the PTS and PBS functions or CCF batch-file processing being retired would need to transition to SPA, API, or MQ-based messaging, and some firms may incur costs to implement, test, and maintain connectivity or to modify existing systems and operational processes.[76] Second, firms may incur costs to adapt existing billing and payment processes to use Centralized Billing for applicable pass-through fees.[77]

[66] *See* Securitize Letter at 5.

[67] *Id.* at 6 (with respect to (i), stating that such an expectation would not be novel, citing FINRA Rule 11870, which the commenter characterizes as already setting specific deadlines for broker-dealers to process customer account transfers).

[68] *See* DTC Response Letter at 2.

[69] *Id.* (describing DTC's industry engagement and consideration of business suggestions and stating that any such considerations must account for the views and priorities of the representative stakeholders and ultimately remain subject to DTC's internal governance and then approval by the Commission as a proposed rule change).

[70] *See* Securitize Letter at 6.

[71] 15 U.S.C. 78s(b)(2)(C)(I).

[72] 15 U.S.C. 78q–1(b)(3)(F).

[73] 15 U.S.C. 78q–1(b)(3)(D).

[74] *See* Notice of Filing at 63329, *supra* note 6. *See also* Securities Exchange Act Release No. 51870, 70 FR 36678.

[75] 15 U.S.C. 78q–1(b)(3)(I).

[76] *See* Notice of Filing at 63331, *supra* note 6.

[77] *See* Notice of Filing at 63332, *supra* note 6.

The Commission finds that any such burden is necessary and appropriate in furtherance of the purposes of the Act. The transition requirements would apply to all current users of the retired processing methods, and the same replacement access methods would be available to all similarly situated users. Likewise, the requirement to use Centralized Billing would apply uniformly to any DRS Agent that elects to impose a pass-through fee and to the Participants that pay it, and it would not impose any new fees on DRS Agents apart from what currently applies (*i.e.,* the collection charge). Moreover, any such burden is necessary and appropriate to achieve the purposes of Section 17A(b)(3)(F) of the Act. As discussed above, retiring the legacy PTS and PBS functions and CCF batch-file processing, and consolidating DRS processing onto SPA, API, and MQ-based messaging, would reduce manual steps, processing latency, and operational risk, and would thereby promote the prompt and accurate clearance and settlement of securities transactions. Those benefits could not be fully realized if DTC were required to maintain legacy processing channels alongside the modernized system. Similarly, consolidating the collection and remittance of pass-through fees into a single mechanism would eliminate the bifurcated billing process. This would allow Participants and DRS Agents to rely on the same modernized infrastructure for all aspects of a DRS transaction.

One commenter, whose affiliates include a registered transfer agent that records ownership using blockchain technology, states that DRS is the electronic path by which investors holding securities in street name can convert their positions into direct-registration tokens.[78] The commenter contrasts this model with DTCC Tokenization Services,[79] under which, according to the commenter, a Participant's security entitlement may be tokenized within DTC without transfer agent involvement.[80] The commenter states that the Proposed Rule Change does not address DTCC Tokenization Services.[81] As a result, according to the commenter, an investor whose position has been tokenized by DTC and who wishes to hold it in direct registration would need to submit a detokenization instruction followed by a separate DRS withdrawal.[82] The commenter therefore recommends that DTC provide an ''Instant Burn-and-Notify'' capability.[83] The commenter further recommends that this integration be available no later than the commercial launch of DTCC Tokenization Services.[84] Alternatively, the commenter recommends that the Commission require DTC to publish an ''aggressive'' timeline for the integration or commit to a follow-on filing within three months.[85] In the commenter's view, the recommended improvements are necessary to place the two tokenization models on ''competitively balanced footing,'' consistent with Section 17A of the Exchange Act.[86] However, the commenter states that its recommendations should not delay implementation of the Proposed Rule Change.[87]

In response, DTC states that the Proposed Rule Change does not propose to modify or interoperate with DTCC Tokenization Services.[88] DTC also states that the commenter's suggestions were not part of the changes developed and proposed and would require considerable internal and external input.[89] DTC states that it may consider such suggestions through its established working groups, advisory councils, and other stakeholder fora.[90] DTC adds that its consideration must account for the views and priorities of representative stakeholders and remains subject to DTC's internal governance.[91]

The Commission has considered the commenter's concerns and DTC's response and does not find the Proposed Rule Change imposes a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As noted above, the Commission's role under Section 19(b)(2)(C) of the Exchange Act is to determine whether the proposed rule change, as filed, is consistent with the Exchange Act and the rules and regulations thereunder. DTCC Tokenization Services is not the subject of the Proposed Rule Change, and the Proposed Rule Change would not alter the terms on which that service operates. In the DTCC Tokenization Service, registered ownership of the tokenized securities must remain with Cede, and a user of the DTCC Tokenization Service would not be able to transfer a tokenized entitlement to a DRS Agent via DRS.[92] The commenter's recommendations concern the relationship between DRS and the DTCC Tokenization Services, which is a separate DTC service, and, particularly, the absence of an additional integrated capability. The fact that DTC did not include such capability in the Proposed Rule Change does not render the proposal inconsistent with Section 17A(b)(3)(I) of the Exchange Act.

To the contrary, the Proposed Rule Change would reduce processing latency for all DRS transfers and make real-time API and MQ-based messaging available to all Participants and DRS Agents. These improvements should benefit any investor seeking to move securities between street name and direct registration. The commenter itself states that the modernization would directly benefit investors who choose to hold securities in their own names and that the Commission should not delay implementation of the Proposed Rule Change to consider this.[93]

In addition, the commenter encourages the Commission to condition approval on DTC's commitment to ensure that the return path from direct registration to street name, through either a DRS Profile Deposit or a DRS Deliver Order, is as efficient as the path out of street name.[94] According to the commenter, investors are unlikely to move securities into direct registration, including in the form of direct-registration tokens, if returning those securities to a broker-dealer is slow or uncertain.[95] In the commenter's view, both return paths should therefore benefit fully from the modernized processing, so that investors can move freely between direct registration and street name in either direction.[96]

With respect to the return path to street name, the Commission understands that the Proposed Rule Change already applies to both DRS Profile Deposit Requests and DRS Deliver Orders. Both instruction types would be available through SPA, API, and MQ-based messaging and would be

[78] *See* Securitize Letter at 3.

[79] The DTCC Tokenization Service is a service offered by DTCC that allows DTC participants to elect to have their security entitlements to DTC-held securities recorded using distributed ledger technology, rather than exclusively through DTC's current centralized ledger. *See In re Depository Trust & Clearing Corporation,* SEC No-Action Letter, Dec. 22, 2025 (''DTC No-Action Latter'').

[80] *Id.*

[81] *Id.* at 2.

[82] *Id.* at 4.

[83] *Id.* This capability would consist of a single instruction that detokenizes a position and initiates the DRS withdrawal, together with a real-time completion message delivered through the Proposal's API and MQ channels on which a DRS Agent could rely to register the investor.

[84] *Id.* at 6.

[85] *Id.*

[86] *Id.* at 6–7.

[87] *Id.*

[88] *See* DTC Response Letter at 2.

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] DTC No-Action Letter, *supra* note 79, at 7–8.

[93] *See* Securitize Letter at 1–2.

[94] *See* Securitize Letter at 5–6.

[95] *See* Securitize Letter at 6.

[96] *Id.*

subject to the Transaction Status and audit-trail functionality. In addition, the automatic creation of Deliver Orders upon a DRS Agent's approval of a DRS Profile Deposit Request is designed specifically to streamline movement from direct registration into a Participant's account at DTC. The modernization therefore addresses movement in both directions.

For these reasons, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(I) of the Exchange Act.

D. Consistency With Rule 17ad–22(e)(21)

Rule 17ad–22(e)(21) under the Act requires, in part, that a covered clearing agency 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.[97]

The Proposed Rule Change should improve the efficiency and effectiveness of DRS in several respects. Replacing legacy user interfaces and scheduled batch transmissions with SPA, API, and MQ-based messaging, as described above in Section I and II, would give Participants and DRS Agents the ability to automate the processing of DRS transactions. Automating the creation of Deliver Orders would eliminate a redundant step in the DRS Profile Deposit process. The Transaction Status and audit-trail functionality would allow users to track instructions without resorting to manual inquiry.

The expansion of Centralized Billing should also make DRS more efficient. Under the current arrangement, some pass-through fees are collected through DTC while others are invoiced and paid separately between DRS Agents and Participants. This bifurcated arrangement requires firms to maintain two sets of billing and payment processes for fees arising from the same service. Requiring that all applicable pass-through fees be collected and remitted through Centralized Billing would consolidate these processes into a single mechanism and reflect fees in Participants' existing monthly invoices and daily billing reports.

The Commission understands, based upon DTC's representation, that DRS modernization was requested by Participants and DRS Agents,[98] which further supports the conclusion that the change is designed to meet the requirements of DTC's participants.

For these reasons, the Commission finds that the Proposed Rule Change is consistent with Rule 17ad–22(e)(21) under the Exchange Act.

V. Solicitation of Comments on Partial Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Partial Amendment No. 1 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-regulations/self-regulatory-organization-rulemaking*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–DTC–2026–012 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–2026–012. 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-regulations/self-regulatory-organization-rulemaking*). Copies of the filing also 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–2026–012 and should be submitted on or before December 14, 2026.

VI. Accelerated Approval of the Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[99] to approve the proposed rule change prior to the 30th day after the date of publication of Partial Amendment No. 1 in the **Federal Register**. As noted above, Partial Amendment No. 1 delays the implementation timeframe of the proposal from November 6, 2026 to no later than June 30, 2027.[100] The Commission believes that the Partial Amendment is consistent with the Act because it does not raise any regulatory issues and would provide more time before the proposal would go into effect.

For the reasons discussed above, the Commission finds that Partial Amendment No. 1 is reasonably designed to protect investors and the public interest, and consistent with the requirements of the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[101] to approve the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis.

VII. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change, as modified by Partial Amendment No. 1, is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A of the Act[102] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[103] that Proposed Rule Change SR–DTC–2026–012 be, and hereby is, approved.[104]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[105]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–23743 Filed 11–20–26; 8:45 am]

BILLING CODE 8011–01–P

[97] 17 CFR 240.17ad–22(e)(21).

[98] *See* Notice of Filing at 63328–63329, *supra* note 6.

[99] 15 U.S.C. 78s(b)(2).

[100] Partial Amendment No. 1, *supra* note 8.

[101] 15 U.S.C. 78s(b)(2).

[102] 15 U.S.C. 78q–1.

[103] 15 U.S.C. 78s(b)(2).

[104] In approving the Proposed Rule Change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[105] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106924; File No. SR–CCUS–2026–02]

Self-Regulatory Organizations; Cboe Clear U.S., LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule To Reduce the Clearing Fee for Securities Contracts

November 18, 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 13, 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, 15 U.S.C. 78s(b)(3)(A), and paragraph (f) of Rule 19b–4 thereunder, 17 CFR 240.19b–4(f), 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 reduce the Clearing Member Clearing Fee and the Clearing Member Position Transfer Fee (collectively, ''clearing fees'') for securities listed on a national securities exchange and issued and cleared by CCUS (''Securities Contracts'') [3] from $0.0001 per cleared contract to $0.0000 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, effective November 13, 2026, to assess no clearing fees on Securities Contracts by reducing the Clearing Member Clearing Fee and the Clearing Member Position Transfer Fee for Securities Contracts from $0.0001 per cleared contract to $0.0000 per cleared contract. The reduced fees will apply equally to all Securities Contract transactions.[4]

CCUS is proposing to reduce its clearing fees for Securities Contracts in connection with the launch of clearing of Binary KPI Options on CCUS to encourage market participants to trade Binary KPI Options. CCUS's participating exchange for Securities Contracts, Cboe Exchange, Inc. (''Cboe Options'' or the ''Exchange''), has separately filed a proposed rule change to waive fees associated with the trading of Binary KPI Options in connection with its launch of the new product.[5] CCUS believes that the reduction in Securities Contract clearing fees from $0.0001 to $0.0000 complements the Exchange's waiver of fees related to Binary KPI Options and will further encourage clearing firms to support, and market participants to trade, the new product. This approach is consistent with practice at other registered clearing agencies, which have waived clearing-related fees to encourage participation in new clearing services or products.[6]

The Clearinghouse may revisit the clearing fees applicable to Securities Contracts in the future, and any such change would be the subject of a separate rule filing.

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. In particular, CCUS believes that the proposed reduction in clearing fees for Securities Contracts provides for the equitable allocation of reasonable fees among its participants, consistent with Section 17A(b)(3)(D) of the Act.[7]

CCUS believes that reducing its clearing fees to $0.0000 for Securities Contracts is reasonable because it assesses no clearing fee for Securities Contracts in any capacity, and thus no market participant will pay more as a result of the proposed rule change. CCUS further believes the proposed reduction of the clearing fee for Securities Contracts from $0.0001 to $0.0000 per cleared contract is reasonable because it complements the waiver of transaction fees for Binary KPI Options adopted by Cboe Options, further lowering the total cost of trading Binary KPI Options for all Clearing Members. More generally, CCUS believes it is reasonable to assess no fees in connection with the launch of a new product because doing so is designed to encourage participation in Binary KPI Options and thereby promote liquid and active markets in these Securities Contracts, to the benefit of all market participants. CCUS notes that fee reductions and waivers in connection with the launch of new products are a common practice among clearing agencies and exchanges, and that the Commission has previously permitted such fee changes to become effective upon filing.[8] CCUS further notes that the fee reduction is designed to apply during the initial launch period, and CCUS will evaluate the fee level for Securities Contracts as the market for Binary KPI Options develops; any future change to the fee will be subject to a rule filing with the Commission. CCUS also believes that the proposed fee reduction is reasonable and has been set at an appropriate level given the costs, expenses, and revenues associated with providing clearing services for Securities Contracts, because CCUS has determined that it can forgo the revenue from the decrease in fees and continue to cover its operating expenses and regulatory financial resource requirements. The fee reduction will not affect CCUS's risk management practices, margin methodology, or the resources available to CCUS to manage

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CCUS Rule 101(ttt).

[4] The proposed rule change also updates the effective date shown at the top of the Fee Schedule to November 13, 2026.

[5] *See* SR–CBOE–2026–086.

[6] *See, e.g.,* Securities Exchange Act Release No. 85763 (May 2, 2019), 84 FR 20178 (May 8, 2019) (SR–LCH SA–2019–002) (extending an onboarding fee waiver and introducing a fee rebate to incentivize clearing members to build liquidity in a new CDSClear Index Swaptions clearing service); see also Securities Exchange Act Release No. 104513 (December 23, 2025), 90 FR 61450 (December 31, 2025) (SR–LCH SA–2025–009) (waiving the CDSClear Dealer Status annual fee for the first year after go-live to encourage clearing activity).

[7] 15 U.S.C. 78q–1(b)(3)(D).

[8] *See supra* note 6.

the default of a Clearing Member, and CCUS will continue to maintain financial resources in accordance with applicable Commission rules. Finally, CCUS also believes the reduced clearing fee is equitably allocated because it will apply uniformly to all transactions in Securities Contracts and all Clearing Members, each of which will have the same opportunity to benefit from the reduction.

CCUS also believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[9] 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. Eliminating clearing costs for Securities Contracts in connection with the launch of Binary KPI Options clearing at CCUS will lower the cost of accessing CCUS clearing services. CCUS believes this will encourage Clearing Members to clear these products at CCUS and will promote clearing activity in them. By facilitating access to CCUS's clearance and settlement services in this way, the proposed rule change will thereby promote the prompt and accurate clearance and settlement of transactions in these products. CCUS also believes the proposed rule change is consistent with the Section 17A(b)(3)(F) requirement that the rules of a clearing agency not be designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency because, as discussed above, the reduced clearing fee will apply equally to all transactions.

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.[10] The $0.0000 Clearing Member Clearing Fee and $0.0000 Clearing Member Position Transfer Fee will apply equally to all Clearing Members clearing Securities Contracts. The change will not disadvantage or favor any particular Clearing Member in relation to another. Because the proposal reduces fees and no Clearing Member will pay more, it will not adversely affect the ability of Clearing Members or other market participants to engage in cleared transactions or to access CCUS services. To the extent the proposal affects competition, CCUS believes it may promote competition by reducing the costs of clearing and encouraging participation in a new product.

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 [11] and paragraph (f) of Rule 19b–4 [12] 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–CCUS–2026–02 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–2026–02. 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 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–2026–02 and should be submitted on or before December 14, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–23746 Filed 11–20–26; 8:45 am]

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[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] *See* 15 U.S.C. 78q–1(b)(3)(I).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106929; File No. SR–FINRA–2026–026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rules 6380A and 6380B (Transaction Reporting) To Extend the Limited, Temporary Exception From Reporting Specified Overnight Transactions Prior to 8:00 a.m. Eastern Time Until December 31, 2027

November 18, 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 13, 2026, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rules 6380A and 6380B regarding the operation of the FINRA/Nasdaq Trade Reporting Facility Carteret, the FINRA/Nasdaq Trade Reporting Facility Chicago, and the FINRA/NYSE Trade Reporting Facility (the ''Trade Reporting Facilities'' or ''TRFs'') to extend the limited, temporary exception from reporting specified overnight transactions prior to 8:00 a.m. Eastern Time (''E.T.'') until December 31, 2027.[4]

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

Background

The TRFs are facilities of FINRA that are operated by NYSE Market (DE), Inc. (in the case of the FINRA/NYSE TRF) and Nasdaq, Inc. (in the case of the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago). Along with the Alternative Display Facility (''ADF''),[5] the TRFs provide FINRA members with a mechanism for the reporting of over-the-counter (''OTC'') trades in NMS stocks. While members are required to report all OTC trades in NMS stocks to FINRA, they may choose which FINRA facility (or facilities) to use to satisfy their trade reporting obligations. All trade reports submitted to the TRFs, other than non-tape reports,[6] are reported to and publicly disseminated by the appropriate SIP.[7]

In March 2026, FINRA extended the opening time of the TRFs from 8:00 a.m. to 4:00 a.m., such that the current operating hours of the TRFs are 4:00 a.m. to 8:00 p.m. each business day.[8] These operating hours are reflected in the transaction reporting rules for the FINRA/Nasdaq TRFs (FINRA Rule 6380A (Transaction Reporting)) and the FINRA/NYSE TRF (FINRA Rule 6380B (Transaction Reporting)). In July 2026, FINRA adopted amendments to Rules 6320A, 6320B, 6380A and 6380B to further extend the TRF hours such that the TRFs will be operational from 9:00 p.m. on Sundays to 8:00 p.m. Fridays, excluding holidays, with a one-hour pause from 8:00 p.m. to 9:00 p.m. on Monday through Thursday, thereby enabling real-time public dissemination through the SIPs of trade reports for OTC transactions in NMS stocks 23 hours per day, five days per week.[9] The TRF 23/5 Amendments are scheduled to be implemented on December 6, 2026.

In connection with the TRF Early Open Amendments, FINRA provided a limited, temporary exception under Supplementary Material .05 to Rules 6380A and 6380B to permit qualifying overnight transactions to continue to be reported by 8:15 a.m.[10] Specifically, Supplementary Material .05(a)(1) provides that last sale reports for qualifying overnight transactions [11] executed between midnight and 8:00 a.m. may be reported by 8:15 a.m. on trade date and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution outside normal market hours.[12] Supplementary Material .05(a)(2) provides that last sale reports for qualifying overnight transactions executed (i) between 8:00 p.m. and midnight or (ii) on any non-business day (*i.e.,* weekend or holiday) may be reported the following business day by 8:15 a.m., be designated ''as/of'' trades to denote their execution on a prior day and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution outside normal market hours.

Collectively, these provisions of Supplementary Material .05 allow members to continue to report qualifying overnight transactions on the same timeframes as generally applied prior to the TRF Early Open Amendments. Under Supplementary Material .05, this temporary exception is in effect until the earlier of (i) the effective date of any amendments to further extend the TRF operating hours or (ii) December 31, 2027. Thus, absent further action, the temporary exception for qualifying overnight transactions will by its terms expire on December 6, 2026, when the TRFs expand their hours pursuant to the TRF 23/5 Amendments.

In response to member concerns regarding the need for more time to address operational challenges associated with reporting specified overnight transactions, FINRA is now proposing to extend the limited,

[4] Unless otherwise specified, all times referred to in the proposed rule change are E.T.

[5] Collectively, the TRFs and the ADF are referred to as the ''FINRA facilities.'' The ADF is a display-only facility operated by FINRA that provides members with a facility for the display of quotations, the reporting of trades, and the comparison of trades in NMS stocks. Currently, there are no active quoting ADF participants, and one Trade Reporting Only participant using the ADF as a back-up trade reporting facility.

[6] ''Tape'' or ''media'' reports are those that are submitted to a TRF for public dissemination by the Securities Information Processors (''SIPs''). By contrast, ''non-tape'' or ''non-media'' reports are not submitted to a TRF for public dissemination but are submitted for regulatory and/or clearance and settlement purposes. Another term that is often used with respect to ''tape'' or ''media'' reports is ''for publication.'' In certain limited circumstances, trade reports submitted for publication may be suppressed from public dissemination (*e.g.,* transactions in Restricted Equity Securities effected pursuant to Securities Act Rule 144A, as well as T+365 trades and trades executed on a non-business day).

[7] Market data is transmitted to three tapes based on the listing venue of the security: securities listed on New York Stock Exchange are disseminated through Tape A; securities listed on AMEX, Nasdaq Texas, BYX, BZX, Cboe, EDGA, EDGX, ISE, IEX, LTSE, MEMX, MIAX, NSX, NYSE Arca, NYSE Chicago, PHLX, 24X, TSE or on any other exchange other than Nasdaq, but not also listed on NYSE are disseminated through Tape B; and securities listed on Nasdaq are disseminated through Tape C. Tape A and Tape B market data is disseminated pursuant to the Consolidated Tape Association Plan (''CTA Plan'') and the Consolidated Quotation Plan (''CQ Plan''), while Tape C market data is disseminated pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'').

[8] *See* Securities Exchange Act Release No. 103435 (July 11, 2025), 90 FR 32032 (July 16, 2025) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2025–011) (''TRF Early Open Amendments''). The TRF Early Open Amendments were implemented on March 30, 2026. *See* Regulatory Notice 25–15 (November 2025).

[9] *See* Securities Exchange Act Release No. 105922 (July 15, 2026), 91 FR 45299 (July 20, 2026) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2026–015) (''TRF 23/5 Amendments'').

[10] *See* Securities Exchange Act Release No. 104912 (March 2, 2026), 91 FR 10835 (March 5, 2026) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2026–005).

[11] Supplementary Material .05(b) defines a ''qualifying overnight transaction'' as a transaction (i) for which the last sale report is appended with the applicable trade report modifier as specified by FINRA for a trade that occurs at a price based on an average weighting or another special pricing formula pursuant to paragraph (a)(5)(E) of Rule 6380A or 6380B, as applicable, and (ii) that either results from an overnight batch process or involves a trade for exchange-traded fund (''ETF'') shares agreed upon during normal market hours where the trade is executed based on the net asset value (''NAV'') of the underlying investments that was published after the close of the applicable TRF.

[12] The TRFs close at 8:00 p.m. E.T. on Business Days.

temporary exception for reporting qualifying overnight transactions until December 31, 2027, as described in greater detail below.

Proposed Extension of Exception for Specified Overnight Transactions

FINRA is proposing to amend Supplementary Material .05(c) to Rules 6380A and 6380B to extend the availability of the trade reporting exception until December 31, 2027, generally permitting members to continue to report qualifying overnight transactions by 8:15 a.m. Specifically, the proposed rule change would remove the current reference to the exception being in effect until the earlier of the effective date of any extension of TRF operating hours and December 31, 2027, and instead provide that the exception is in effect until December 31, 2027. The proposed rule change would thus provide just over one additional year for members to adapt their processes to accommodate real-time overnight and early morning reporting for qualifying overnight transactions. FINRA believes this extension would provide sufficient time for members to address operational challenges while still providing an outer effective date for members to begin reporting such transactions in real time.

While the proposed rule change would not alter the substance of the existing relief under paragraph (a) of Supplementary Material .05 (or the definition of ''qualifying overnight transaction'' under paragraph (b) of Supplementary Material .05), it would make several conforming and clarifying changes to these provisions to account for the new defined terms used in Rules 6380A and 6380B as amended by the TRF 23/5 Amendments. First, the proposed rule change would replace the term ''normal market hours'' with the new defined term ''Regular Trading Hours'' in paragraphs (a) and (b) of Supplementary Material .05.[13] Second, the proposed rule change would replace the term ''business day'' with the new defined term ''Business Day'' in paragraph (a) of Supplementary Material .05.[14] Finally, the proposed rule change would amend paragraph (a) of Supplementary Material .05 to account for the new definition of ''Trade Date'' under the TRF 23/5 Amendments.[15] Specifically, paragraph (a)(1) would be amended to provide that last sale reports executed between 8:00 p.m. on a Calendar Day preceding a Business Day and 8:00 a.m. on a Business Day may be reported by 8:15 a.m. on such Business Day and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution outside Regular Trading Hours. Paragraph (a)(2) would be amended to provide that last sale reports executed on any non-Business Day (*i.e.,* weekend or holiday) may be reported the following Business Day by 8:15 a.m., be designated ''as/of'' trades to denote their execution on a prior day and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution outside Regular Trading Hours.[16]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change on 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,[17] 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.

FINRA believes that the proposed rule change is consistent with the Act because it would extend the temporary, limited exception from reporting qualifying overnight transactions prior to 8:15 a.m. E.T. that would address concerns regarding the operational feasibility and burdens associated with the new reporting timeframes that will be implemented in the TRF 23/5 Amendments. FINRA believes the proposed rule change would address an area of industry concern and provide impacted members with additional time to address operational issues that would otherwise impact the timely reporting of qualifying overnight transactions. FINRA further believes that the proposed extension of the exception would have a limited impact on market transparency given the relatively low volume of trades that would be expected to qualify, the time-limited nature of the exception, and the condition requiring that excepted transactions must be appended with the modifier designating the trade as having occurred at a price based on an average weighting or another special pricing formula (and thus excepted trades may have limited value for real-time price discovery).

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15A(b)(9) of the Act[18] requires that FINRA's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts of the proposed rule change, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline.

Regulatory Need

As discussed above, FINRA is proposing to extend a temporary, limited exception to permit certain overnight transactions to continue to be reported by 8:15 a.m. for a limited period of time, thereby addressing operational concerns of firms executing qualifying overnight transactions while maintaining the regulatory objectives of enhanced market transparency.

Economic Baseline

The TRFs do not have a trade modifier that specifically identifies qualifying overnight transactions as defined in Supplementary Material .05 to Rules 6380A and 6380B. However, all qualifying overnight transactions must be designated with the .W modifier and be executed between 8:00 p.m. and 8:00 a.m. on a business day, or on a non-business day. From March 30, 2026 to

[13] ''Regular Trading Hours'' means 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time each Business Day. Regular Trading Hours can end earlier than 4:00 p.m. Eastern Time in the case of an early scheduled close. *See supra* note 9, TRF 23/5 Amendments, 91 FR 45299, 45301.

[14] ''Business Day'' means any Calendar Day other than a Saturday, Sunday, or a holiday where U.S. markets are closed. A ''Calendar Day'' means each full 24-hour period starting at midnight Eastern Time and ending the following midnight Eastern Time. *See supra* note 9, TRF 23/5 Amendments, 91 FR 45299, 45301.

[15] ''Trade Date'' means the Calendar Day attributed to a transaction as its Trade Date based on its time of execution. A Trade Date is considered to start at 8:00 p.m. Eastern Time on a Calendar Day and end at 8:00 p.m. Eastern Time the following Calendar Day. Transactions executed between midnight and 8:00 p.m. Eastern Time on a Calendar Day will be designated with a Trade Date of that same Calendar Day. Transactions executed after 8:00 p.m. Eastern Time on a Calendar Day will be designated with a Trade Date of the next Calendar Day. *See supra* note 9, TRF 23/5 Amendments, 91 FR 45299, 45301.

[16] The proposed rule change would also amend the introduction to paragraph (a) of Supplementary Material .05 to reflect the renumbering of subparagraphs in paragraph (a) of Rules 6380A and 6380B under the TRF 23/5 Amendments.

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] 15 U.S.C. 78*o*–3(b)(9).

September 30, 2026, FINRA estimates that transactions designated with the .W modifier that were executed outside TRF operating hours—*i.e.,* between 8:00 p.m. and 4:00 a.m. on a business day, or on a non-business day—represented approximately 0.67 percent of all OTC trades in NMS stocks executed outside TRF operating hours.[19] Additionally, during this period, FINRA estimates that transactions designated with the .W modifier that were executed between 4:00 a.m. and 8:00 a.m. on business days represented approximately 0.85 percent of all OTC trades in NMS stocks executed during that window.[20] Further, during this period, FINRA estimates that transactions designated with the .W modifier that were executed outside TRF operating hours and between 4:00 a.m. and 8:00 a.m. on business days accounted for approximately 0.027 percent and 0.016 percent, respectively, of the approximately 14.4 billion total OTC trades in NMS stocks executed across all times of day.

FINRA estimates that 65 firms executed at least one OTC trade in NMS stocks outside of TRF operating hours and 118 firms executed at least one OTC trade in NMS stocks between 4:00 a.m. and 8:00 a.m. on business days from March 30, 2026 to September 30, 2026. Of these firms, 27 firms executed at least one OTC trade in NMS stocks outside TRF operating hours that were designated with the .W modifier and 44 firms executed at least one such trade between 4:00 a.m. and 8:00 a.m. on business days.[21]

FINRA notes that the .W modifier may also be used to identify transactions unrelated to overnight batch processing or ETF NAV Trades, and as such this analysis may be over-inclusive by capturing transactions that would not qualify for the exception under Supplementary Material .05 to Rules 6380A and 6380B.

Economic Impacts

Anticipated Benefits

FINRA believes that the proposed change would reduce operational burdens and costs by allowing firms to continue to employ existing processes for reporting qualifying overnight transactions during the proposed temporary extension period of the existing exception. Such transactions could continue to be reported by 8:15 a.m., in line with existing reporting timeframes for qualifying overnight transactions. By utilizing current infrastructure, firms could minimize transition-related error risk and avoid the rework that would otherwise be required if systems were reconfigured to account for implementation of the TRF 23/5 Amendments on December 6, 2026. Overall, the proposed rule change would mitigate risks of failed implementations and market disruptions while advancing FINRA's regulatory objectives of enhanced market transparency.

Because the use of this exception by members is voluntary,[22] the extent and timing of cost savings for each member will depend on whether and when the firm chooses to avail itself of the exception as well as the firm's current reporting systems and OTC trading activities in NMS stocks.

Anticipated Costs

The proposed change would delay transparency of qualifying overnight transactions executed by firms that avail themselves of the exception until December 31, 2027. However, FINRA expects the impact of this delayed transparency to be limited. The volume of such transactions is minimal, and these transactions are priced at the prior day's closing price or a published NAV price rather than current market conditions, limiting their value for real-time price discovery.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) [24] thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[25]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [26] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay period so that the proposal can be implemented on December 6, 2026 in alignment with the planned expansion of the TRF operating hours. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest because it would align the proposal with the planned expansion of the TRF operating hours and provide additional time to support operational readiness to report qualifying overnight transactions. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative on December 6, 2026.[27]

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

[19] This analysis uses FINRA TRF transaction data as of October 12, 2026, excluding trades that were canceled, declined, rejected, reversed, or reported with special trade conditions. Because some trades are reported with a delay, the analysis includes all trades reported within ten days after execution. March 30, 2026 marks the date on which the TRFs' new daily opening time of 4:00 a.m. took effect under the TRF Early Open Amendments. The analysis includes both media and non-media trades reported to the TRFs. *See supra* note 6.

FINRA estimates that approximately 571.5 million OTC trades in NMS stocks were executed outside TRF operating hours during the period from March 30, 2026 to September 30, 2026. Of these trades, approximately 3.8 million trades were designated with the .W modifier.

[20] FINRA estimates that approximately 264.9 million OTC trades in NMS stocks were executed between 4:00 a.m. and 8:00 a.m. on business days during the period from March 30, 2026 to September 30, 2026. Of these trades, approximately 2.2 million trades were designated with the .W modifier.

[21] FINRA estimates that 55 firms in total executed at least one .W-designated OTC trade in NMS stocks across both time windows—outside TRF operating hours and between 4:00 a.m. and 8:00 a.m. on business days. This total of 55 firms is less than the sum of the two individual counts because certain firms executed such trades in both windows.

[22] The proposed rule change extends a temporary exception that permits, but does not require, firms to continue reporting qualifying overnight transactions by 8:15 a.m.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

[25] FINRA has satisfied this requirement.

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[28] If the Commission takes such action, the Commission shall 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–FINRA–2026–026 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–2026–026. 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–2026–026 and should be submitted on or before December 14, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026–23745 Filed 11–20–26; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(3)(C).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 36395; File No. 812–16086]

Powerlaw Corp, et al.

November 19, 2026.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDCs''), closed-end management investment companies, and open-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Powerlaw Corp., Powerlaw Fund II, Powerlaw10 LP, Powerlaw Fund Adviser, LLC, Syon Capital GQ, LP, Tarchia Ventures, LLC, Tivoli Holdings, LLC, Akkadian Ventures, LLC, Akkadian Ventures Management, LLC and certain vehicles identified in Schedule A to the application.

FILING DATES: The application was filed on September 10, 2026, and amended on November 3, 2026.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. The email should include the file number referenced above. Hearing requests should be received by the Commission by 5:30 p.m., Eastern Time, on December 14, 2026, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Michael Dinsdale, *mike@powerlawfunds.com* with copies to Anne G. Oberndorf, Esq., Steven B. Boehm, Esq., Owen J. Pinkerton, Esq. and Krisztina Nadasdy, Esq., respectively, Eversheds Sutherland (US) LLP, *anne.oberndorf@eversheds-sutherland.com, stevenboehm@eversheds-sutherland.com, owenpinkerton@eversheds-sutherland.com* and *krisztinanadasdy@eversheds-sutherland.com.*

FOR FURTHER INFORMATION CONTACT: Rachel Loko, Senior Special Counsel, at (202) 551–6720 or *IMOCC@sec.gov* (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended application, filed November 3, 2026, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/search-filings.* You may also call the SEC's Office of Investor Education and Assistance at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–23792 Filed 11–20–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106928; File No. SR–24X–2026–33]

Self-Regulatory Organizations; 24X National Exchange LLC; Notice of Filing of a Proposed Rule Change To Adopt Rules To Govern the Trading of Options on the Exchange

November 18, 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, 24X National Exchange LLC (''24X'' or the ''Exchange'') filed with the Securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 adopt rules to govern the trading of options, including rules to permit the listing of binary options overlying key performance indicators (''KPIs'') reported by certain issuers of stock (''binary KPI options''), on the Exchange (referred to herein as ''24X Options Exchange'' or ''24X Options''). 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt a series of rules in connection with the trading of options, including rules to permit the listing of binary options overlying key performance indicators (''KPIs'') reported by certain issuers of stock (''binary KPI options''), on 24X Options, which will be a facility of the Exchange. 24X Options will operate an electronic trading system developed to trade options (the ''System''). The Exchange will operate its options market much as it operates its cash equities market today and in a manner similar to that of other options exchanges, with a comprehensive suite of conventional order types and functionality that is designed to provide for an efficient, robust, and transparent order matching process. The proposed functionality for 24X Options is substantially similar to that offered by other options exchanges. Thus, the Exchange proposes to adopt rules applicable to 24X Options that are substantively identical or substantially similar to the approved options rules of MEMX, except for the rules related to binary KPI options which are substantively identical or substantially similar to the approved rules of Cboe Exchange, Inc. (''Cboe'') for binary KPI options.

The System will provide for the electronic display and execution of orders in price/time priority without regard to the status of the entities that are entering orders. All Exchange Members will be eligible to participate in 24X Options provided that the Exchange specifically authorizes them to trade in the System. The System will provide a routing service via unaffiliated routing broker-dealers for orders when trading interest is not present on 24X Options and will comply with all applicable securities laws and regulations and the obligations of the Options Order Protection and Locked/Crossed Market Plan.

24X Options Members

Pursuant to the proposed rules in Chapter 17 (Participation on 24X Options), the Exchange will authorize any Exchange Member that meets certain enumerated qualification requirements (any such Member, an ''Options Member'') and any Options Member's Sponsored Participants to obtain access to, and transact business on, 24X Options.

There will be two types of Options Members—Options Order Entry Firms (''OEFs'') and Options Market Makers.[3] OEFs will be those Options Members representing Customer Orders as agent on 24X Options or trading as principal on 24X Options. Options Market Makers will be those Options Members registered with the Exchange as Options Market Makers pursuant to proposed Rule 22.2. To become an Options Market Maker, an Options Member will be required to register by filing a written application.[4] The Exchange will not place any limit on the number of entities that may become Options Market Makers, the number of appointments an Options Market Maker may have, or the number of Options Market Makers that may have appointments in a class unless the Exchange determines to impose any such limit based on system constraints, capacity restrictions, or other factors relevant to protecting the integrity of the System.[5] The Exchange will not impose any such limitations until it has submitted objective standards for imposing the limits to the Commission for its review and approval.[6]

As set forth in proposed Rule 22.6, Options Market Makers will be required to electronically engage in a course of dealing reasonably calculated to contribute to the maintenance of fair and orderly markets. Among other things, an Options Market Maker would generally have to satisfy the following responsibilities and duties during trading: (1) on a daily basis maintain a two-sided market on a continuous basis in at least 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Options Market Maker's appointed classes are open for trading, excluding any adjusted series, any intraday add-on series on the day during which such series are added for trading, any Quarterly Option Series, and any series with an expiration of greater than 270 days; [7] (2) enter a size of at least one contract for its best bid and its best offer; [8] and (3) maintain minimum net capital in accordance with Commission and Exchange rules.[9] Substantial or continued failure by an Options Market Maker to meet any of its obligations and duties will subject the Options Market Maker to disciplinary action, suspension, or revocation of the Options Market Maker's registration as such or its appointment in one or more of its appointed options classes.[10] The quoting obligations of Options Market Makers set forth in proposed Rule 22.6 are substantively identical to MEMX Rule 22.6.

Options Market Makers would also be required to (1) identify all accounts related to their market making activities

[3] As set forth in proposed Rule 22.8, no Options Member may make transactions on 24X Options unless a Letter of Guarantee has been issued for such Member by a Clearing Member and such Letter of Guarantee has been filed with the Exchange and remains in effect. Proposed Rule 22.8 is substantively identical to MEMX Rule 22.8.

[4] *See* Proposed Rule 22.2(a).

[5] *See* Proposed Rules 22.2(c) and 22.3(c).

[6] *See* Proposed Rule 22.2(c).

[7] *See* Proposed Rule 22.6(c)–(d). The Exchange notes that it also proposes to adopt provisions that exclude from the calculation of continuous quoting those times that an Options Market Maker is experiencing a technical failure or limitation, during a trading halt, suspension or pause in the underlying security, or when the underlying security is in a limit up-limit down state. *See* Proposed Rule 22.6(d)(2)–(3).

[8] *See* Proposed Rule 22.6(b).

[9] *See* Proposed Rule 22.9.

[10] *See* Proposed Rule 22.5(c).

to the Exchange; [11] (2) report to the Exchange upon request all orders in securities underlying options traded on the Exchange or securities convertible into or exchangeable for such underlying security; [12] and (3) comply with certain joint account restrictions.[13] The foregoing requirements are set forth in proposed Rule 22.7, which is substantively identical to MEMX Rule 22.7.

Options Market Makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange. Thus, an Options Market Maker has a corresponding obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment.

Every Options Member shall at all times maintain membership in another registered options exchange that is not registered solely under Section 6(g) of the Exchange Act [14] or in FINRA. OEFs that transact business with Public Customers must at all times be members of FINRA. Pursuant to proposed Rule 17.2(g), every Options Member will be required to have at least one registered Options Principal who satisfies the criteria of that rule, including the satisfaction of a proper qualification examination. An OEF may only transact business with Public Customers if such Options Member also is an Options Member of another registered national securities exchange or association with which the Exchange has entered into an agreement under Rule 17d–2 under the Exchange Act [15] pursuant to which such other exchange or association shall be the designated options examining authority for the OEF.

The proposed rules relating to qualification and participation on 24X Options as an Options Member (including as an OEF and an Options Market Maker) are substantively identical to the relevant rules of MEMX Options.[16]

As provided in proposed Rule 16.2, existing Exchange Rules applicable to the 24X equities market contained in Chapters 1 through 15 of the Exchange Rules will apply to Options Members unless a specific Exchange Rule applicable to the 24X Options market (proposed Chapters 16 through 30 of the Exchange Rules) governs or unless the context otherwise requires. Options Members can therefore provide sponsored access to the 24X Options Exchange to a non-Member (*i.e.,* a Sponsored Participant) pursuant to Rule 11.3 of the Exchange Rules.

Definitions

The Exchange proposes to define a series of terms under proposed Rule 16.1 (Definitions), which are to be used in proposed Chapters 16 to 30 relating to the trading of options contracts on the Exchange (unless the context otherwise requires). Each of the terms defined in proposed Rule 16.1 is either identical or substantially similar to definitions included in MEMX Rule 16.1.[17]

- *24X Exchange and Exchange.* The terms ''24X Exchange'' and ''Exchange'' mean 24X National Exchange LLC.
- *24X Exchange Rules and Exchange Rules.* The terms ''24X Exchange Rules'' and ''Exchange Rules'' mean the rules of the Exchange, including those for equities and options.
- *24X Options.* The term ''24X Options'' means the 24X National Exchange LLC Options Market, an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act.
- *24X Options Book.* The term ''24X Options Book'' means the electronic book of options orders maintained by the Trading System.
- *24X Options Transaction.* The term ''24X Options Transaction'' means a transaction involving an options contract that is effected on or through 24X Options or its facilities or systems.
- *ABBO.* The term ''ABBO'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (as defined in proposed Rule 27.1) and calculated by the Exchange based on market information the Exchange receives from OPRA.
- *Aggregate Exercise Price.* The term ''aggregate exercise price'' means the exercise price of an options contract multiplied by the number of units of the underlying security covered by the options contract.
- *American-Style Option.* The term ''American-style option'' means an options contract that, subject to the provisions of proposed Rule 23.1 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, may be exercised at any time from its commencement time until its expiration.
- *Associated Person and Person Associated with an Options Member.* The terms ''associated person'' and ''person associated with an Options Member'' mean any partner, officer, director, or branch manager of an Options Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an Options Member or any employee of an Options Member.
- *Bid.* The term ''bid'' means a limit order to buy one or more options contracts.
- *Board.* The term ''Board'' means the Board of Directors of 24X National Exchange LLC.
- *Call.* The term ''call'' means an options contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the number of shares of the underlying security covered by the options contract.
- *Capacity.* The term ''Capacity'' means the capacity in which a User submits an order, which the User specifies by applying the corresponding code to the order. The Capacity codes available on 24X Options will be listed in publicly available specifications and published in a Regulatory Circular.
- *Class of Options.* The terms ''class'' or ''class of options'' mean all options contracts with the same unit of trading covering the same underlying security or index.
- *Clearing Corporation and OCC.* The terms ''Clearing Corporation'' and ''OCC'' mean The Options Clearing Corporation.
- *Clearing Member.* The term ''Clearing Member'' means an Options Member that is self-clearing or an Options Member that clears 24X Options Transactions for other Members of 24X Options.
- *Closing Purchase Transaction.* The term ''closing purchase transaction'' means a 24X Options Transaction that reduces or eliminates a short position in an options contract.
- *Closing Writing Transaction.* The term ''closing writing transaction'' means a 24X Options Transaction that reduces or eliminates a long position in an options contract.
- *Covered Short Position.* The term ''covered short position'' means (i) an options position where the obligation of the writer of a call option is secured by a ''specific deposit'' or an ''escrow

[11] *See* Proposed Rule 22.7(a).

[12] *See* Proposed Rule 22.7(b).

[13] *See* Proposed Rule 22.7(c).

[14] 15 U.S.C. 78f(g).

[15] 17 CFR 240.17d–2.

[16] *See* MEMX Rules, Chapters 17 and 22.

[17] The Exchange notes that it is not currently proposing the term ''index options'' as set forth MEMX Rule 16.1, nor the references to complex options as set forth in paragraphs (a) and (c) of Interpretation .01 of MEMX Rule 16.1.

deposit'' meeting the conditions of Rules 610(f) or 610(g), respectively, of the Rules of the Clearing Corporation, or the writer holds in the same account as the short position, on a share-for-share basis, a long position either in the underlying security or in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or less than the exercise price of the options contract in such short position; and (ii) an options position where the writer of a put option holds in the same account as the short position, on a share-for-share basis, a long position in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or greater than the exercise price of the options contract in such short position.

• *Customer.* The term ''Customer'' means a Public Customer or a broker-dealer.

• *Customer Order.* The term ''Customer Order'' means an agency order for the account of a Customer.

• *Discretion.* The term ''discretion'' means the authority of a broker or dealer to determine for a Customer the type of option, the class or series of options, the number of contracts, or whether options are to be bought or sold.

• *European-Style Option.* The term ''European-style option'' means an options contract that, subject to the provisions of proposed Rule 23.1 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised only on its expiration date.

• *Exchange Act.* The term ''Exchange Act'' means the Securities Exchange Act of 1934, as amended, or Rules thereunder.

• *Exercise Price.* The term ''exercise price'' means the specified price per unit at which the underlying security may be purchased or sold upon the exercise of an options contract.

• *He, Him, and His.* The terms ''he,'' ''him'' and ''his'' are deemed to refer to persons of female as well as male gender, and to include organizations, as well as individuals, when the context so requires.

• *Individual Equity Option.* The term ''individual equity option'' means an options contract which is an option on an equity security.

• *Long Position.* The term ''long position'' means a person's interest as the holder of one or more options contracts.

• *NBB, NBO, and NBBO.* The term ''NBB'' means the national best bid, the term ''NBO'' means the national best offer, and the term ''NBBO'' means the national best bid or offer as calculated by 24X Options based on market information received by 24X Options from OPRA.

• *Offer.* The term ''offer'' means a limit order to sell one or more options contracts.

• *Opening Purchase Transaction.* The term ''opening purchase transaction'' means a 24X Options Transaction that creates or increases a long position in an options contract.

• *Opening Writing Transaction.* The term ''opening writing transaction'' means a 24X Options Transaction that creates or increases a short position in an options contract.

• *OPRA.* The term ''OPRA'' means the Options Price Reporting Authority.

• *Options Contracts.* The term ''options contract'' means a put or a call issued, or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation.

• *Options Market Close and Market Close.* The terms ''options market close'' and ''market close' mean the time the Exchange specifies for the end of a trading session on the Exchange on that trading day.

• *Options Market Maker and Market Maker.* The terms ''Options Market Maker'' and ''Market Maker'' mean an Options 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 proposed Chapter 22.

• *Options Market Open and Market Open.* The terms ''options market open'' and ''market open'' mean the time the Exchange specifies for the beginning of a trading session on the Exchange on that trading day.

• *Options Member.* The term ''Options Member'' means a firm, or organization that is registered with the Exchange pursuant to proposed Chapter 17 for purposes of participating in options trading on 24X Options as an ''Options Order Entry Firm'' or ''Options Market Maker.''

• *Options Member Agreement.* The term ''Options Member Agreement'' means the agreement to be executed by Options Members to qualify to participate on 24X Options.

• *Options Order Entry Firm, Order Entry Firm, and OEF.* The terms ''Options Order Entry Firm'' and ''Order Entry Firm'' or ''OEF'' mean those Options Members representing as agent Customer Orders on 24X Options and those non-Market-Maker Members conducting proprietary trading.

• *Options Principal.* The term ''Options Principal'' means a person engaged in the management and supervision of the Options Member's business pertaining to options contracts that has responsibility for the overall oversight of the Options Member's options related activities on the Exchange.

• *Order.* The term ''order'' means a firm commitment to buy or sell options contracts as defined in proposed Rule 21.1(c).

• *Outstanding.* The term ''outstanding'' means an options contract which has been issued by the Clearing Corporation and has neither been the subject of a closing writing transaction nor has reached its expiration date.

• *Primary Market.* The term ''primary market'' means, in the case of securities listed on Nasdaq Stock Market, LLC (''Nasdaq''), the market that is identified as the listing market pursuant to Section X(d) of the approved national market system plan governing the trading of Nasdaq-listed securities, and, in the case of securities listed on another national securities exchange, the market that is identified as the listing market pursuant to Section XI of the Consolidated Tape Association Plan.

• *Priority Customer and Priority Customer Order.* The term ''Priority Customer'' means any person or entity that is not: (A) a broker or dealer in securities; or (B) a Professional. The term ''Priority Customer Order'' means an order for the account of a Priority Customer.

• *Professional.* The term ''Professional'' means any person or entity that (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Options Members. Orders for any customer that had an average of more than 390 orders per day during any calendar month must be represented as Professional orders for the next calendar month. Options Members will be required to conduct a monthly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar month.

• *Protected Quotation.* The term ''Protected Quotation'' has the meaning provided in proposed Rule 27.1.[18]

[18] As defined in proposed Rule 27.1(a)(20), the term ''Protected Quotation'' refers to a Protected Bid or Protected Offer, and the terms ''Protected Bid'' and ''Protected Offer'' refer to a Bid or Offer in an options series, respectively, that: (A) is disseminated pursuant to the OPRA Plan; and (B) is the highest priced Bid or lowest priced Offer, respectively, displayed by an Eligible Exchange.

• *Public Customer.* The term ''Public Customer'' means a person that is not a broker or dealer in securities.

• *Put.* The term ''put'' means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option and the Rules of the OCC, to sell to the Clearing Corporation the number of units of the underlying security covered by the options contract, at a price per unit equal to the exercise price, upon the timely exercise of such option.

• *Quarterly Options Series.* The term ''Quarterly Options Series'' means a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and expires at the close of business on the last business day of a calendar quarter.

• *Quote and Quotation.* The terms ''quote'' and ''quotation'' mean a bid or offer entered by a Market Maker as a firm order that updates the Market Maker's previous bid or offer, if any.

• *Responsible Person.* The term ''Responsible Person'' means a U.S.-based officer, director, or management-level employee of an Options Member, who is registered with the Exchange as an Options Principal, responsible for the direct supervision and control of associated persons of that Options Member.

• *Rules of 24X Options.* The term ''Rules of 24X Options'' mean the rules contained in Chapters 16 to 30 of 24X Exchange Rules governing the trading of options on the Exchange.

• *Rules of the Clearing Corporation and Rules of the OCC.* The terms ''Rules of the Clearing Corporation'' and ''Rules of the OCC'' mean the Certificate of Incorporation, the By-Laws and the Rules of the Clearing Corporation, and all written interpretations thereof, as may be in effect from time to time.

• *SEC and Commission.* The terms ''SEC'' and ''Commission'' mean the United States Securities and Exchange Commission.

• *Series of Options.* The terms ''series'' or ''series of options'' mean all options contracts of the same class that are the same type of options and have the same exercise price and expiration date.

• *Short Position.* The term ''short position'' means a person's interest as the writer of one or more options contracts.

• *Short Term Option Series.* The term ''Short Term Option Series'' means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

• *SRO.* The term ''SRO'' means a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act.

• *Trading System and System.* The terms ''Trading System'' and ''System'' mean the automated trading system used by 24X Options for the trading of options contracts.

• *Type of Option.* The term ''type of option'' means the classification of an options contract as either a put or a call.

• *Uncovered.* The term ''uncovered'' means a short position in an options contract that is not covered.

• *Underlying Security.* The term ''underlying security'' means the security that the Clearing Corporation shall be obligated to sell (in the case of a call option) or purchase (in the case of a put option) upon the valid exercise of an options contract.

• *User.* The term ''User'' means any Options Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3 (Access).

Execution System

The Exchange plans to implement an options System that will utilize state of the art technology, including with regard to customer connectivity, messaging protocols, quotation and execution engine, order router, data feeds, and network infrastructure. 24X Options will closely resemble the Exchange's equities market, as well as other options markets, such as MEMX, that offer true price/time priority across all participants rather than differentiating between participant/trading interest.

Like the Exchange's system for equities, as well as the MEMX market, all trading interest entered into the System will be automatically executable. Orders entered into the System will be displayed anonymously. Thus, the System will offer anonymous trading, however, options trades are not currently anonymous through settlement. Accordingly, as set forth in proposed Rule 21.10, aggregated and individual transaction reports produced by the System will indicate the details of a User's transactions, including the contra party's executing firm ID (''EFID''), capacity, and clearing firm account number.[19] The Exchange will become an exchange member of the Options Clearing Corporation (''OCC''). The System will be linked to OCC for the Exchange to transmit locked-in trades for clearance and settlement.

Hours of Operation. As stated in proposed Rule 21.2, the 24X Options System will begin accepting orders after 9:30 a.m. Eastern Time pursuant to the market opening procedures described in proposed Rule 21.7. Orders and bids and offers shall be open and available until 4:00 p.m. Eastern Time except for option contracts on Fund Shares, as defined in proposed Rule 19.3(i), and option contracts on exchange-traded notes including Index-Linked Securities, as defined in proposed Rule 19.3(l). The proposed hours of operation of 24X Options are the same as MEMX Options, and the same as Cboe with regard to KPI binary options.

Units of Trading. As stated in proposed Rule 21.3, the unit of trading in each series of options traded on 24X Options will be the unit of trading established for that series by the OCC pursuant to the Rules of the OCC and the agreements of the Exchange with the OCC. The proposed determination of the unit of trading for a series of options traded on 24X Options is the same as on MEMX Options pursuant to MEMX Rule 21.3.

Meaning of Premium Quotes and Orders. As stated in proposed Rule 21.4, except with respect to certain special cases described in proposed Rule 21.4(b), orders shall be expressed in terms of dollars per unit of the underlying security. Proposed Rule 21.4 is substantively identical to MEMX Rule 21.4.

Minimum Quotation and Trading Increments. As stated in proposed Rule 21.5(a), the Exchange is proposing to apply the following quotation increments: (1) if the options series is trading at less than $3.00, five (5) cents; (2) if the options series is trading at

[19] The Exchange shall also reveal a User's identity: (i) when a registered clearing agency ceases to act for a participant, or the User's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the User's trades; and (ii) for regulatory purposes or to comply with an order of an arbitrator or court. *See* Proposed Rule 21.10. The Exchange notes that proposed Rule 21.10 is identical to MEMX Rule 21.10.

$3.00 or higher, ten (10) cents; and (3) if the options series is trading pursuant to the Penny Interval Program one (1) cent if the options series is trading at less than $3.00, five (5) cents if the options series is trading at $3.00 or higher, unless for QQQ, SPY, or IWM where the minimum quoting increment will be one (1) cent for all series regardless of price. In addition, as stated in proposed Rule 21.5(b), the Exchange is proposing that the minimum trading increment for options contracts traded on 24X Options will be one (1) cent for all series. Such proposed minimum quotation and trading increments are the same as on MEMX Options pursuant to MEMX Rules 21.5(a) and (b).

Penny Interval Program. As set forth in proposed Rule 21.5(d), the Exchange is proposing to adopt a Penny Interval Program that is substantially similar to the penny programs of other exchanges, including MEMX Options pursuant to MEMX Rule 21.5(d), which includes minimum quoting requirements for option classes listed under the Penny Interval Program. However, eligibility for inclusion in the Penny Interval Program will be limited to those classes already operating under penny programs of other options exchanges at the time 24X Options is launched. The list of option classes included in the Penny Interval Program will be announced by the Exchange via circular distributed to Options Members and published by the Exchange on its website.

Order Types and Handling Instructions. Proposed Rule 21.1 describes the Order Types and Handling Instructions available on 24X Options. In doing so, paragraphs (a), (b), and (c) in proposed Rule 22.1 provide definitions of ''System,'' ''System Securities,'' and ''Order'' that are substantively identical to the definitions of such terms provided in MEMX Rule 22.1.

The System will make available to Users two Order Types (as defined in proposed Rule 21.1(d))—Limit Orders and Market Orders—as well as various other instructions and modifiers that can be appended to such orders. The characteristics and functionality of each Order Type is substantially similar to what is currently approved for use in the Exchange's equities trading facility or on other options exchanges, including MEMX Options, except where described below. 24X Options will support bulk messages for Options Market Makers as specified in the description of each Order Type or other instruction. Proposed Rule 21.1(d) includes the following details with respect to Limit Orders and Market Orders:

- *Limit Order.* Limit Orders are orders (including bulk messages) to buy or sell an option at a specified price or better. A Limit Order is marketable when, for a Limit Order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a Limit Order to sell, at the time it is entered into the System, the order is priced at the current inside bid or lower.
- *Market Order.* Market Orders are orders to buy or sell at the best price available at the time of execution. Market Orders to buy or sell an option traded on 24X Options will be rejected if they are received when the underlying security is subject to a ''Limit State'' or ''Straddle State'' as defined in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan''). Bulk messages may not be Market Orders.

The System will also make available to Users several additional instructions that can be designated on an order (''Handling Instructions''). A Handling Instruction applied to a bulk message applies to each bid and offer within that bulk message. The Handling Instructions available on 24X Options are described in proposed Rule 21.1(e) and will include the following:

- *Book Only.* Book Only is an instruction that an order is to be ranked and executed on the Exchange pursuant to proposed Rule 21.8 (Order Display and Book Processing) or cancelled, as appropriate, without routing away to another options exchange. Users may designate bulk messages as Book Only as set forth in proposed Rule 21.1(l).
- *Post Only.* Post Only is an instruction that an order is to be ranked and executed on the Exchange pursuant to proposed Rule 21.8 (Order Display and Book Processing) or cancelled, as appropriate, without routing away to another options exchange except that the order will not remove liquidity from the 24X Options Book. The System cancels or rejects a bid (offer) designated as Post Only with a price that locks or crosses the Exchange's best offer (bid). A Market Order cannot be designated as Post Only. Users may designate bulk messages as Post Only as set forth in proposed Rule 21.1(l).
- *Intermarket Sweep Order* (''ISO''). ISOs are orders that shall have the meaning provided in proposed Rule 27.1, which relates to intermarket trading. Such orders may be executed at one or multiple price levels in the System without regard to Protected Quotations at other options exchanges (*i.e.,* may trade through such quotations). The Exchange relies on the marking of an order as an ISO order when handling such order, and thus, it is the entering Options Member's responsibility, not the Exchange's responsibility, to comply with the requirements relating to ISOs. ISOs are not eligible for routing pursuant to proposed Rule 21.9. A Market Order cannot be designated as an ISO. Users may not designate bulk messages as ISOs.

Time-in-Force Designations. Users entering orders into the System may designate such orders to remain in force and available for display and/or potential execution for varying periods of time. Unless cancelled earlier, once these time periods expire, the order (or the unexecuted portion thereof) is returned to the entering party. A Time-in-Force applied to a bulk message applies to each bid and offer within that bulk message. Unless otherwise specified in the Exchange Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class or system basis. The Time-in-Force designations available on 24X Options are described in proposed Rule 21.1(g) and will include the following, both of which are set forth in MEMX Rule 21.1(g):

- *Immediate Or Cancel* (''IOC''). IOC means, for an order so designated, an order that is to be executed in whole or in part as soon as such order is received. The portion not so executed immediately on the Exchange or another options exchange is cancelled and is not posted to the 24X Options Book. IOC orders that are not designated as Book Only and that cannot be executed in accordance with proposed Rule 21.8 on the System when reaching the Exchange will be eligible for routing away pursuant to proposed Rule 21.9. Users may designate bulk messages as IOC.
- *Day.* Day means, for an order so designated, an order to buy or sell which, if not executed, expires at market close. Users may designate bulk messages as Day.

The Exchange notes that each of the proposed Time-in-Force designations available on 24X Options is identical to the same Time-in-Force designation available on MEMX Options.

Member Match Trade Prevention Modifiers. As with its equities market, the Exchange will allow Users to use certain Match Trade Prevention (''MTP'') modifiers, which are described in proposed Rule 21.1(g). Any incoming order designated with an MTP modifier will be prevented from executing against a resting opposite side order also

designated with an MTP modifier and originating from the same EFID, Exchange Member identifier, trading group identifier, or Exchange Sponsored Participant identifier. The Exchange will offer the following MTP modifiers: MTP Cancel Newest, described in proposed Rule 21.1(g)(1); MTP Cancel Oldest, described in proposed Rule 21.1(g)(2); and MTP Cancel Both, described in proposed Rule 21.1(g)(3). The Exchange notes that each of the proposed MTP modifiers available on 24X Options is identical to the same MTP modifier available on MEMX Options.

Re-Pricing Mechanism. Like other options exchanges, the Exchange proposes to offer a re-pricing mechanism to Users to comply with the order protection and trade through restrictions of the Options Order Protection and Locked/Crossed Market Plan.[20] This re-pricing mechanism, described in proposed Rule 21.1(i), is referred to by the Exchange as Price Adjust and is identical to the Price Adjust mechanism offered by MEMX Options pursuant to MEMX Rule 21.1(i).

EFIDs. As proposed in Rule 21.1(j), the term ''EFIDs'' means Executing Firm IDs and shall refer to what the System uses to identify the User and the clearing number for the execution of orders and quotes submitted to the System with that EFID. A User may obtain one or more EFIDs from the Exchange (in a form and manner determined by the Exchange). The Exchange assigns an EFID to its Users. Each EFID corresponds to a single User and a single clearing number of a Clearing Member with the Clearing Corporation. A User may obtain multiple EFIDs, which may be for the same or different clearing numbers. A User is able (in a form and manner determined by the Exchange) to designate which of its EFIDs may be used for each of its ports. If a User submits an order or quote through a port with an EFID not enabled for that port, the System cancels or rejects the order or quote. The Exchange notes that its proposed Rule 21.1(j) is identical to MEMX Rule 21.1(j).

Ports and Bulk Messages. Proposed Rule 21.1(k) defines two types of ports: (1) a ''physical port,'' which provides a physical connection to the System and may provide access to multiple logical ports; and (2) a ''logical port'' or ''application session,'' which provides Users with the ability within the System to accomplish a specific function through a connection, such as order entry, data receipt, or access to information. The Exchange notes that each of the proposed types of ports available on 24X Options is identical to the same types of ports on MEMX Options.

Under proposed Rule 21.1(l), the term ''bulk message'' would mean a bid or offer included in a single electronic message a User submits with a Market Maker Capacity to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers (which number the Exchange will announce via Exchange notice and publicly available technical specifications). The System handles a bulk message in the same manner as it handles an order or quote, unless the Exchange Rules specify otherwise. Users may submit bulk messages through a logical port, subject to the following: bulk messages must contain a Time-in-Force of Day or IOC; a Market Maker with an appointment in a class must designate a bulk message for that class as Post Only or Book Only, and a non-appointed Market Maker must designate a bulk message for that class as Post Only; the System cancels or rejects a Post Only bulk message bid (offer) with a price that locks or crosses the Exchange best offer (bid) or ABO (ABB); the System executes a Book Only bulk message bid (offer) that locks or crosses the ABO (ABB) against offers (bids) resting in the Book at prices the same as or better than the ABO (ABB) and then cancels the unexecuted portion of that bid (offer). Proposed Rule 21.1(l), regarding bulk messages, is substantively identical to MEMX Rule 21.1(l).

Cancel Back. The term ''Cancel Back'' is proposed to mean an instruction a User designates on an order (including bulk messages) to not be subject to the Price Adjust process pursuant to proposed Rule 21.1(i). The System cancels or rejects an order with a Cancel Back instruction (immediately at the time the System receives the order or upon return to the System after being routed away) if displaying the order on the Book would create a violation of proposed Rule 27.3, or if the order cannot otherwise be executed or displayed in the Book at its limit price. The System executes a Book Only—Cancel Back order against resting orders. The proposed definition of Cancel Back in proposed Rule 21.1(m) is substantively identical to a Cancel Back Order defined in MEMX Rule 21.1(m)

Entry of Orders. As stated in proposed Rule 21.6, Users would be permitted to enter orders into the System subject to certain requirements and conditions set forth therein. The conditions set forth in proposed Rules 21.6 would be substantively identical to MEMX Rule 21.6.

Market Opening Procedures. As stated in proposed Rule 21.7, the System shall open options for trading after the System's observation after 9:30 a.m. Eastern Time of both: (i) the first transaction on the primary listing market in the security underlying the option, and (ii) the Limit Up-Limit Down price bands applicable to the security underlying the option as disseminated by the applicable Securities Information Processor (''SIP''). Because the Exchange does not propose to adopt an opening cross or similar opening process, the opening trade that occurs on the Exchange will be a trade in the ordinary course of dealings on the Exchange. Accordingly, the System will ensure that the opening trade in an options series will not trade through a Protected Quotation at another options exchange, consistent with the general standard regarding trade throughs articulated in proposed Rule 21.6(e). The proposed market opening procedures are identical to the market opening procedures currently in effect on MEMX Options.[21] Additionally, the Exchange proposes that it may delay the commencement of trading in any class of options in the interests of a fair and orderly market. As stated in proposed Rule 21.6(c), orders received prior to the opening of the System will be cancelled. The Exchange believes that it is appropriate to commence operations on 24X Options with simplified procedures for when the System is open for trading because for a successful opening process to function, an exchange needs a critical mass of liquidity from market participants in order to price and execute opening transactions. In turn, as a new options exchange, 24X Options does not know the amount of preopening interest it will have, and it will have to gain market share in order to accumulate such interest. 24X Options will re-evaluate its opening procedures over time and may propose to add an opening process through a

[20] The Linkage Plan requires U.S. options exchanges to establish a framework for providing order protection and addressing locked and crossed markets in eligible options classes. The Linkage Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. The full text of the Linkage Plan is available at *https://www.theocc.com/getcontentasset/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/dfc3d011-8f63-43f6-9ed8-4b444333a1d0/options_order_protection_plan.pdf.*

[21] *See* Securities Exchange Act Release No. 102338 (Feb. 4, 2025), 90 FR 9266 (Feb. 10, 2025) (SR–MEMX–2025–01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 21.7 Related to the Exchange's Opening Procedures on MEMX Options).

rule filing submitted to the Commission in the future.

Order Display/Matching System. The System will be based upon functionality currently approved for use in the Exchange's equities trading system. Specifically, the System will allow Users to enter Market Orders and priced Limit Orders to buy and Sell 24X Options listed options. All orders (including bulk messages) will be designated for display (price and size) on an anonymous basis by the Exchange.

Order Routing. The 24X Options Exchange will support orders that are designated to be routed to the NBBO as well as orders that will execute only within 24X Options. Orders that are designated to execute at the NBBO will be routed to other options markets to be executed when the Exchange is not at the NBBO consistent with the Options Order Protection and Locked/Crossed Market Plan. Subject to the exceptions contained in proposed Rule 27.2(b), the System will ensure that an order will not be executed at a price that trades through another options exchange. An order that is designated by an Options Member as routable will be routed in compliance with applicable trade-through restrictions. Any order entered with a price that would lock or cross a Protected Quotation that is not eligible for either routing or the price adjust process as defined in proposed Rule 21.1(i) will be cancelled. Bulk messages are not eligible for routing.

The proposed routing functionality for 24X Options is designed to operate much like the routing functionality for the Exchange's equities market, in that the Exchange offers a simple routing service to facilitate compliance with applicable regulations and does not currently offer other complex routing strategies. The Exchange notes that the proposed rules relating to the routing of orders on 24X Options to away options markets are similar to the approved rules of MEMX Options.[22]

24X Options shall route orders in options via one or more routing brokers that are not affiliated with the Exchange (''Third-Party Routing Brokers''), which provide certain Routing Services to the Exchange, as defined in Rule 2.11. The function of the Third-Party Routing Brokers will be to route orders in options listed and open for trading on 24X Options to other options exchanges pursuant to the proposed rules of 24X Options solely on behalf of 24X Options, subject to the requirements set forth in proposed Rule 21.9(e)(1)–(7). Use of the Third-Party Routing Brokers' Routing Services to route orders to other market centers is optional. Parties that do not desire to use Third-Party Routing Brokers' Routing Services must designate orders as not available for routing.

In connection with the proposed rules regarding routing to away options exchanges, proposed Rule 21.9(f) provides that the Third-Party Routing Brokers providing the Routing Services have, pursuant to Rule 15c3–5 under the Act,[23] implemented certain tests designed to mitigate the financial and regulatory risks associated with providing the Exchange's Users with access to such away options exchanges. If an order or series of orders are deemed to be erroneous or duplicative, would cause the entering User's credit exposure to exceed a preset credit threshold, or are non-compliant with applicable pre-trade regulatory requirements (as defined in Rule 15c3–5), the Third-Party Routing Brokers providing the Routing Services will reject such orders prior to routing and/or seek to cancel any orders that have been routed. This is consistent with the routing implementation of other options exchanges, and the Exchange notes that proposed Rule 21.9(f) is substantively similar to MEMX Rule 21.9(f), provided that proposed Rule 21.9(f) deviates from MEMX Rule 21.9(f) in certain ways because the Exchange will route orders to other options exchanges via one or more unaffiliated routing brokers while MEMX Options routes orders to other options exchanges primarily via an affiliated routing broker, MEMX Execution Services LLC, and provides certain back-up routing services via unaffiliated routing brokers.

Order Priority. The System, like the Exchange's equities facility, shall execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Trading interest will be executed with the order clearly established as the first entered into the System at each price level having priority up to the number of contracts specified in the order. Any order entered with a price that would lock or cross a Protected Quotation that is not eligible for either routing or the price adjust process as defined in proposed Rule 21.1(i) will be cancelled. The Exchange notes that the proposed price/time priority and book processing is substantially similar to MEMX Options.

Data Dissemination. As set forth in proposed Rule 21.15, the System will include a proprietary data feed which will display without attribution to Users' orders on both the bid and offer side of the market for price levels then within 24X Options using the minimum price variation applicable to that security. Proposed Rule 21.15 is substantively identical to MEMX Rule 21.15.

Risk Controls. The Exchange also proposes to offer to all Users of 24X Options the ability to establish certain risk control parameters and limits that are intended to assist Users in managing their market risk. The proposed risk controls are set forth in proposed Rules 21.16 and 21.17 and are identical to those of MEMX Options described in MEMX Rules 21.16 and 21.17. The proposed risk controls are designed to offer Users protection from entering orders outside of certain size and price parameters, as well as certain standard or Exchange-established parameters based on order type and market conditions.

The Exchange proposes to offer a Risk Monitor Mechanism described in proposed Rule 21.16 that features passive risk counter functionality, which is similar to the risk monitor mechanism functionality offered by other options exchanges, including MEMX Options, as well as active risk counter functionality.

Under the proposed Risk Monitor Mechanism, Users may configure risk limits for various parameters, including number of contracts executed (''volume''), notional value of executions (''notional''), number of executions (''count''), number of contracts executed as a percentage of number of contracts outstanding within an Exchange-designated time period or during the trading day (''percentage''), and the number of times the limits on any of the foregoing parameters are reached (''risk trips''). The System will track each of the parameters within an underlying for an EFID (''underlying limit''), across all underlyings for an EFID (''EFID limit''), across all underlyings for a group of EFIDs (''EFID Group'') (''EFID Group limit''), and/or across a customized group of orders designated by the User (''Custom Group Limit''), over a User-established time period (''interval'') and on an absolute basis for a trading day (''absolute limits'').

When the System determines that a specified parameter has reached the User-defined risk limit, depending on the User's instructions and the applicable limit that has been reached, the Risk Monitor Mechanism either: (1) cancels or rejects such User's orders or quotes in all series of the applicable

[22] *See* MEMX Rule 21.9.

[23] 17 CFR 240.15c3–5.

underlying(s) and cancels or rejects any additional orders or quotes from the User in the applicable underlying(s) until the counting program resets; or (2) suspends all of a User's resting orders or quotes in all series of the applicable underlying(s) and cancels or rejects any additional orders or quotes from the User in the applicable underlying(s) until the Exchange is instructed to reinstate such bids and offers. A User may also engage the Risk Monitor Mechanism to cancel resting bids and offers, as well as subsequent orders as set forth in proposed Rule 22.10 (''mass cancellation'') or to suspend all resting bids and offers until the Exchange is instructed to reinstate such bids and offers (''mass suspension'').

The proposed Risk Monitor Mechanism functionality described above is identical to the risk monitor mechanism offered on MEMX Options in that it provides for the System to track specified risk parameters across designated underlyings and/or order groups until the counting program is reset by the User (such functionality, the ''passive risk counter''). In addition to the Risk Monitor Mechanism's passive risk counter functionality, which is identical to the Risk Monitor Mechanism functionality offered by MEMX Options in MEMX Rule 21.16, the Exchange also proposes to enable a User to optionally manage their risk limits actively using the Exchange's proposed active risk counter functionality within the Risk Monitor Mechanism. As proposed, for a User using the active risk counter, the System will increment the active risk counter associated with a defined parameter when such parameter increments, and the System will decrement the active risk counter upon positive confirmation from the User via an electronic instruction that the User has acknowledged a change in the active risk counter. A User would also be able to specify the value by which each parameter increments and decrements in the active risk counter. The proposed active risk counter therefore enables a User to interact with the Risk Monitor Mechanism dynamically such that the User may actively acknowledge executions and decrement the counting program by a specified amount as such executions occur (or at any time), rather than waiting until a risk limit is reached or the User otherwise sends a specific instruction to the Exchange to completely reset the counting program.

The following examples illustrate the proposed behavior of the passive risk counter and the active risk counter within the Risk Monitor Mechanism. In each case, assume a User configures a risk limit of 10,000 contracts executed with respect to options contracts on underlying security ABC for a single EFID.

Passive Risk Counter

- The System executes User's order to purchase 5,000 call options on ABC (''Transaction 1''). The System's counting program would increment to a total of 5,000 executed options contracts on ABC for the User.
- The System then executes User's order to purchase 3,000 call options on ABC (''Transaction 2''). The System's counting program would increment an additional 3,000 executed options contracts for Transaction 2 to a total of 8,000 executed options contracts on ABC for the User.
- The System then executes User's order to purchase 3,000 call options on ABC (''Transaction 3''). The System's counting program would increment an additional 3,000 executed options contracts for Transaction 3 to a total of 11,000 executed options contracts on ABC for the User. As Transaction 3 results in executions in excess of the User's risk limit with respect to the number of options contracts executed, the Risk Monitor Mechanism is triggered, and the System will cancel, reject or suspend, as applicable in accordance with the User's instructions, the User's orders and quotes in all series of options contracts on ABC for the User.
- The User then submits an electronic instruction to the System to reset the counting program, and the counting program is decremented to zero. The System will now accept new orders or quotes from the User in a series of options contracts on ABC.

Active Risk Counter

- The System executes a transaction to purchase 5,000 call options on ABC (''Transaction 1''). The System's counting program would increment to a total of 5,000 executed options contracts on ABC for the User.
- The User then submits an electronic instruction to the System acknowledging a change in the active risk counter due to Transaction 1. Upon the System's receipt of such instruction, the counting program decrements the active risk counter by 5,000 options contracts for Transaction 1 to a total of zero with respect to the number of executed options contracts on ABC for the User.
- The System then executes two separate transactions to purchase 3,000 call options on ABC per transaction (''Transaction 2'' and ''Transaction 3'' respectively), and the User does not acknowledge a change in the active risk counter due to either of these executions. The System's counting program would increment 3,000 executed options contracts at the time of execution for each of Transaction 2 and Transaction 3, for a total of 6,000 executed options contracts on ABC for the User.
- The User then submits an electronic instruction to the System acknowledging a change in the active risk counter due Transaction 3, but not Transaction 2. Upon the System's receipt of such instruction, the counting program would decrement the active risk counter by the 3,000 executed options contracts for Transaction 3 to a total of 3,000 executed options contracts on ABC for the User.
- The User then executes a transaction to purchase 10,000 call options on ABC (''Transaction 4''). The System's counting program would increment an additional 10,000 executed options contracts for Transaction 4 to a total of 13,000 options contracts on ABC for the User. As Transaction 4 results in executions in excess of the User's risk limit with respect to the number of options contracts executed, the Risk Monitor Mechanism is triggered, and the System will cancel, reject or suspend, as applicable in accordance with the User's instructions, the User's orders and quotes in all series of options contracts on ABC for the User.
- The User then submits an electronic instruction to the System acknowledging a change in the active risk counter due to Transaction 4. Upon the System's receipt of such instruction, the counting program would decrement the active risk counter by the 10,000 executed options contracts for Transaction 4 to a total of 3,000 executed options contracts on ABC for the User. The System will now accept new orders or quotes from the User in a series of options contracts on ABC.

In addition to the Risk Monitor Mechanism functionality described above, the Exchange also proposes to offer additional price protection mechanisms and risk controls that relate to certain standard or Exchange-established parameters based on order type and market conditions, which are described in proposed Rule 21.17. These additional price protection mechanisms and risk controls are substantively identical to those offered on MEMX Options pursuant to MEMX Rule 21.17.

One Second Exposure Period. Proposed Rule 22.11 would require Options Members to expose their customers' orders on the Exchange for at least one second under certain

circumstances. During this one second exposure period, other Options Members will be able to enter orders to trade against the exposed order. In adopting a one second order exposure period, the Exchange is proposing a requirement that is consistent with the rules of other options exchanges.[24] Thus, the exposure period will allow Options Members that are members of other options exchanges to comply with proposed Rule 22.11 without programming separate time parameters into their systems for order entry or compliance purposes. The Exchange believes that market participants are sufficiently automated that a one second exposure period allows an adequate time for market participants to electronically respond to an order. Also, it is possible that market participants might wait until the end of the exposure period, no matter how long, before responding. Thus, the Exchange believes that any longer than one second would not further the protection of investors or market participants, but rather, would potentially increase market risk to investors and other market participants by creating a longer period of time for the exposed order to be subject to market risk.

Options Order Protection and Locked/Crossed Market Plan Rules

The Exchange will participate in the Options Order Protection and Locked/Crossed Market Plan (the ''Plan''), and therefore will be required to comply with the obligations of Participants under the Plan. The Exchange proposes to adopt rules relating to the Plan that are substantially similar to the rules in place on all of the options exchanges that are Participants to the Plan. The Plan essentially applies the Regulation NMS price-protection provisions to the options markets. Similar to Regulation NMS, the Plan requires the Plan Participants to adopt rules ''reasonably designed to prevent Trade-Throughs'', while exempting ISOs from that prohibition. The Plan's definition of an ISO is essentially the same as under Regulation NMS. The remaining exceptions to the trade-through prohibition, discussed more specifically below, either track those under Regulation NMS or correspond to unique aspects of the options market, or both.

The proposed rules in Chapter 27 (Options Order Protection and Locked and Crossed Markets Rules) conform to the requirements of the Plan. Proposed Rule 27.1 sets forth the defined terms for use under the Plan. Proposed Rule 27.2 prohibits trade-throughs and exempts ISOs from that prohibition. Proposed Rule 27.2 also contains additional exceptions to the trade-through prohibition that track the exceptions under Regulation NMS or correspond to unique aspects of the options market, or both.

Proposed Rule 27.3 sets forth the general prohibition against locking/crossing other eligible exchanges as well as certain enumerated exceptions that permit locked markets in limited circumstances; such exceptions have been approved by the Commission for inclusion in the rules of other options exchanges. Specifically, the exceptions to the general prohibition on locking and crossing occur when: (1) the locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment; (2) the locking or crossing quotation was displayed at a time when there is a Crossed Market; (3) the Options Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer; or (4) with respect to a locking quotation, the order entered on the Exchange that will lock a Protected Bid or Protected Offer, is: (i) not a Customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a Customer order; or (ii) a Customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a Customer order, and, on a case-by-case basis, the Customer specifically authorizes the Member to lock such Protected Bid or Protected Offer.

The Exchange notes that the proposed rules in Chapter 27 (Options Order Protection and Locked and Crossed Markets Rules) are identical to Rules 27.1–27.3 of MEMX Options.

Securities Traded on 24X Options

General Listing Standards. The Exchange proposes to adopt listing standards for options traded on 24X Options as described in Chapter 19 (Securities Traded on 24X Options), which are substantively identical to the approved rules of MEMX Options.[25] The Exchange will join the Options Listings Procedures Plan and will list and trade options already listed on other options exchanges. The Exchange will gradually phase-in its trading of options, beginning with a selection of actively traded options.

Conduct and Operational Rules for Options Members

The Exchange proposes to adopt rules for 24X Options that are substantively identical to the rules of MEMX Options regarding: business conduct as described in Chapter 18 (Business Conduct); the binding nature of transaction prices as described in proposed Rule 21.11 (Transaction Price Binding); clearing member give ups as described in proposed Rule 21.12 (Clearing Member Give Up); clearing of options transactions as described in proposed Rule 21.13 (Submission for Clearance); message traffic mitigation as described in proposed Rule 21.14 (Message Traffic Mitigation); exercises and deliveries as described in Chapter 23 (Exercises and Deliveries); records, reports and audits as described in Chapter 24 (Records, Reports and Audits); minor rule violations as described in Chapter 25 (Discipline and Summary Suspensions); doing business with the public as described in Chapter 26 (Doing Business With the Public); and margin as described in Chapter 28 (Margin Requirements).[26]

National Market System

24X Options will operate as a full and equal participant in the national market system for options trading established under Section 11A of the Exchange Act,[27] just as its equities market participates today. 24X Options will become a member of the Options Price Reporting Authority (''OPRA''), the Options Linkage Authority (''OLA''), the Options Regulatory Surveillance Authority (''ORSA''), and the Options Listing Procedures Plan (''OLPP''). The Exchange expects to participate in those plans on the same terms currently applicable to current members of those plans. The Exchange will be contacting the leadership of each options-related national market system plan to begin the membership process.

[24] *See, e.g.,* BZX Rule 22.12; Cboe Rule 5.9; MIAX Options Rule 520(b); BOX Rule IM–7140–3; MEMX Rule 22.11.

[25] *See* MEMX Rules, Chapter 19. The Exchange notes that it is not currently proposing to adopt rules applicable to listing and trading of index options as set forth in MEMX Chapter 29.

[26] *See* MEMX Rules, Chapters 18, 21, 23, 24, 25, 26 and 28. The Exchange notes that it is not currently proposing to adopt rules applicable to listing and trading of index options as set forth in in MEMX Options Rules. *See* references to index options in Chapters 16, 18, 19, 20, 21, 23, 25 and 29 of MEMX Options Rules.

[27] 15 U.S.C. 78k–1.

Regulation

The Exchange will leverage many of the structures it established to operate a national securities exchange in compliance with Section 6 of the Exchange Act.[28] As described in more detail below, there will be three elements of that regulation: (1) the Exchange will join the existing options industry agreements pursuant to Section 17(d) of the Exchange Act prior to commencing operations,[29] as it did with respect to equities; (2) the Exchange's Regulatory Services Agreement with FINRA will be amended as necessary prior to commencing operations and will govern many aspects of the regulation and discipline of Members that participate in options trading, just as it does for equities regulation; and (3) the Exchange will perform options listing regulation, as well as authorize Options Members to trade on 24X Options, and conduct surveillance of options trading as it does today for equities. Section 17(d) of the Exchange Act and the related Exchange Act rules permit SROs to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d–1,[30] the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory oversight. Because 24X Options Members also must be members of at least one other SRO, the Exchange would generally not be designated as the DEA for any of its members.

Exchange Act Rule 17d–2 [31] permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO (''common members''). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO.

All of the options exchanges, FINRA, and NYSE have entered into the Options Sales Practices Agreement, a Rule 17d–2 agreement, and the Exchange intends to join this agreement prior to the commencement of operations for 24X Options. Under this Agreement, the examining SROs will examine firms that are common members of the Exchange and the particular examining SRO for compliance with certain provisions of the Exchange Act, certain of the rules and regulations adopted thereunder, certain examining SRO rules, and certain proposed 24X Options rules. In addition, the proposed 24X Options rules contemplate participation in this Agreement by requiring that any Options Member also be a member of at least one of the examining SROs. The Exchange and FINRA are also party to a bilateral Rule 17d–2 agreement that requires minor modifications due to the proposed launch of 24X Options. The Exchange intends to modify and seek Commission approval of the modified bilateral Rule 17d–2 agreement prior to commencing of operations for 24X Options. Additionally, all of the options exchanges and FINRA have entered into the Options-Related Market Surveillance Agreement, a Rule 17d–2 agreement, and the Exchange intends to join this agreement prior to the commencement of operations for 24X Options.

For those regulatory responsibilities that fall outside the scope of any Rule 17d–2 agreements, the Exchange will retain full regulatory responsibility under the Exchange Act. However, the Exchange has entered into a Regulatory Services Agreement with FINRA, pursuant to which FINRA personnel operate as agents for the Exchange in performing certain of these functions. The Exchange and FINRA will continue to operate under the Regulatory Services Agreement that is currently in place but with modifications as necessary to accommodate the expanded scope of the relationship. The necessary modifications will be implemented prior to the commencement of operations of 24X Options. As is the case with the Exchange's equities market, the Exchange will supervise FINRA and continue to bear ultimate regulatory responsibility for the 24X Options Exchange.

Consistent with the Exchange's existing regulatory structure, the Exchange's Chief Regulatory Officer shall have general supervision of the regulatory operations of 24X Options, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to 24X Options. Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to 24X Options.

Finally, as it does with equities, the Exchange will perform automated surveillance of trading on 24X Options for the purpose of maintaining a fair and orderly market at all times. As it does with its equities trading, the Exchange will monitor 24X Options to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA.

In addition, the Exchange will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering the Exchange's process for identifying and remediating ''obvious errors'' by and among its Options Members. The proposed rules in Chapter 20 (Regulation of Trading on 24X Options) regarding halts, unusual market conditions, extraordinary market volatility, obvious errors, audit trail, and rules regarding prohibited and permissible transfers of options positions off the Exchange are substantively identical to the approved rules of MEMX Options.[32] In addition, the Exchange is not proposing to adopt language in Chapter 20 of the MEMX Rules related to index options.

Minor Rule Violation Plan

The Exchange's disciplinary rules, including Exchange Rules applicable to ''minor rule violations,'' are set forth in Chapter 8 of the Exchange's current Rules. Such disciplinary rules will apply to Options Members and their associated persons.

The Commission approved the Exchange's Minor Rule Violation Plan (''MRVP'') in 2025.[33] The Exchange's MRVP specifies those uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the provisions of Rule 19d–1(c)(1) under the Act [34] requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[35] The Exchange's

[28] 15 U.S.C. 78f.

[29] 15 U.S.C. 78q(d).

[30] 17 CFR 240.17d–1.

[31] 17 CFR 240.17d–2.

[32] *See* MEMX Rules, Chapter 20.

[33] *See* Securities Exchange Act Rel. No. 103837 (Sept. 3, 2025), 90 FR 43255 (Sept. 8, 2025) (Order Declaring Effective a Minor Rule Violation Plan).

[34] 17 CFR 240.19d–1(c)(1).

[35] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Rel. No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation

MRVP includes the policies and procedures included in Exchange Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules) and in Exchange Rule 8.15, Interpretations and Policy .01.

The Exchange proposes to amend its MRVP and Exchange Rule 8.15, Interpretation and Policy .01 to include proposed Rule 25.3 (Penalty for Minor Rule Violations).[36] The rules included in proposed Rule 25.3 as appropriate for disposition under the Exchange's MRVP are: (a) position limit and exercise limit violations; (b) violations regarding the failure to accurately report position and account information; (c) Market Maker quoting obligations; (d) violations regarding expiring exercise declarations; (e) violations relating to the failure to respond to the Exchange's requests for the submission of trade data; and (f) violations relating to noncompliance with the Consolidated Audit Trail Compliance Rule requirements. The rules included in proposed Rule 25.3 are the same as the rules included in the MRVPs of other options exchanges.[37]

Upon implementation of this proposal, the Exchange will include the enumerated options trading rule violations in the Exchange's standard quarterly report of actions taken on minor rule violations under the MRVP. The quarterly report includes: the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the fine imposed, the number of times the rule violation has occurred, and the date of disposition. The Exchange's MRVP, as proposed to be amended, is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Act, which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange.[38] In addition, because amended Rule 8.15 will offer procedural rights to a person sanctioned for a violation listed in proposed Rule 25.3, the Exchange will provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Act.[39]

This proposal to include the rules listed in proposed Rule 25.3 in the Exchange's MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[40] because it should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In requesting the proposed change to the MRVP, the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.

Section 36 Exemption Request

The Exchange proposes to incorporate by reference as 24X Options rules certain rules of the Cboe, the New York Stock Exchange (''NYSE''), and FINRA. Specifically, 24X Options Rule 26.16 proposes to incorporate by reference the applicable rules of FINRA with respect to Communications with Public Customers; and 24X Options Rule 28.3 proposes to incorporate by reference initial and maintenance margin requirements of either Cboe or NYSE. Thus, for certain 24X Options rules, Exchange members will comply with a 24X Options rule by complying with the Cboe, NYSE, or FINRA rule referenced. Using its authority under Section 36 of the Act, the Commission has previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act when incorporating another SRO's rules by reference.[41] Each such exempt SRO has agreed to be governed by the incorporated rules, as amended from time to time, but, has not been required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify its rules. In addition, each SRO incorporated by reference only regulatory rules (*e.g.,* margin, suitability, arbitration), not trading rules, and incorporated by reference whole categories of rules (*i.e.,* did not ''cherry-pick'' certain individual rules within a category). Last, each exempt SRO had reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide its members with notice of a proposed rule change that affects their interests, so that they would have an opportunity to comment on it.

In connection with this proposal, the Exchange respectfully requests, pursuant to Rule 0–12 under the Act,[42] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those 24X Options rules that are effected solely by virtue of a change to a cross-referenced Cboe, NYSE, or FINRA rule. The Exchange proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. The Exchange also agrees to provide written notice to Options Members prior to the launch of 24X Options of the specific Cboe, NYSE, and FINRA rules that it will incorporate by reference. In addition, the Exchange will notify Options Members whenever Cboe, NYSE, or FINRA proposes a change to a cross-referenced Cboe, NYSE, or FINRA rule.[43] For the foregoing reasons, the Exchange believes that its request for exemptive relief is consistent with prior requests for, and provision of, similar exemptive relief.

Amendments to Existing Exchange Rules

In addition to the rules of 24X Options proposed above, the Exchange proposes to amend certain of its existing Exchange Rules that currently apply to

pursuant to such a plan filed with and declared effective by the Commission will not be considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[36] In its proposal to adopt the MRVP, the Exchange requested that, going forward, to the extent that there are any changes to the rules applicable to the Exchange's MRVP, the Exchange requests that the Commission deem such changes to be modifications to the Exchange's MRVP.

[37] *See, e.g.,* BZX Rules, Chapter XXV; MEMX Rules, Chapter 25. The Exchange is not proposing language in MEMX Rule 25.3 related to index options.

[38] 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6).

[39] 15 U.S.C. 78f(b)(7).

[40] 17 CFR 240.19d–1(c)(2).

[41] *See, e.g.,* Securities Exchange Act Release No. 49260 (Feb. 17, 2004), 69 FR 8500 (Feb. 24, 2004). *See also* Securities Exchange Act Release Nos. 57478 (Mar. 12, 2008), 73 FR 14521, 14539–40 (Mar. 18, 2008); 53128 (Jan. 13, 2006), 71 FR 3550, 3565–66 (Jan. 23, 2006), 85 FR 27451, 27463 (May 8, 2020).

[42] 17 CFR 240.0–12.

[43] The Exchange will provide such notice through a posting on the same website location where the Exchange will post its own rule filings pursuant to Rule 19b–4(l) under Act, within the time frame required by that rule. The website posting will include a link to the location on the Cboe, NYSE, or FINRA website where the proposed rule change is posted.

the Exchange's equities market in order to reflect the Exchange's proposed operation of 24X Options.

First, the Exchange proposes to amend paragraph (d) of Interpretations and Policies .01 to Rule 2.5 (Restrictions), which generally requires each Member to register at least two Principals with the Exchange subject to certain exceptions described therein, to provide that such paragraph (d) shall not apply to a Member that solely conducts business on the Exchange as an Options Member, however, Options Members must comply with the registration requirements set forth in proposed Rule 17.2(g). The Exchange notes that proposed Rule 17.2(g), which provides that every Options Member shall have at least one Options Principal and sets forth the Exchange's Options Principal registration requirements, is identical to MEMX Rule 17.2(g). In connection with this proposed change, the Exchange also proposes to amend paragraph (i) of Interpretations and Policies .01 to Rule 2.5 to include Options Principal as a registration category and to set forth the Exchange's qualification requirements for an Options Principal, which are the same as those for an Options Principal on MEMX Options.

Second, the Exchange proposes to amend Interpretations and Policies .01 of Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules), which contains the list of Exchange Rule violations and recommended fine schedule pursuant to Rule 8.15, to include a new paragraph (i) referencing proposed Rule 25.3 for the recommended fines for minor rule violations of the Exchange Rules applicable to 24X Options, which the Exchange notes are the same as those of MEMX Options.

Binary KPI Options

The Exchange proposes to amend its Rules to permit the listing of binary options overlying KPIs reported by certain issuers of stock (''binary KPI options''). The Exchange proposes to adopt Chapter 30 (Binary KPI Options) to describe binary KPI options. The Exchange's proposal is substantively identical to Cboe Exchange, Inc.'s (''Cboe) recently approved rules which permit the listing of binary options that overlie KPIs.[44]

Binary options are based on the same framework as traditional, standardized options traded on the Exchange, except the payout of a binary option is an amount contingent upon the occurrence of the option being in- or at-the-money rather than the degree to which the option is in-the-money. As a result, payout at expiration of a binary option is an all-or-nothing occurrence.

Similar to the Cboe's approved rules regarding binary KPI options, the Exchange proposes to amend its Rules to permit the listing of binary KPI options. Binary KPI options are European-style, cash-settled options contracts listed on an underlying KPI of an issuer whose exercise settlement value is determined not by the market price of the issuer's stock, but by whether a specific financial or operating metric reported by the issuer in an earnings-related filing submitted to the U.S. Securities and Exchange Commission (the ''Commission'') meets or exceeds a pre-specified strike level.

Proposed Rule 30.1.—Applicability, Definitions. The Exchange proposes to adopt Rule 30.1 (Applicability, Definitions) to describe the applicability of the rules in proposed Chapter 30 and to define terms used in proposed Chapter 30.

Paragraph (a) of proposed Rule 30.1 states that the rules in proposed Chapter 30 apply only to binary KPI options. All other rules apply to the trading of binary KPI options, except as otherwise provided or the context otherwise requires.[45]

Like other standardized options, binary KPI options have standardized terms that are established by the Exchange. Standardized terms for binary KPI options include the exercise criteria that is the condition or criteria of a binary KPI option, the exercise settlement amount (*i.e.,* payout amount), strike prices, expiration dates, settlement type as A.M.-settlement or P.M.-settlement, the settlement style (as European), and the requirements used to determine if the KPI condition or criteria of a binary KPI option has been met (the ''payout determination requirement''). The Exchange proposes to define terms related to binary KPI options in proposed Rule 30.1.

The Exchange proposes to define a ''binary KPI option'' in proposed Rule 30.1(b)(1) as a cash-settled option contract listed on an underlying KPI of an issuer with an exercise settlement amount that is established at the creation of the option and with a settlement value that is determined by whether a specific KPI disclosed by the issuer in an earnings-related filing submitted to the Commission meets or exceeds its exercise price. Binary KPI options are paid out if the reported value of the applicable KPI (1) equals or is greater than the exercise price for a call binary KPI option or (2) is less than the exercise price for a put binary KPI option. Proposed Rule 30.1(b)(1) also would provide that unless the context dictates otherwise, the terms underlying security, equity, or index, or any variations of these terms, in the Rules mean KPI for purposes of binary KPI options.[46]

The Exchange proposes to define a ''call binary KPI option'' in proposed Rule 30.1(b)(2) as an option contract that returns an exercise settlement amount if the settlement value of the underlying KPI is at or above the exercise price at expiration (*i.e.,* in- or at-the money).[47]

The Exchange proposes to define the term ''Clearing Corporation'' in proposed Rule 30.1(b)(3) to mean the registered clearing agency designated by the Exchange to clear binary KPI options.[48]

The Exchange proposes to define ''exercise price'' (also referred to as ''strike price'') in proposed Rule 30.1(b)(4) as the value[49] to which the settlement value of the underlying KPI is compared to determine whether the holder of a binary KPI option is entitled to the exercise settlement amount.[50] For binary KPI options, the exercise price is the exercise threshold of an option contract that establishes a number, value, or measure that is compared against the price of the settlement value of the underlying index or the KPI to determine if the cash payout amount (*i.e.,* the exercise settlement amount)

[44] *See* Securities Exchange Act Rel. No. 106659 (Oct. 13, 2026), 91 FR 65854 (Oct. 16, 2026) (''Cboe KPI Approval Order'').

[45] Paragraph (a) of proposed Rule 30.1 is the same as the introductory language to Cboe Chapter 4, Section I.

[46] Paragraph (b)(1) of proposed Rule 30.1 contains the same language as the definition of ''Binary KPI Option'' in Cboe Rule 4.80 as well as the last clause regarding binary KPI options in the definition of ''underlying security'' in Cboe Rule 1.1.

[47] Paragraph (b)(2) of proposed Rule 30.1 is the same as the definition of ''call binary KPI option'' in Cboe Rule 4.80.

[48] The definition of Clearing Corporation reflects that the Exchange may designate the Options Clearing Corporation (''OCC'') or another registered clearing agency to clear binary KPI options. References in this filing to the Clearing Corporation with regard to binary KPI options therefore are intended to be clearing agency-neutral. The proposed definition does not alter the requirement that clearing and settlement occur through a registered clearing agency subject to the applicable provisions of the Act and the rules and oversight applicable to that clearing agency. Upon designation of a clearing agency to clear binary KPI options, the Exchange will submit a separate rule filing to update Rules to reflect such designation.

[49] The value of an exercise price is measured in the applicable units of the KPI. For example, some KPIs are measured in U.S. dollars while others may be measured in percentages or numbers.

[50] Paragraph (b)(4) of proposed Rule 30.1 is the same as the definition of ''exercise price'' in Cboe Rule 4.80.

will be paid out. In other words, binary options will have a threshold number as the exercise price that will be used to determine if the exercise criteria of the binary option has been met and the option will be exercised (and if holders will receive the cash payout amount). For binary KPI options, the exercise threshold will be a number that reflects or is compared to the underlying KPI of the binary option.

The Exchange proposes to define the term ''exercise settlement amount'' for binary KPI options in proposed Rule 30.1(b)(5) to be $1 (unless otherwise adjusted pursuant to Rule 30.5 or modified pursuant to the Rules of the Clearing Corporation).[51]

The Exchange proposes to define the term KPI (or ''key performance indicator'') in proposed Rule 30.1(b)(6) as a key financial or operating metric disclosed by an issuer in its earnings-related filings submitted to the Commission (*i.e.,* Form 8–K, Form 10–Q, or Form 10–K, as applicable).[52]

The Exchange proposes to define ''put binary KPI option'' in proposed Rule 30.1(b)(7) as an option contract that returns an exercise settlement amount if the settlement value of the underlying KPI is below the exercise price at expiration (*i.e.,* in-the-money).[53]

The Exchange proposes to define ''settlement value'' in proposed Rule 30.1(b)(8) as the value of the underlying KPI that is used to determine whether a binary KPI option is in-, at-, or out-of-the-money. The proposed definition specifies that the ''settlement value'' is the value of the applicable KPI as disclosed in the applicable issuer's earnings-related filing submitted to, the Commission on applicable expiration date (for both A.M.-settled and P.M.-settled binary KPI options).[54] Proposed paragraph (a) of the settlement value definition states the Exchange designates the applicable KPI and the relevant reporting period (for example, a calendar quarter) at the time of listing a binary KPI option series. Proposed paragraph (b) of the settlement value definition provides if the applicable KPI is not reported or otherwise unavailable on the expiration date, settlement will occur in accordance with the Rules of the Clearing Corporation. Additionally, proposed paragraph (c) of the settlement value definition states that, if an applicable KPI is restated after the expiration date and settlement of a binary KPI option, the settlement value (and the exercise settlement amount) of the binary KPI option does not change.[55] In other words, the value of the applicable KPI as reported by the issuer on the applicable expiration date is final, and the amount paid (or not paid) at settlement will not change, regardless of whether it is later restated by the issuer.

Proposed Rule 30.2—Designation of Binary KPI Option Contracts. The Exchange proposes to adopt Rule 30.2 (Designation of Binary KPI Option Contracts) to identify the binary KPI options that may be listed for trading on the Exchange. Pursuant to proposed Rule 30.2(a), the Exchange may from time to time approve for listing and trading on the Exchange any of the following binary KPI options contracts for the following issuers:[56]

Company	KPI (each financial metric is measured in $ unless otherwise specified)
Apple, Inc	Earnings per share: diluted.
	Total net sales.
	Net sales by category: iPhone.
	Net sales by category: Services.
	Net sales by reportable segment: Americas.
	Net sales by reportable segment: Greater China.
Advanced Micro Devices, Inc	GAAP Diluted earnings per share.
	GAAP Revenue.
	Net Revenue: Data Center Segment.
	Net Revenue: Client and Gaming Segment.
	GAAP Operating Margin (%).
Alphabet Inc	Diluted net income per share.
	Revenues.
	YouTube ads Revenues.
	Google Cloud Revenues.
Amazon.com, Inc	Diluted earnings per share.
	Total Net sales.
	AWS: Net sales.
	North America: Net sales.
	International: Net sales.
	Net Sales: Advertising services.
Bank of America Corporation	Diluted earnings per share.
	Total Revenue, net of interest expense.
	Net Interest Income.
	Provision for credit losses.
	Net Income.
Citigroup Inc	Diluted earnings per share.
	Total Revenue, net of interest expense.
	Net Interest Income.
	Total Provision for credit losses.
	Net Income.

[51] Paragraph (b)(5) of proposed Rule 30.1 is the same as the definition of ''exercise settlement amount'' in Cboe Rule 4.80.

[52] Paragraph (b)(6) of proposed Rule 30.1 is the same as the definition of ''KPI'' in Cboe Rule 4.80.

[53] Paragraph (b)(7) of proposed Rule 30.1 is the same as the definition of ''put binary KPI option'' in Cboe Rule 4.80.

[54] While the timing of an issuer's official disclosure informs whether the Exchange will establish a binary KPI option as A.M.-settled or P.M.-settled (as further discussed below), the Exchange will use the KPI value included in an issuer's report submitted to the Commission (and not the press release announcing earnings results, for example) as the settlement value. The Exchange understands, however, these values are generally the same.

[55] Paragraph (b)(8) of proposed Rule 30.1 is the same as the definition of ''settlement value'' in Cboe Rule 4.80.

[56] Proposed Rule 30.2(a) is the same as Cboe Rule 4.81(a).

Company	KPI (each financial metric is measured in $ unless otherwise specified)
Coinbase Global, Inc	Net income per share—Diluted.
	Total Revenue.
	Transaction Revenue.
	Total Trading Volume.
	Subscription and Services Revenue.
Ford Motor Company	GAAP Earnings per share—Diluted.
	Total Revenues.
	Ford Pro Segment: Revenue.
	Ford Model e Segment: Revenue.
	Ford Blue Segment: Revenue.
Intel Corporation	GAAP Earnings per share attributable to Intel—diluted.
	Net revenue.
	Revenue: Client Computing Group (CCG).
	Revenue: Data Center and AI (DCAI).
	Revenue: Intel Foundry.
	GAAP operating margin (%).
JPMorgan Chase & Co	Earnings per share—diluted.
	Net revenue—reported.
	Net Interest Income.
	Provision for credit losses.
	Net Income.
Marathon Digital Holdings, Inc	Earnings (Net loss) per share of common stock—diluted.
	Revenues.
	Number of Blocks Won (# Bitcoin (BTC)).
	Energized Hashrate (EH) (# EH/s).
	Total Bitcoin Holdings (# BTC).
	BTC Produced (# BTC).
	BTC Purchased (# BTC).
Meta Platforms, Inc	Earnings per share: Diluted.
	Revenue.
	Family Daily Active People (DAP) (#).
	Revenue: Advertising.
	Operating Margin (%).
Microsoft Corporation	Diluted Earnings per Share.
	Revenue.
	Intelligent Cloud: Revenue.
	Microsoft Cloud revenue.
	More Personal Computing: Revenue.
Netflix, Inc	Earnings per share: Diluted.
	Revenues.
	United States and Canada (UCAN): Revenue.
	Europe, Middle East, and Africa (EMEA): Revenue Operating Margin (%).
NVIDIA Corporation	GAAP Diluted earnings per share.
	Revenue.
	Data Center Revenue.
	Edge Computing Revenue.
	Automotive Revenue.
Palantir Technologies Inc	Earnings per share attributable to common.
	stockholders, diluted.
	Revenue.
	Net Income.
	Closed Deals of at Least $1 Million (#).
Robinhood Markets, Inc	Net income attributable to Robinhood common stockholders: Diluted.
	Total net revenues.
	Funded Customers (#).
	Average Revenue Per User (‘‘ARPU’’).
	Robinhood Gold Subscribers (#).
SoFi Technologies, Inc	Earnings per share attributable to common stockholders—diluted.
	Total net revenue.
	Total net revenue—Technology Platform.
	Total net revenue—Financial Services.
	Total net revenue—Lending.
Space Exploration Technologies Corp	Earnings per share: Diluted.
	Total Revenues.
Super Micro Computer, Inc	Net income per common share: Diluted.
	Net sales.
	Gross Margin (%).
	Cash flow used in operations.
	Net Income.

Company	KPI (each financial metric is measured in $ unless otherwise specified)
Target Corporation	Diluted earnings per share.
	Net sales.
	Food & Beverage Net sales.
	Apparel & Accessories Net sales.
	Operating income: Rate (%).
Tesla, Inc	Net Income per share of common stocks attributable to common stockholders: diluted.
	Total Revenues.
	Total Automotive Revenue.
	Model 3/Y Production (#).
	Supercharger Connectors (#).
	Free Cash Flow.
The Walt Disney Company	Diluted earnings per share.
	Revenues.
	Entertainment Subscription Video On Demand(SVOD) Operating Income.
	Revenues: Experiences.
	Segment operating income: Sports.

The Exchange proposes to add Rule 30.2(b) to clarify that binary KPI options are a separate class from other options overlying the stock of the issuer and are a separate class from other binary KPI options with differently underlying KPIs for the same issuer.[57] The Exchange believes this is reasonable given that an individual KPI is the specific underlying of binary KPI options, and generally options with different underlyings (*e.g.,* different underlying security or index) are different option classes.

Proposed Rule 30.3—Terms of Binary KPI Option Contracts. The Exchange proposes to adopt Rule 30.3 (Terms of Binary KPI Option Contracts) to describe the permissible terms of binary KPI option series. Proposed Rule 30.3 provides that binary KPI options listed and traded on the Exchange are designated as to expiration date, exercise price, settlement type, exercise style, exercise settlement amount, contract multiplier, and underlying KPI. After approving a particular binary KPI option class for listing and trading on the Exchange, the Exchange from time to time may open for trading series of options in that binary KPI option class.[58]

Proposed Rule 30.3(a) provides that the Exchange may designate the settlement type for binary KPI options as A.M.-settled or P.M.-settled. Binary KPI options for issuers [59] that disclose their earnings results before the open of Regular Trading Hours on a given trading day are designated as A.M.-settled binary KPI options, and binary KPI options for issuers that disclose their earnings results after the close of Regular Trading Hours on a given trading day are designated as P.M.-settled binary KPI options. The Exchange believes the proposed description of A.M.-settlement and P.M.-settlement appropriately reflects the earnings disclosure practices of issuers, and are consistent with the binary KPI options described in the Cboe binary KPI options rules.[60]

Proposed Rule 30.3(a) further states that the exercise style of binary KPI options is European-style, which is consistent with the exercise style of the binary KPI options that Cboe's recently received approval to list.[61] A European-style option may only be exercised on its expiration date.

Proposed Rule 30.3(b) describes permissible expirations for binary KPI options.[62] Specifically, the proposed rule change will permit the Exchange to list series that expire on the date the issuer discloses its earnings results for the applicable reporting period (such as calendar quarter). The expiration date for a binary KPI option will be the date on which an issuer discloses the applicable KPI in its earnings results (for example, the date on which it issues an earnings results press release) for the specified reporting period (with the specific expiration date to be finalized when an issuer announces the date on which it will disclose its earnings results for that reporting period).[63] If that date is a Tuesday, Wednesday, Thursday, or Friday and the Exchange is not open for business on that date, the expiration date will be the first business day immediately prior to that day. If that date is a Monday and the Exchange is not open for business on that date, the expiration date will be the first business day immediately following that Monday. The disclosed KPIs relate to a specific reporting period (such as a calendar quarter), which KPIs an issuer publicly announces on a date following the end of that reporting period.[64]

While an expiration date for a binary KPI option will be a specific date, as is the case for traditional options, the Exchange's proposed designation of expiration dates for binary KPI options will differ to reflect standard issuer disclosure practices. In some instances, an issuer might not establish the specific date on which it will announce its earnings results for a reporting period until weeks prior to the disclosure date. Consequently, unlike standard equity and index options that have an exact expiration date when strikes are first listed, a binary KPI option will be listed for trading with a placeholder expiration date if the date

[57] Proposed Rule 30.2(b) is the same as Cboe Rule 4.81(b).

[58] The introductory paragraph for proposed Rule 30.3 is the same as the introductory paragraph for Cboe Rule 4.82.

[59] The Exchange determines whether an issuer discloses its earnings results before or after the close of Regular Trading Hours on a given trading day based on publicly available information regarding the issuer's disclosure practice. Proposed Rule 30.3(a).

[60] Proposed Rule 30.3(a) is the same as Cboe Rule 4.82(a).

[61] *See* Cboe Rule 4.82(a).

[62] Proposed Rule 30.3(b) is the same as Cboe Rule 4.82(b).

[63] For example, for a binary KPI option series, the Exchange may designate the reporting period for a series to be the fourth quarter of 2026. The expiration date for that series would be the date on which the applicable issuer establishes as the date it will announce earnings results for that quarter. The Exchange will issue a notice when the specific expiration date for a binary KPI option is finalized. Additionally, the Exchange will maintain a reference data file for each issuer KPI on which the Exchange lists binary KPI options (as will be described in the Exchange's technical specifications available on its public website), and that reference data file will be updated with the specific expiration date for a binary KPI option once known.

[64] While earnings results are often reported with respect to the time period covered by the issuer's earnings release, such as a calendar quarter, certain issuers may disclose results for different time periods. For example, it is possible in an earnings release for an issuer to announce a KPI that covers a calendar month rather than a calendar quarter.

the KPI information will be disclosed by the issuer is not publicly known. If a placeholder expiration date is required, it will be set as the first trading day following the date of the deadline for the issuer's submission of its earnings-related filing for the reporting period applicable to the series. Once an issuer announces the disclosure date of the KPI information, the expiration date will be updated as the finalized expiration date of the option contract.[65] Ultimately, the expiration date for a binary KPI option is the issuer's earnings disclosure date, even if that date is unknown at the time the series is listed.

The Exchange may designate binary KPI option series to expire up to 12 months from the time they are listed and may list up to two expirations at one time for a binary KPI option (per KPI per issuer). The Exchange may open for trading a series of binary KPI options at least one business week prior to the expiration date of a binary KPI option.

Proposed Rule 30.3(c) describes the automatic exercise feature of binary KPI options. Specifically, the proposed rule states that binary KPI options will be automatically exercised at expiration if the settlement value of the underlying KPI is equal to or greater than the exercise price of a call binary KPI option or less than the exercise price in the case of a put binary KPI option.[66]

Proposed Rule 30.3(d) describes the permissible exercise prices (or strike prices) the Exchange may designate for series of binary KPI options.[67] Proposed Rule 30.3(d)(1) describes how the value of exercise prices of binary KPI options are measured. Specifically, the exercise price of each binary KPI option series will be fixed at an amount equal to an underlying KPI value divided by a scaling factor. Because the value of certain KPIs may be very large (*e.g.,* billions of dollars), the Exchange proposes that the exercise value of the underlying KPI will be divided by a scaling factor based on the value of the KPI in the issuer's most recent earnings-related disclosure as of the time a binary KPI option class is listed) as follows:

- if the most recently disclosed KPI value is greater than or equal to one trillion, the exercise price equals that value divided by one trillion (*e.g.,* for such KPIs, an exercise price of 27.00 is equivalent to a KPI value of 27,000,000,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one billion but less than one trillion, the exercise price equals that value divided by one billion (*e.g.,* for such KPIs, an exercise price of 112.00 is equivalent to a KPI value of 112,000,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one million but less than one billion, the exercise price equals that value divided by one million (*e.g.,* for such KPIs, an exercise price of 900.00 is equivalent to a KPI value of 900,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one thousand but less than one million, the exercise price equals that value divided by one thousand (*e.g.,* for such KPIs, an exercise price of 42.00 is equivalent to a KPI value of 42,000.00); and
- if the most recently disclosed KPI value is less than one thousand, the exercise price equals that value and is not divided by a scaling factor (*e.g.,* for such KPIs, an exercise price of 774.00 is equivalent to a KPI value of 774.00).[68]

The Exchange will apply a different scaling factor to binary KPI option series for a new expiration only after the value of the KPI in the issuer's earnings-related filing submitted to the Commission has a value in a different scaling tier for four consecutive reporting periods or if the Exchange deems it necessary in the interests of a fair and orderly market. Application of a different scaling factor will not affect the exercise prices of any series of the binary KPI options previously opened. For example, if the Exchange begins listing a new class of binary KPI options and the most recently disclosed KPI value for the issuer at the time of that listing was for the third quarter of 2026 and was $892,000, the exercise prices for that class of binary KPI options will be scaled by 1,000, and thus exercise prices of 895, 995, and 1005, would represent $895,000, $995,000, and $1,005,000, respectively. If the issuer discloses a KPI value of $1,020,000 in its fourth quarter 2026 earnings disclosure, the Exchange will continue to list exercise prices scaled by 1,000. If the issuer then discloses KPI values of $1,112,000, $1,237,000, and $1,064,000 for the first, second, and third quarters, respectively, of 2027, the Exchange will begin scaling the exercise prices by 1,000,000 for the fourth quarter 2027 expirations (or for the first quarter 2028 expirations if the Exchange had already listed fourth quarter 2027 expirations prior to the disclosure of the third quarter 2027 KPI value). The Exchange believes this will permit consistency for listing scaled KPI values while allowing the Exchange to update strike prices to reflect long-term changes to an issuer's KPI values.

The Exchange will announce if the scaling factor applied to a binary KPI options changes (for example, the KPIs will be scaled in billions rather than in millions). Additionally, the Exchange will update this information in the Exchange's technical specifications regarding binary KPI options and reference data file that describes the terms of binary KPI options, both of which will be available on the Exchange's website (customers receive notifications of such updates).[69]

It is possible for a KPI to have a negative value, such as earnings per share (which is equivalent to a loss per share). Proposed Rule 30.3(d)(1)(B) provides the Exchange may list binary KPI options series with exercise prices representing negative KPI values. For these series, the exercise price will equal the absolute value of the KPI and will be scaled as described above. For example, if an issuer's earnings per share in the last reporting period was $3.52 (and thus was a loss per share), a binary KPI option for such issuer with a strike of 3.58 will reflect an expected loss of $3.58 per share. The Exchange will incorporate into symbology for binary KPI options whether the value of the strike price is positive or negative, including if the Exchange lists binary KPI option series with both positive and negative strike prices. Whether a symbol reflects a positive or negative value will be available on contract specifications as well as the reference data file for the specific binary KPI option on the Exchange's public website.

Proposed Rule 30.3(d)(2) states that the minimum interval between strike prices for binary KPI options series is:

- where the strike price is less than 10;
- 0.10 where the strike price is 10 or greater but less than 100;
- 1.00 where the strike price is 100 or greater but less than 1,000;
- 10.00 where the strike price is 1,000 or greater but less than 10,000; and
- 100.00 where the strike price is 10,000 or greater.

As discussed above, while KPI values above 1,000 are generally scaled, there may be circumstances in which the

[65] Issuers have different practices as to when they disclose their earnings results (and when they announce their earnings disclosure dates); however, each issuer's practice is generally consistent and predictable.

[66] Proposed Rule 30.3(c) is the same as Cboe Rule 6.20(g)(2).

[67] Proposed Rule 30.3(d) is the same as Cboe Rule 4.82(c).

[68] When applying the scaling factor, the Exchange will not round the scaled KPI value and instead will truncate the value so the scaled strike price value fits within standard strike listing format.

[69] The binary KPI option contract specifications available on the Exchange's public website will set forth the scaling factor for each binary KPI option.

Exchange lists strikes above 1,000 or even 10,000 given the Exchange's proposal to maintain a lower scale level until a KPI value is consistently above a certain level (*e.g.,* above one billion for four consecutive quarters). This may occur when a KPI value is near the top of a scaling range; for continuity, the Exchange will continue listing strike prices using the lower scaling factor and not change to a higher scaling factor until the KPI value is regularly within that higher range (as noted above). Suppose a KPI value is 995,000,000; in this case, strike prices will be scaled by 1,000,000. Thus, the Exchange may list binary KPI options above and below 995 (995,000,000 divided by 1,000,000). However, it is realistic that the KPI may increase to above 1,000,000,000. As proposed, the Exchange may list strike prices, for example, of 1,000 (representing 1,000,000,000) and above, for expirations until the KPI value is above 1,000,000,000 for four consecutive reporting periods. To reduce confusion, the Exchange would not scale strike prices using different scaling factors within a single expiration (and would not change the scale until the KPI value is consistently at the higher level). Therefore, it is possible the Exchange may list strikes greater than 1,000. Similarly, while strikes above 10,000 may be rare, given the Exchange proposes to maintain a lower scale level until a KPI value is consistently above a certain level (*e.g.,* above one billion for four consecutive quarters, as proposed), depending on market factors and demand, it is possible (although unlikely) the Exchange may determine it is appropriate to list strikes above 10,000 if market factors or expectations signify a significant increase of the KPI value. The proposed strike intervals accommodate the listing of binary KPI options in these circumstances before the Exchange shifts the strike prices for an issuer's KPI to a different scaling level.

The proposed strike intervals are identical to the strike intervals applicable to the binary KPI options that Cboe's recently received approval to list.[70] Given the scaling factor for larger KPI values, it may appear the proposed rule change will permit smaller strike intervals for larger KPI values if those intervals are considered solely on a nominal basis. However, that is not the case if the actual values of the strike intervals are considered. The corresponding actual value of the strike interval for a strike price that was subject to a larger scale value is higher than the actual value of the strike interval for a strike price that was subject to a smaller scale value. For example, suppose a strike price of 950 represents $950 million. The proposed rule change would permit strike intervals of $1.00. However, that $1.00 corresponds to $1,000,000. In other words, if the Exchange listed strikes of 950, 951, and 952, the difference in values of those strikes are $1 million, not $1 (*i.e.,* the strikes represent values of $950,000,000, $951,000,000, and $952,000,000). Similarly, suppose a strike price of 3 represents $3,000,000,000. The proposed rule change would permit strike intervals of $0.01. However, in this case, that $0.01 corresponds to $10,000,000. If the Exchange listed strikes of 3.00, 3.01, and 3.02, the difference in values of those strikes are $10,000,000, not $0.01 (*i.e.,* the strikes represent values of $3,000,000,000, $3,010,000,000, and $3,020,000,000, respectively). As a result, the permissible strike intervals for strike prices representing values in the billions are actually larger than the permissible strike intervals for strike prices representing values in the millions. This is consistent with the general premise underlying current strike intervals that larger strike intervals apply to larger strike values.

Proposed Rule 30.3(e) addresses bid and offer conventions for binary KPI options with multipliers other than 100.[71] Proposed Rule 30.3(e) provides that bids and offers for a binary KPI option with a multiplier other than 100 must be expressed in terms of dollars per 1/multiplier of the total value of the contract. For example, if a binary option has a multiplier of 1, an offer of ''0.50'' represents an offer of $0.50. It will provide clarity and consistency in market quotations relative to the notional size of the option, promotes investor understanding of the cost and value of binary KPI option contracts. Therefore, the Exchange believes the proposed rule change is consistent with just and equitable principles of trade because it creates a pricing structure that reflects the notional value of an option based on its multiplier.

Proposed Rule 30.3(f) describes the initial series of a binary KPI option the Exchange may open for trading.[72] Specifically, the Exchange may open for trading one or more binary KPI option series with a fixed KPI value as the strike price (scaled as described above), with approximately the same number of strike prices being opened above and below the at-the-money KPI value (*i.e.,* the value of the KPI in the issuer's most recent earnings-related disclosure) at the time the binary KPI options are opened. The ''at-the-money'' KPI value may be the value of the KPI in the issuer's most recent earnings-related filing submitted to the Commission, the issuer's disclosed estimate of the KPI for the next reporting period, or analysts' consensus estimate as reported by major market vendors, as the Exchange deems appropriate based on the most recent market information available to the Exchange. Because KPIs are static values, the Exchange believes it is appropriate to determine strike prices based on all available information that would inform expectations about the KPIs (as investors would do). The Exchange understands that an issuer's previously disclosed KPI, as well as issuer and analyst estimates of the KPI, are primary factors investors may consider when determining in which direction the KPI value may move in the next reporting period (similar to how investors consider the then-current price of an underlying stock when considering their options investment strategies and which direction the stock price may move). Therefore, the Exchange believes using the most recently available of these values is appropriate to use for determining which strikes it should list for a specific issuer KPI. The Exchange believes this flexibility to select the most appropriate at-the-money value is similar to current exchange rules that permit the listing of additional series to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves substantially. The Exchange believes the proposed definition of at-the-money will allow the Exchange to list series with strike prices that are consistent with investor expectations and demands and that are based on information available in the market.

The Exchange will list strike prices for binary KPI option series that are reasonably close to the at-the-money KPI value at the time of listing. A strike is ''reasonably close'' to the at-the-money KPI value if (1) for KPIs less than or equal to 1, it is no more than 2;[73] (2)

[70] *See* Cboe Rule 4.82(c)(2).

[71] Proposed Rule 30.3(e) is the same as Cboe Rule 5.3(c)(3).

[72] Proposed Rule 30.3(f) is the same as Cboe Rule 4.82(d).

[73] The Exchange believes this is appropriate given the potentially small values of certain KPIs. For example, suppose the second quarter earnings per share of a company were $0.04. In such a case, if strikes were limited to 100% above this value, the Exchange could only list strikes up to $0.08, which would provide investors with minimal investment options. Therefore, the Exchange believes this provision is appropriate to provide the Exchange

Continued

for KPIs greater than 1 and less than or equal to 10, it is no more than 100% above or below the at-the-money KPI value; and (3) for KPIs greater than 10, it is no more than 30% above or below the at-the money KPI value. The Exchange may also open binary KPI option series that are more than 30% above or below the at-the-money KPI value (if the KPI is greater than 10) provided demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers.

Per proposed Rule 30.3(g), the Exchange may add new series of binary KPI options when the Exchange deems it necessary to maintain a fair and orderly market or to meet customer demand, and the opening of a new series of binary KPI options on the Exchange will not affect any other series of options of the same binary KPI option class previously opened. This is consistent with Cboe's authority to add new series of binary KPI options.[74] The Exchange may list additional series using updated at-the-money KPI values, such as if the Exchange lists binary KPI options series for an expiration before the applicable issuer has disclosed the KPI value in a filing submitted to the Commission for the immediately preceding reporting period and that value is then disclosed in a filing submitted to the Commission or if the issuer or major market data vendors publish estimates of the KPI value. For example, before expiration of a binary KPI options series set to expire on the date of an issuer's disclosure of its third quarter earnings results, the Exchange lists series of that binary KPI option to expire on the date of an issuer's disclosure of its fourth quarter earnings results (using the KPI from the second quarter earnings results as the at-the-money KPI value). After the issuer discloses its third quarter earnings results in a filing submitted to the Commission, including the applicable KPI, the Exchange may list additional series for the fourth quarter binary KPI options using the third quarter KPI result as the at-the-money KPI value. Suppose, further, that after the issuer discloses its third quarter earnings results, the issuer publishes an estimate of the fourth quarter KPI value. As investors may see this estimate (and possibly factor it into their investment decisions), the Exchange may determine it is appropriate to consider this estimate the ''at-the-money'' value and list additional strikes above and below this value. Any additional strike prices the Exchange lists will be reasonably close (as defined above) to the at-the-money KPI value at the time of listing.

Continuing the above example, suppose the Exchange lists binary KPI options for the fourth quarter before the binary KPI options for the third quarter have expired. As proposed, the Exchange would list strikes above and below the at-the-money strike, which at the time of listing would be the settlement value KPI from the issuer's second quarter earnings results disclosure (the most recently available KPI). If the KPI for the option was net sales, and the second quarter value was $45.093 billion, the at-the-money strike would be 45.10, and the Exchange could list strikes within 30% of that value, and additional series based on customer demand or market changes. After the Exchange lists those series, the issuer discloses its third quarter earnings results, including net sales of $57.241 billion. As proposed, after that disclosure, the Exchange may list additional strikes within 30% of $57.24 to reflect the change in value of the underlying (as well as additional series based on customer demand or market changes).

This proposed framework for listing and adding series is identical to recently approved framework for Cboe to list and add binary KPI options.

Proposed Rule 30.3(h) provides that the contract multiplier for each class of binary KPI options is one.[75]

Proposed Rule 30.4—Determination of Settlement Value. The Exchange proposes to add new Rule 30.4 (Determination of Settlement Value) to establish that binary KPI options that are ''at-the-money,'' ''in-the money,'' or ''out-of-the-money'' are a function of the settlement value of the underlying KPI in relation to the type of binary KPI option (*i.e.,* put or call) and the exercise price.[76] As described above, the settlement value for a binary KPI option is the value of the KPI for the applicable reporting period as disclosed in the applicable issuer's earnings-related filing submitted to the Commission. While the Exchange factors the timing of an issuer's disclosure of a KPI value into the determination of whether the Exchange lists a binary KPI option as A.M.-settled or P.M.-settled, the Exchange will source the settlement value from the earnings-related filing for the applicable reporting period that the issuer submits to the Commission. Generally, companies issue press releases that contain earnings results and near contemporaneously submit a Form 8–K to the Commission with the press release as an exhibit. Therefore, it is unlikely the value of the KPI in the Commission filing will differ from the value in the initial announcement; however, the value in the Commission filing will be the ultimate settlement value.

Proposed Rule 30.5—Adjustment. Proposed Rule 30.5 (Adjustment) provides that binary KPI option contracts are subject to adjustment only in accordance with and to the extent specified in the Rules of the Clearing Corporation. When any such adjustment has been made pursuant to Rule 30.5 (and Rules of the Clearing Corporation), the Exchange will announce this adjustment, which will become effective as of the time specified in that announcement.[77]

As described above, binary KPI options would be cleared by the Clearing Corporation, which would serve as the central counterparty to each transaction and facilitate standardized clearing, settlement, and contract administration processes pursuant to its Rules. Consistent with this centralized clearing framework, proposed Rule 30.5 provides that binary KPI options would be subject to adjustment only in accordance with and to the extent specified in the Rules of the Clearing Corporation. When any such adjustment has been determined, the Exchange will announce this adjustment, which will become effective at the time specified in that announcement. The Exchange believes that limiting contract adjustments to those provided under the Rules of the Clearing Corporation provides a clear and transparent framework under which any adjustments to binary KPI options would be administered. A registered clearing agency designated to clear binary KPI options would be subject to Commission oversight and would possess expertise in the clearance and settlement of financial products. Because binary KPI options represent a novel product type, the Exchange anticipates that the Clearing Corporation would develop adjustment procedures designed to address the unique characteristics of these contracts and the types of events that may require adjustment. To the extent the Clearing Corporation adopts new adjustment procedures for binary KPI options, those procedures would be subject to the

with authority to list meaningful strikes for smaller-valued KPIs.

[74] Proposed Rule 30.3(g) is the same as Cboe Rule 4.82(e).

[75] Proposed Rule 30.3(h) is the same as Cboe Rule 4.82(f).

[76] Proposed Rule 30.4 is the same as Cboe Rule 4.83.

[77] Proposed Rule 30.5 is the same as Cboe Rule 4.84.

applicable regulatory process, including review and approval by the Commission, as applicable, before the Exchange commences trading in the product.

Proposed Rule 30.6—Binary KPI Options Trading Hours. The Exchange proposes to add Rule 30.6 to describe the trading hours for binary KPI options.[78] As set forth in Proposed Rule 30.6, binary KPI options may be traded on the Exchange from 9:30 a.m. to 4:00 p.m.[79] Further, the last day of trading for P.M.-settled binary KPI options is the day of expiration, and the last day of trading for A.M.-settled binary KPI options is the trading day prior to expiration.

The Exchange recognizes it is possible, although unusual and unlikely, that KPI information may become available at unexpected times. Proposed Rule 30.6 addresses the impact on trading and expiration that such disclosure may have. First, proposed Rule 30.6(c) provides if the Exchange confirms an issuer discloses the KPI prior to the expiration date (*i.e.,* the date on which the issuer had announced it would disclose its earnings results for the applicable reporting period), trading in the applicable binary KPI options series will cease, and the expiration date for the option accelerates to a date on or shortly after the date of that disclosure in accordance with the Rules of the Clearing Corporation. This may occur if, for example, the applicable issuer discloses the KPI information in advance of the expiration date of the option. If the issuer discloses KPI information after the expiration date, which may be the case if, for example, the issuer's disclosure of its earnings is delayed, trading in the option will not be impacted and will cease as of the expiration date. While the expiration date will not change, expiration and settlement processing of such options will be delayed until the KPI information becomes available, in accordance with the rules of the Clearing Corporation.

Additionally, proposed Rule 30.6(d) provides if there is an unofficial disclosure [80] of the KPI prior to the expiration date, the Exchange may determine to halt (and resume) trading in the applicable binary KPI options series in accordance with Rule 20.3. In certain circumstances, the expiration date for the option may accelerate in accordance with the rules of the Clearing Corporation rules; if this occurs, trading in the binary KPI will cease. This proposed provision addresses the unlikely event that KPI information becomes available through sources other than the issuer in advance of the expiration date. If the Exchange determines the KPI information reported from the unofficial source is unreliable, trading in the binary KPI option may resume until it expires.

Finally, proposed Rule 30.6(e) states that the System shall open binary KPI options for trading at 9:30 a.m. Eastern Time.[81]

Proposed Rule 30.7—Position Limits for Binary KPI Options. The Exchange proposes to adopt Rule 30.7 (Position Limits for Binary KPI Options) to set forth position limit requirements for binary KPI options. Proposed Rule 30.7(a) would provide that, in determining compliance with Rule 18.7, the position limit for binary KPI options is 25,000 standard option contracts per expiration and 100 binary KPI option contracts equal one standard option contract.[82]

Per proposed Rule 30.7(b), positions in binary KPI options on the same KPI that have different expiration dates are not aggregated (as proposed position limits are calculated per expiration) and positions in binary KPI options for the same issuer with different underlying KPIs are not aggregated.[83]

The Exchange proposes to adopt Rule 30.7(c) to provide that binary KPI options are not aggregated with non-binary options contracts overlying the stock of the issuer.[84] Finally, proposed Rule 30.7(d), provides a hedge exemption for Market Makers with respect to binary KPI options.[85] A binary KPI option short position coupled with a binary KPI option short call position held by a Market Maker, regardless of the KPI option strike price, shall be exempt from the established position limits as discussed above.

The Exchange believes the proposed hedge exemption provision is consistent with the Act because it facilitates legitimate hedging activity in binary KPI options. Because a liquidity provider simultaneously holding a short put and short call position in binary KPI options has taken opposing sides of the potential binary outcome (*i.e.,* the short call is at risk if the KPI is met, and the short put is at risk if the KPI is not met), the Exchange believes such a position represents a defined, bounded risk profile that does not present the same potential for manipulation or market disruption that position limits are designed to prevent. The Exchange believes it is reasonable to make the proposed hedge exemption available only to binary KPI positions held by Market-Makers. The Exchange believes that offsetting binary KPI option creates a similar hedge to one to which the equity exemption is available. The Exchange believes the proposed hedge exemption security will allow Market-Makers to provide depth and liquidity in the marketplace for binary KPI options. The Exchange therefore believes the hedge exemption as proposed will encourage market-making activity and liquidity provision in binary KPI options while protecting investors and the public.

Proposed Rule 30.8—Reporting of Positions. The Exchange also proposes to adopt Rule 30.8 (Reporting of Positions).[86] Positions in binary KPI options shall be reported pursuant to Rule 18.10, except, in computing reportable binary KPI options thereunder, aggregation of positions shall be in accordance with proposed Rule 30.7. Proposed Rule 30.8 further provides that, for purposes of this report, 100 binary KPI option contracts equal one standard option contract.

Proposed Rule 30.9—Minimum Increment for Bids and Offers. The Exchange proposes to adopt Rule 30.9 to establish the minimum increment for bids and offers on orders for binary KPI options.[87] Proposed Rule 30.9 states that the minimum price variation for binary KPI options shall be established on a case-by-case basis by the Exchange and shall not be less than $0.01.

Proposed Rule 20.6—Nullification and Adjustment of Options Contracts including Obvious Errors. In proposed interpretation .04 to Rule 20.6, the Exchange proposes to exclude binary KPI options from the obvious error provisions in Rule 20.6.[88]

Proposed Rule 21.17—Additional Price Protection Mechanisms and Risk Controls. Proposed paragraph (h) of Proposed Rule 21.17 states that, in

[78] Proposed Rule 30.6 is the same as Cboe Rule 5.1(b)(3)(F).

[79] Unless otherwise specified, all times in this proposal are Eastern Time.

[80] Unofficial disclosure of a KPI may include, for example, an unsanctioned leak of the KPI or disclosure of the KPI by a source other than the issuer.

[81] Proposed Rule 30.6(e) is similar to Cboe Rule 5.31(d)(1)(D). The proposed language, however, recognizes that 24X would not have an opening rotation like Cboe does.

[82] Proposed Rule 30.7(a) is the same as Cboe Rule 8.36(a)(3).

[83] Proposed Rule 30.7(b) is the same as Cboe Rule 8.36(b)(2).

[84] Proposed Rule 30.7(c) is the same as Cboe Rule 8.36(c)(2).

[85] Proposed Rule 30.7(d) is the same as Cboe Rule 8.36(e)(2).

[86] Proposed Rule 30.8 is based on Cboe Rule 8.43(f).

[87] Proposed Rule 30.9 is the same as Cboe Rule 5.4(c)(1).

[88] Proposed Interpretation .04 of Rule 20.6 is the same as Cboe Rule 6.5, Interpretation .01.

addition to the order and quote price protection mechanisms and risk controls described in this Rule, the Exchange may apply a maximum execution price protection for binary options on a class basis, pursuant to which the System adjusts any execution price for a binary option above the Exchange-designated maximum execution price for that class down to that maximum execution price.[89]

Application of Other Rules. Except as otherwise described above, all binary KPI options will be listed and traded on the Exchange in a substantially similar manner as standard equity options are proposed to be listed and traded on the Exchange. The Rules that will apply to the listing and trading of non-binary options on the Exchange, including those related to customer accounts, margin requirements and trading halt procedures,[90] which are designed to prevent fraudulent and manipulative acts and practices, will apply to the listing and trading of binary KPI options. The Exchange has analyzed its planned capacity and represents that it believes the Exchange will have the necessary systems capacity to handle any potential additional message traffic associated with the listing of binary KPI options.

OPRA. The Exchange will send quotation and transaction price information for binary KPI options to The Options Price Reporting Authority (''OPRA'') in the same manner it will send this information to OPRA for all other options the Exchange lists. Additionally, the Exchange understands from OPRA that it will disseminate information regarding binary KPI options in the same manner it does for all other options the Exchange lists. The Exchange intends to follow OPRA's standard capacity monitoring process for binary KPI options (in accordance with OPRA instructions), which includes submission of quarterly capacity projections (the Exchange will include its projected binary KPI option volume in the applicable submission). Further, the Exchange understands from OPRA that no technical changes are required to accommodate the reporting to OPRA of quotation and transaction information regarding binary KPI options (the Exchange represents, if later required by OPRA, it will adhere to any new technical requirements OPRA deems necessary to accommodate binary KPI options).[91]

Capacity. The Exchange does not believe Options Members will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with binary KPI options and the effect (if any) of binary KPI options on market fragmentation and the capacity of the Exchange's automated system.

Surveillance. The Exchange represents that the same surveillance procedures that will be applicable to all other options that will be listed and traded on the Exchange will apply to binary KPI options, and that it has the necessary systems capacity to support the option series. The Exchange's surveillance and reporting safeguards for options will be designed to deter and detect possible manipulative behavior and other improper trading. In addition, the Exchange has a Regulatory Services Agreement with the Financial Industry Regulatory Authority, Inc. (''FINRA'') with regard to its equity trading; the Exchange intends to extend this agreement to cover options as well. Pursuant to a multi-party 17d–2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.[92] The Exchange intends to participate in this joint plan. The Exchange is also a member of the Intermarket Surveillance Group (''ISG'') under the ISG Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of binary KPI options.

CAT. The Exchange will report any information regarding binary KPI options required to be reported to the Consolidated Audit Trail (''CAT'') in the same manner it reports this information to CAT for all other options the Exchange lists.[93] The Exchange represents, if later required by FINRA CAT, it will adhere to any new technical requirements FINRA CAT deems necessary to accommodate binary KPI options).

Linkage Plan. Pursuant to the Options Order Protection and Locked/Crossed Market Plan (''Linkage Plan''),[94] participant exchanges to the Linkage Plan established a framework to provide order protection. The Linkage Plan (and proposed Exchange Chapter 27 regarding intermarket linkage) applies during all trading sessions during which multiply listed options trade. Proposed Rule 27.2 addresses order routing away from the Exchange to promote compliance with the Linkage Plan. If the proposed binary KPI options become multiply listed options, Users may designate an order for routing (or not available for routing), and the Exchange System is designed to, at all times, prevent trade-throughs and avoid displaying locked/crossed markets in accordance with the Linkage Plan (and proposed Exchange Chapter 27 regarding intermarket linkage).

Clearance. Upon launch, binary KPI options will clear through the Clearing Corporation as that term is defined in proposed Rule 30.1. In doing so, the proposal would bring these securities products within the established regulatory infrastructure applicable to listed options, including exchange trading and surveillance, standardized disclosure, and centralized clearance and settlement through a registered clearing agency, as further described below. Additionally, binary KPI options would be cleared through a registered clearing agency, which would serve as the central counterparty to each transaction and facilitate risk mitigation through established clearing, settlement,

[89] Proposed paragraph (h) of Proposed Rule 21.17 is the same as Cboe Rule 5.34(d).

[90] Binary KPI options will not be tied to the trading state of the underlying issuer stock and thus, trading in binary KPI options will not be affected by halts in the underlying issuer stock. The binary KPI options will halt in accordance with proposed Rule 20.3

[91] The Exchange understands OPRA may need to update how it disseminates open interest information for binary KPI options, as its current process incorporates information from OCC and references in this filing are clearing agency-neutral.

[92] Section 19(g)(1) of the Act, among other things, requires every self-regulatory organization (''SRO'') registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO's own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. *See* 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

[93] CAT reporting requirements will apply to broker-dealers with respect to binary KPI options in the same manner as they apply to any other options the Exchange lists. The Exchange understands from the CAT Plan Processor that there will be no changes to the reporting specifications for broker-dealers to accommodate the reporting of information regarding binary KPI options to CAT.

[94] The Linkage Plan requires U.S. options exchanges to establish a framework for providing order protection and addressing locked and crossed markets in eligible options classes. The Linkage Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. The full text of the Linkage Plan is available at *https://www.theocc.com/getcontentasset/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/dfc3d011-8f63-43f6-9ed8-4b444333a1d0/options_order_protection_plan.pdf.*

contract adjustment, and other standardized operational processes.

The Exchange represents it will not list for trading binary KPI options until the registered clearing agency designated as the Clearing Corporation is authorized and operationally ready to clear the options and until all applicable filings and documents of the Clearing Corporation related to binary KPI options being cleared through the Clearing Corporation are approved by the Commission or effective after review by the Commission, as applicable.

OLPP. The Options Listings Procedure Plan (the ''OLPP'') sets forth procedures to facilitate the listing and trading of standardized options. This plan currently describes procedures with respect to options issued by and cleared at the OCC. If the Exchange ultimately does not designate the OCC as the Clearing Corporation for the purposes of the definition set forth in proposed Rule 30.1, the Exchange will take steps necessary and within its authority to amend the OLPP to reflect listing procedures applicable to binary KPI Options to the extent not cleared by the OCC.

Standardized Options. As discussed in further detail below, the Exchange intends for binary KPI options to be treated as listed standardized options. Rule 9b–1 under the Act establishes a disclosure framework for standardized options pursuant to which investors receive a disclosure document describing the terms, characteristics, and risks of the product before trading. Depending on which registered clearing agency is designated as the Clearing Corporation, the applicable Rule 9b–1 disclosure document may be based on an existing options disclosure document utilized by that clearing agency, as modified or supplemented, as appropriate, or another comparable disclosure document prepared in connection with the clearance of binary KPI options. In either case, the disclosure document would contain substantially similar information regarding the terms, characteristics, risks, settlement mechanics, and other material features of binary KPI options and would be tailored, as necessary, to address the product's unique features and distinctions from traditional listed options. The Exchange believes that disclosure through the Rule 9b–1 framework would better serve the informational needs of investors than a traditional prospectus because binary KPI options are standardized options for which the principal investor considerations relate to the contract's terms, payout structure, settlement mechanics, and trading characteristics rather than the disclosure typically provided in connection with an offering of a corporate issuer's securities.

Conditions. The Exchange will not commence listing and trading of binary KPI options until a registered clearing agency is authorized and operationally ready to clear the contracts; the applicable disclosure document under Rule 9b–1 is in place; any necessary changes relating to CAT, FINRA, OPRA, the Linkage Plan, and OLPP have been completed; and the Exchange has issued an implementation notice to Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [95] in general, and furthers the objectives of Section 6(b)(5) of the Act [96] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange proposes to operate its options market much as it operates its cash equities market today and in a manner similar to that of other options exchanges, namely MEMX Options. As a result, the proposed rules of 24X Options are substantially similar to the approved rules of MEMX Options, Cboe, Nasdaq ISE Options, and Cboe EDGX, which have already been found to be consistent with the Exchange Act. Therefore, the Exchange does not believe that any of the proposed rules raise any new or novel issues that have not been previously considered by the Commission. The Exchange believes that 24X Options will benefit individual investors, options trading firms, and the options markets generally by providing an additional competitive dynamic to the options landscape, thereby promoting further initiative and innovation among market centers and market participants. The entry of an innovative, cost-competitive market such as 24X Options will promote competition, spurring existing exchanges to improve their own execution systems and reduce trading costs.

General

More broadly, the Exchange believes that the functionality that it proposes to offer is consistent with Section 6(b)(5) of the Act because the System is designed to be efficient and its operation transparent, thereby facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open national market system. As described above, the Exchange's proposed rules, including the proposed Order Types and Handling Instructions, opening procedures, routing services, and order matching process are designed to provide a comprehensive suite of conventional features and to comply with all applicable regulatory requirements, including the obligations of the Options Order Protection and Locked/Crossed Market Plan.

The Exchange believes that the proposed rules of 24X Options, as well as the proposed method of monitoring for compliance with and enforcing such rules is also consistent with the Exchange Act, particularly Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Exchange Act, which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the Exchange. The Exchange has proposed to adopt rules necessary to regulate Options Members that are either substantively identical or substantially similar to the approved rules of other options exchanges, as described above. The Exchange proposes to regulate activity on 24X Options in the same way it regulates activity on its equities market, specifically through various Exchange-specific functions, an RSA with FINRA, as well as participation in industry plans, including plans pursuant to Rule 17d–2 under the Exchange Act.

Binary KPI Options

As an initial matter, the Exchange's proposal is identical to the recently approved proposal made by the Cboe to list binary KPI options.[97] Similar to Cboe, the Exchange believes that trading such instruments as binary KPI options would promote a fair and orderly market and facilitate new investment and hedging opportunities on a Commission-regulated exchange.

The Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and

[95] 15 U.S.C. 78f(b).

[96] 15 U.S.C. 78f(b)(5).

[97] *See* Cboe Binary KPI Approval Order.

open market and a national market system, and, in general, protect investors and the public interest because it establishes a clear and transparent framework for a new category of listed options (binary KPI options) that are tied to financial and operating metrics of issuers that are publicly disclosed in reports submitted to the Commission. Currently, investors wishing to position their investment strategies around earnings disclosures must rely primarily on equity options, whose pricing is affected by a wide range of variables beyond the reported financial or operating measure of interest (*e.g.,* implied volatility, delta, time value, and general market movement). Binary KPI options allow investors to take a targeted, defined-risk position directly on a specific financial or operating measure (*i.e.,* a KPI) for a particular reporting period. The Exchange believes this additional investment tool will protect investors and the public interest because it will promote market efficiency, enable more precise price discovery around earnings events, allow investors to hedge against potential idiosyncratic risks, and remove a gap in current national securities exchange-listed products available to market participants.

The Exchange believes the proposed list of issuers and KPIs on which the Exchange may list binary KPI options will prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. First, as noted above, the Exchange is proposing to list binary KPI contracts based on specific financial and operating metrics reported by the following issuers in their earnings-related disclosures submitted to the Commission: Apple, Inc.; Advanced Micro Devices, Inc.; Alphabet Inc.; Amazon.com, Inc.; Bank of America Corporation; Citigroup Inc.; Coinbase Global, Inc.; Ford Motor Company; Intel Corporation; JPMorgan Chase & Co.; Marathon Digital Holdings, Inc.; Meta Platforms, Inc.; Microsoft Corporation; Netflix, Inc.; NVIDIA Corporation; Palantir Technologies Inc.; SoFi Technologies, Inc.; Space Exploration Technologies Corp.; Super Micro Computer, Inc.; Target Corporation; Tesla, Inc.; and The Walt Disney Company. The Exchange believes offering investors an additional investment tool on a national securities exchange related to some of the most actively traded stocks and options will perfect the mechanism of a free and open market and benefit investors by allowing them to further refine their investment strategies, including using these options to hedge idiosyncratic, even-specific risk embedded in the specific KPIs (as further discussed below), for these actively traded companies.

The Exchange believes the proposed universe of issuers will prevent fraudulent and manipulative acts and practices, because the proposed issuers are large, well capitalized, and widely followed issuers with highly liquid underlying securities and options markets. As noted in its filing to amend its rules to permit the listing of binary KPI options,[98] Cboe noted that during May 2026, each of the issuers exceeded $3 billion in market capitalization and ranked among the top 200 U.S. companies by average daily options or stock volume, with the exception of Space Exploration Technologies Corp (commonly referred to as SpaceX), which had not been trading for a full calendar month but which the Exchange believes will satisfy these measures with its first month of trading results based on its volumes since it began trading.[99]

Securities with high market capitalizations and liquid markets are generally less susceptible to manipulation because of the substantial capital required to artificially influence prices of those securities. The depth and breadth of trading activity for securities with significant market capitalizations, such as the stocks of the proposed issuers, make it unlikely that a single market participant would be able to exert undue influence on the price of such a stock, as large volumes of buyers and sellers are what ultimately continuously reflect the true market value of the stock. The Exchange believes the KPIs of issuers with high market capitalizations proposed to underlie binary KPI options are similarly less susceptible to manipulation because any attempt to distort a financial metric of such an issuer would require an enormous and economically impractical deployment of capital, which would likely exceed the fixed payout of a binary KPI option. Therefore, like stocks of large-cap issuers, KPIs of large-cap issuers are less susceptible to manipulation due to the structural barriers that would make manipulating KPI values operationally difficult and financially irrational (in addition to the rigorous financial oversight to which these issuers are subject, as further discussed below).

In addition to the proposed issuers being highly capitalized and having actively traded stocks and options on such stocks, the Exchange also believes the proposed limited universe of issuers for binary KPI options to those proposed will prevent fraudulent and manipulative acts and practices because each issuer is subject to periodic reporting requirements under the Act. Therefore, each of the proposed issuers must file annual reports on Form 10–K, quarterly reports on Form 10–Q, and current reports on Form 8–K with the Commission, which as discussed above disclose information the issuer believes is necessary for an investor to understand its financial condition, changes in financial condition and results of operations, which can include KPIs. Further, each issuer maintains audited financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles (''GAAP'') and is subject to executive certification requirements under the Sarbanes-Oxley Act. As a result, the settlement-determining KPI values for each eligible issuer are produced within the Commission's supervisory jurisdiction, are publicly verifiable from a Commission-regulated source and are subject to relevant anti-fraud provisions under the Act, which the Exchange believes will reduce the potential for manipulation of the underlying KPIs as well as the applicable issuer's stock.

Further, the Exchange believes the proposed limited universe of issuers will introduce binary KPI options in a well-developed, well-understood, and transparent Commission-regulated market environment. Each issuer is among the most widely followed, actively traded, and extensively analyzed issuer in its respective sector, with deep and liquid equity and derivatives markets and a broad institutional and retail investor base. The depth of existing market activity surrounding these issuers supports fair and orderly pricing by ensuring that binary KPI options are listed in markets where price discovery is well-established, liquidity is readily available, and participants have broad access to the information necessary to form and express informed views on KPI outcomes. The Exchange believes the continuous public scrutiny to which these issuers are subject substantially reduces the likelihood that any market participant could obtain or maintain an informational advantage sufficient to manipulate the settlement value of the binary KPI options.

[98] *See* Securities Exchange Act Rel. No. 105877 (July 10, 2026), 91 FR 43418 (July 15, 2026).

[99] As noted by Cboe, the ADV of SpaceX stock between June 12 and June 22, 2026 was approximately 290,009,963 shares. The market capitalization of SpaceX as of June 22, 2026 was $2.145 trillion.

The Exchange believes the proposed KPI metrics will similarly prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange's proposal limits eligible KPIs to GAAP and non-GAAP measures and other statistics related to an issuer's financial condition and operational results, all of which the proposed issuers disclose in their earnings-related filings (*i.e.,* Forms 8–K, 10–Q, and 10–K) submitted to the Commission. As such, the settlement values of the proposed binary KPI options are derived exclusively from information that issuers deem as material information required to be disclosed in reports submitted to the Commission. These metrics are routinely referenced and tracked in the investment community and are figures that the market recognizes as a meaningful and central indicator of issuer performance. The Exchange believes that the inclusion of well-established metrics as eligible KPIs expands the value of binary KPI options for investors without compromising the integrity of trading processes, including the settlement process.

The proposed KPI metrics are among the most widely followed and extensively analyzed measures for the proposed issuers. Specifically, the Exchange proposes to be able to list a binary KPI option on earnings per share (prepared in accordance with GAAP) for each proposed issuer. This metric is among the most widely followed and extensively analyzed figures in public company financial disclosure and is disclosed in each issuer's periodic Commission filings. Similarly, the Exchange proposes to list binary KPI options on revenue, prepared in accordance with the applicable GAAP, for each issuer. As is the case for earnings per share, revenue is a widely followed financial metric for publicly reporting companies and is the subject of extensive analyst coverage.

The Exchange proposes KPIs representing revenues broken out by applicable reportable segment, business unit, or product category, including cloud and artificial intelligence infrastructure revenues, streaming and geographic subscription revenues, automotive segment revenues, financial services segment revenues, consumer product category revenues, and digital asset exchange transaction and subscription revenues, among others, for several of the proposed issuers. Each such metric is a GAAP-defined figure required to be disclosed in the issuer's periodic Commission filings. The Exchange understands these metrics enable market participants to express views on specific high-profile business lines that are extensively covered by analysts and subject to a high volume of publicly available forecasts.

The Exchange proposes KPIs for the proposed financial institution issuers that are specific to financial institution income statement presentation, including net interest income, provision for credit losses, and net income. Each such metric reflects the distinct GAAP reporting framework applicable to banking institutions and is subject to the same periodic disclosures as other proposed KPIs.

The proposed rule change also includes operating margin, gross margin, or cash flow from operations KPIs for several issuers, each of which is computed directly from GAAP financial statement line items disclosed in the issuer's periodic Commission filings. These metrics provide market participants with insight into issuer profitability and capital generation and complement other revenue and earnings figures when market participants are evaluating the value of an issuer and its stock.

The Exchange also proposes several non-financial operational KPIs that issuers disclosed in their periodic Commission filings, including relevant production volumes, network and infrastructure counts, user engagement metrics, deal counts, digital asset trading volume, and digital asset mining and holdings metrics. Each designated non-financial operational metric is closely tied to the core economic activity of the respective issuer's business and is a figure that the issuer has affirmatively chosen to disclose to the public as a key indicator of business performance. Issuers typically designate and disclose such metrics precisely because they are understood by the market to be among the most meaningful measures of their business activities. As discussed above, this is consistent with Commission guidance that an issuer should include KPIs in these report that the issuer believes an investor needs to gain understanding of its financial condition, changes in financial condition and results of operations, as such KPIs present the ''pulse'' of the issuer's business. The market significance of these metrics is further reflected in the extensive analyst coverage and investor attention, particularly near each reporting date. Each metric is subject to executive certification as part of the periodic report in which it appears and is widely tracked by financial data services and equity research analysts.

Overall, the Exchange believes that the proposed well-established, publicly reported metrics as eligible KPIs will expand the value of binary KPI options for investors without compromising the integrity of trading processes, including the settlement process. As a result, the Exchange believes the proposed KPIs will protect investors and the public interest as it will permit the Exchange to offer investors additional investment and hedging tools on the Exchange that investors can incorporate into their investment strategies regarding the proposed issuers.

The Exchange believes the proposed contract terms for binary KPI options will promote just and equitable principles of trade, remove impediments to and perfect a free and open market and national market system, and protect investors. As discussed above, the Exchange believes the proposed contract terms for binary KPI options are standardized option terms. Like standard option contracts, each proposed binary KPI option will be a call or a put, will have an underlying exercise price, an expiration date, a settlement type, a settlement style, and a multiplier. As is the case for binary index options, each proposed binary KPI option will have an exercise settlement amount paid depending on how the settlement value of the underlying compares to the exercise price.

The proposed binary KPI options will function identically to, and carry the same contractual terms as, the binary KPI options the Cboe has recently been approved to list. The proposed definitions of binary KPI option, call binary KPI option, exercise price, and put binary KPI option are the same as those terms employed by Cboe for its binary KPI options.

The proposed definition of settlement value for binary KPI options is identical to the definition applied by Cboe for binary KPI options. The Exchange believes the proposed $1 exercise settlement amount is reasonable given the retail nature of the proposed binary KPI options and merely adds specificity to the Rules for binary KPI options. The Exchange notes binary KPI options differ from standardized index options (which are also cash-settled) in that the exercise settlement amount is $1.00 rather than the cash difference amount between the settlement value of the index and the strike price of an option. Since the $1.00 exercise settlement amount will be paid out to the option holder if the criteria of the binary KPI option have been met, binary KPI

options utilize a fixed exercise settlement amount.

The Exchange proposes new Rule 30.2 to list the specific binary KPI option contracts with the KPI criteria for each option contract. Such KPI criteria are established as the set of KPI events that will be used to determine whether an option contract will be exercised by comparing the strike price of the binary KPI option to the KPI value. The Exchange believes these proposed contracts (including the issuers and KPIs) are consistent with the Act for the reasons set forth above.

The Exchange believes the proposed expirations for binary KPI options will remove impediments to and perfect the mechanism of a free and open market and a national market system because they will align with the reporting periods for which the proposed issuers disclose earnings results and submit corresponding reports to the Commission. These expirations will, therefore, permit investors to incorporate binary KPI options into their investment strategies that correspond to issuers' earnings results. Further, as discussed above, the Exchange believes aligning expirations with Commission-regulated sources will reduce the potential for manipulation of the underlying KPIs, which will ultimately protect investors and the public interest.

The proposed rule establishes a strike regime for binary KPI options similar to that for traditional options. As is the case for traditional options and binary index options, the proposed rule change establishes permissible strike intervals, the amounts of which increase as the value of the strike increases. Additionally, the Exchange proposes to list initial and additional series pursuant to a similar framework as traditional equity options. The differences in the proposed strike regime compared to that of standard equity and index options are necessary and appropriate to reflect the static nature of KPIs (unlike underlying equities and indexes, the values of which change throughout the trading day) and the timing of their disclosure. As noted above, the Exchange intends to list binary KPI options aligned with the cadence of the KPI disclosures as their expiration cycle (generally quarterly). The Exchange intends to list for trading binary KPI options with expirations for the then-current reporting period (*e.g.,* third quarter) as well as the following period (*e.g.,* fourth quarter) prior to the expiration of the binary KPI options for the then-current reporting period.

As described above, the Exchange intends to list strikes for binary KPI options by listing strikes relative to the then-current value of the underlying KPI or publicly available estimates from the issuer or major market data vendors. The Exchange believes it is consistent with just and equitable principles of trade to permit the Exchange to list strikes based on all available information that would inform expectations about the KPIs (as investors would do), and then add strikes based on new or updated information, as it will allow the Exchange to list series with strikes consistent with investor expectations and demands. This will enable the Exchange to respond to changes in market conditions for binary KPI options, factoring in the static value of KPIs. Specifically, the Exchange believes this flexibility is appropriate for binary KPI options because the value of a KPI changes only when an issuer discloses that KPI, which generally happens every three months, unlike other underlyings, the value of which changes every trading day. This proposed strike listing regime for binary KPI options permits the Exchange to list strikes reflective of the then-current value of the underlying and in response to customer demand. It is possible the changed value of an underlying KPI in a more recent earnings disclosure or new or updated estimates may be more sudden and pronounced than changes in the value of an underlying equity or index (which are susceptible to sudden value changes); however, like the listing rules for equity and index options, the proposed rules permit the Exchange to list strikes to reflect changes in the value of the underlying, including substantial changes.

The Exchange believes the proposed scaling of strike prices is reasonable and will protect investors, as it will permit the Exchange to list strike values in amounts similar to current strike values for other options. As noted above, values of certain KPIs may be large (*e.g.,* in the billions). The proposed scaling will permit the Exchange, for example, to list a strike of 27 rather than 27,000,000,000, which the Exchange believes will be simpler for investors to understand (as it will be made clear that 27 will reflect billions in this example) and consistent with current strike levels. The proposed scaling also permits the strike prices for binary KPI options to fit within current system capabilities regarding strike price values. The Exchange believes scaling rather than modifying its systems (and potentially causing investors to modify their systems) will benefit investors by allowing them to trade binary KPI options in the same manner as they trade other options today.

The Exchange believes the proposed strike intervals promote just and equitable principles of trade because it will permit the Exchange to list commercially meaningful strikes that will permit investors to tailor their trading strategies with precision. The Exchange acknowledges the proposed strike intervals are smaller than those in exchange rules for other types of options. However, the Exchange believes the precision is appropriate and necessary given the nature of KPIs and the proposed options. The purpose of binary KPI options is to permit investors to take discrete and precise positions on KPIs. Therefore, the Exchange needs the ability to list strikes with the precision necessary to permit investors to take these positions. For example, earnings per share is generally a relatively small number (under $10). While strike intervals for other options are limited to $0.50 intervals, that would not be meaningful in the context of binary KPI options when investors are looking to take positions for a specific KPI, which will be measured in penny intervals. Therefore, the Exchange believes smaller strike intervals will benefit investors because they will allow the Exchange to list binary KPI options that will enable investors to use these options in the precise nature for which they are intended and provide sufficient flexibility for the Exchange to list series to respond to changes in market conditions and customer demand, while other rules will place bounds around the strikes the Exchange may list. Further, as discussed above, the proposed strike intervals are consistent with the strike intervals used by Cboe for the binary KPI options it recently received approval to list.

The Exchange believes this proposed rule change clearly describes the proposed terms of binary KPI options, such as with respect to expirations (including the Exchange's announcement of the specific expiration date after binary KPI options series for that expiration are listed) and exercise prices (including the scaling factor, negative values, and potential changes to that scaling factor for a binary KPI option class) for all investors. As discussed above, these terms and changes to such terms will be described in Exchange notices, technical specifications (including binary KPI option reference data files), and contract specifications (all of which are posted on the Exchange's public website and thus available to all investors). Exchange Options Members and retail brokerage firms are highly sophisticated

investors that intake information regarding other Exchange-listed options (including changes) in the same manner that the Exchange plans to release this information for binary KPI options. Therefore, the Exchange expects retail customers to have access to all relevant information regarding the terms of binary KPI options they choose to trade, including changes to expiration dates and exercise price values as announced by the Exchange.

Proposed Rule 30.3(e) specifies a multiplier of one for binary KPI options rather than require the Exchange to designate a multiplier of at least one as the rules for binary index options do. This proposed multiplier is consistent with the definition of contract multiplier applicable to the binary KPI options approved for listing on Cboe. Therefore, the Exchange believes the proposed rule change is consistent with just and equitable principles of trade because it creates a pricing structure that reflects the notional value of an option based on its multiplier.

The Exchange believes proposed Rule 30.6, which establishes trading hours for binary KPI options, is consistent with the Act, protects investors, and prevents fraudulent and manipulative practices. The Exchange believes the proposed structure ensures that trading in binary KPI options ceases before the earnings disclosure that determines settlement. The distinction between A.M.- and P.M.-settled contracts mirrors the settlement terms applicable to the binary KPI options approved for listing on Cboe.

The Exchange believes proposed Rule 30.6(e), which states that the System shall open binary KPI options for trading at 9:30 A.M., removes impediments to a free and open market by applying the same opening process to binary KPI options that will govern other listed options classes on the Exchange. Additionally, unlike equity options, for which the underlying opens for trading and can trigger the market opening, KPIs do not trade, so setting the opening based on a set time is reasonable for binary KPI options.

The Exchange believes excluding binary KPI options from the obvious error provisions in Rule 20.6 is consistent with the Act and promotes just and equitable principles of trade because the standard obvious error framework, which evaluates whether an execution price deviates from a ''theoretical value'' by a prescribed amount, is incompatible with the structure of binary KPI options. Binary KPI options have no continuously observable theoretical value (unlike equity and index options) prior to the date of the earnings-related disclosure. Rather, their exercise settlement amount is fixed at either a pre-specified dollar amount or zero, depending entirely on whether the reported KPI satisfies the exercise condition, which itself is based on a single, publicly verifiable metric, disclosed in Commission filings. Applying an obvious error framework premised on theoretical value calculations to a product with a binary, fixed payout would be technically inapplicable and could produce unjust or arbitrary results. Moreover, because settlement of binary KPI options is determined by issuer-reported metrics disclosed through Commission filings (*i.e.,* figures produced pursuant to established accounting standards, subject to independent audit, and certified under the Sarbanes-Oxley Act), the settlement process is itself governed by a comprehensive external regulatory framework. The Exchange believes that establishing any alternative dispute mechanism in this context would be not only unnecessary, but potentially disruptive to market integrity, as it may introduce an element of post-hoc discretion into a settlement process that is expressly designed to be objective, verifiable, and rule bound.

Finally, the Exchange notes that it is planning to implement a systemic maximum execution price protection for binary KPI options on a class basis, pursuant to which any execution price for a binary KPI option above the Exchange designated maximum execution price for that class is either rejected or adjusted down to that maximum execution price. This protection will provide investors with an additional safeguard against executions at potential erroneous prices, further limiting the need for a separate obvious error provision applicable to binary KPI options, which the Exchange believes protects investors and the public interest. The Exchange represents it will not list for trading binary KPI options until such systemic control is in place.

The Exchange believes the proposed amendments related to position limits for binary KPI options are consistent with the Act because they establish a rational position limit framework for binary KPI options that protects against manipulation while facilitating legitimate trading activity in a novel product.

As proposed, binary KPI options with a multiplier of one will count toward applicable limits on a proportional basis relative to standard equity options on the issuer's stock, which carry a multiplier of 100. Because the proposed binary KPI options have a multiplier of one, while standard option contracts have a multiplier of 100, the notional value of a binary KPI option is significantly less than the notional value of standard option contracts. For example, 25,000 contracts with a value of $1.00 with a multiplier of 100 would equate to $2,500,000 notional value, while 25,000 binary KPI option contracts with a value of $1.00 (which is the fixed maximum value of a binary KPI option contract) with a multiplier of one would equate to $25,000 notional value. Counting 100 binary KPI contracts as one standard option contract for purposes of calculating compliance with position limits effectively calibrates these limits so that investors may hold positions in binary KPI options for an economically equivalent number of contracts as they may hold in standard equity options. Therefore, the Exchange believes this proposed treatment is consistent with just and equitable principles of trade, as it counts option positions in a manner equivalent with their value.

The Exchange further believes the proposal is reasonable given the nature of binary KPI options and their relationship to the underlying issuer. Because binary KPI options have a fixed maximum notional value and settle on an all-or-nothing basis based on a KPI of the issuer rather than the price of the issuer's stock as with a standard equity option, the Exchange believes the proposed position limits appropriately reflects the distinct structure of these contracts and limits the potential for any single market participant to exert undue influence over binary KPI option settlement. With respect to binary KPI options, the economic risk of a position is binary, in that the contract either settles in-the-money at $1.00 or out-of-the-money at $0.00. Additionally, with respect to binary KPI options, the maximum notional exposure per contract is fixed in advance; it cannot exceed $1.00.

Further, the Exchange's proposal to provide that positions in binary KPI options on the same KPI with different expiration dates and positions in binary KPI options for the same issuer with different underlying KPIs are not aggregated reflects the distinct structure of binary KPI options. Each binary KPI option expiration corresponds to a separate event tied to a specific issuer reporting period. Thus, the Exchange believes aggregating positions across different expiration dates would not accurately reflect the risk profile of these positions and would impose an unnecessary burden on market participants seeking exposure to

company KPI events across different reporting periods.

Similarly, the Exchange believes it is reasonable to provide that binary KPI options are not aggregated with non-binary options contracts overlying the stock of the issuer. Because binary KPI options and equity options overlying the same issuer have different risk profile (*i.e.,* binary KPI options settle based on a KPI of the issuer rather than its stock price), the Exchange believes it would be inappropriate and misleading to require aggregation of these positions for purposes of position limits. As noted above, binary KPI options are based solely on whether a single, specified-issuer KPI meets a discrete threshold at a defined future date, and their value reflects the market's probability assessment of that singular outcome. Standard equity options, on the other hand, reflect a broad array of factors bearing on the price of the underlying security, including macroeconomic conditions and sector dynamics, of which any individual KPI is only one component. Because the two products are not priced off of a common reference and do not represent economically equivalent or fungible exposures, aggregating positions across them would not meaningfully advance the prevention of manipulative practices with respect to the underlying security. The Exchange further notes that this proposed non-aggregation framework in proposed Rule 30.7(b) is consistent with that applied by Cboe regarding binary KPI options.

Finally, the Exchange believes the amendments to the hedge exemption provision in proposed Rule 30.7(d) is consistent with the Act because it facilitates legitimate hedging activity in binary KPI options. Proposed Rule 30.7(d) provides a hedge exemption for Market Makers with respect to binary KPI options, a binary KPI option short position coupled with a binary KPI option short call position, regardless of the KPI option strike, shall be exempt from the established position limits proscribed in Rule 18.7.

The Exchange believes the proposed hedge exemption provision is consistent with the Act because it facilitates legitimate hedging activity in binary KPI options. Because a liquidity provider simultaneously holding a short put and short call position in binary KPI options has taken opposing sides of the potential binary outcome (*i.e.,* the short call is at risk if the KPI is met, and the short put is at risk if the KPI is not met), the Exchange believes such a position represents a defined, bounded risk profile that does not present the same potential for manipulation or market disruption that position limits are designed to prevent. The Exchange believes it is reasonable to make the proposed hedge exemption available only to binary KPI positions held by Market-Makers. The Exchange believes that offsetting binary KPI option creates a similar hedge to one to which the equity exemption is available. The Exchange believes the proposed hedge exemption security will allow Market-Makers to provide depth and liquidity in the marketplace for binary KPI options. The Exchange therefore believes the hedge exemption as proposed will encourage market-making activity and liquidity provision in binary KPI options while protecting investors and the public.

The Exchange also believes the proposed adoption of Rule 30.8 consistent with the Act. By establishing tailored reporting requirements for binary KPI options, the Exchange will be able to monitor positions effectively and detect any accumulation of positions that may approach or exceed applicable limits, to the benefit of investors. The Exchange believes it is consistent with just and equitable principles of trade for 100 binary KPI option contracts to equal one standard option contract for purposes of determining whether the report in proposed Rule 30.8 is required given the size of binary KPI contracts. As discussed above, proposed binary KPI options have a multiplier of one, while standard option contracts have a multiplier of 100. Therefore, the notional value of a binary KPI option is significantly less than the notional value of standard option contracts. For example, 200 contracts with a value of $1.00 with a multiplier of 100 would equate to $20,000 notional value, while 200 binary KPI option contracts with a value of $1.00 (which is the fixed maximum value of a binary KPI option contract) with a multiplier of one would equate to $200 notional value. Counting 100 binary KPI contracts as one standard option contract for purposes of this report effectively calibrates the reporting requirement so that investors are required to submit the report for an economically equivalent number of contracts, which promotes just and equitable principles of trade.

The Exchange believes the proposal will provide the Exchange and regulators with visibility into large position concentrations in binary KPI options, preserving the ability to identify unusual activity and respond to any unforeseen concerns, while calibrating the threshold to a metric that is meaningful for this contract given its smaller multiplier relative to that of standard equity options. The Exchange believes this reporting framework, coupled with the position limits amendments, provides a fully adequate regulatory framework for these instruments.

Further, as noted above, the Exchange believes it has an adequate surveillance program in place to detect potentially manipulative trading in binary KPI options. The Exchange notes that manipulation of the reported KPI would constitute securities fraud and expose the issuer to liability under federal securities law, separate and apart from any exchange-related violation.

The Exchange believes the proposed binary KPI options will serve as a vehicle to hedge idiosyncratic, event-specific risk embedded in the specific KPIs. Standard equity options are calibrated to the price of the underlying security and capture a full spectrum of factors or risks which may affect issuer value, such as macroeconomic conditions or sector dynamics. Because equity option pricing incorporates this full spectrum, a participant seeking to hedge exposure to a single, discrete KPI outcome cannot do so precisely using standard equity options. Because settlement of a binary KPI option is determined solely by whether a specified-issuer KPI meets a defined threshold, the contract effectively isolates certain individual risks an investor may seek to manage. For example, consider an investor holding a long-term position in a particular issuer stock, who believes the issuer's quarterly revenue will fall short of expectations (for reasons unrelated to the issuer's long-term prospects). The investor may utilize the binary KPI option to hedge precisely against the near-term risk without disruption to the underlying equity position. This targeted hedging utility represents a distinct and additive function relative to existing listed products, which the Exchange believes will serve the interests of investors and provide an efficient mechanism for managing event-specific, KPI-driven risk.

The Exchange believes the proposed rule change will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide investors with a securities exchange-listed investment choice for these instruments, offering price transparency and the regulatory protections of a national securities exchange. The Exchange believes the proposed rule change will permit investors to manage their risk exposures

and carry out their investment objectives on a securities exchange with more flexibility and broader applicability. The Exchange also believes the proposed rule change will promote competition, as it will meet demands of investors that currently may trade products structured in substantively the same manner as the proposed binary KPI options in other markets (as further discussed below). Binary KPI options would provide investors with a straightforward means of expressing a directional view on key financial and operating metrics. The Exchange further believes the proposed rule change is consistent with the protection of investors and the public interest, as binary KPI options would be subject to the Exchange's existing rules governing the listing and trading of options. The Exchange believes expanding the universe of binary options will benefit investors, particularly retail investors and other investors who prefer simplicity, as a complementary offering to current exchange-traded options.

The proposed rule change will permit the Exchange to list binary KPI options on a national securities exchange as alternatives to products that are structured in substantially the same manner as binary options currently available in the OTC market and on other platforms. The Exchange understands investors have traded binary options similar to the proposed binary options in OTC markets for many years but may prefer to trade such options in a listed environment to receive the benefits of trading listing options. These benefits include: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness. The Exchange believes the proposed rule change may encourage liquidity to shift from the OTC market onto the Exchange, which the Exchange believes would increase market transparency as well as enhance the process of price discovery conducted on the Exchange through increased order flow. The proposed rule change is intended to provide a market for binary KPI options as a standardized product without the credit risk of an individual issuer. By providing a listed and standardized market for more classes of binary options, the Exchange seeks to attract investors who desire the simplicity of a binary option with the certainty and safeguards of a regulated and standardized marketplace. Additionally, unlike an OTC binary option, counter party credit risk for Exchange-listed binary KPI options is significantly reduced through the issuance and guarantee of the contracts by a registered clearing agency. Further, as an exchange-traded option, binary options will have the advantage of liquidity provided by Market-Makers, which the Exchange believes may lead to tighter spreads than those in the OTC market. The Exchange also believes that standardization will enable more interested parties to become market participants.

In addition to the OTC market, various market platforms that are not registered as national securities exchanges currently offer products structured in substantively the same manner as binary options that the Exchange may list pursuant to current Rules and as proposed. These platforms offer binary option products overlying issuer KPIs, which may be settled at varying points of the day (not just at the open and close of the trading day). However, as these venues are not national securities exchanges, they do not offer investors the benefits of centralized liquidity, market transparency, or securities regulations intended to protect investors. The Exchange believes listing competitive products on a national securities exchange would create a centralized and standardized marketplace for these products, which promotes price discovery and transparency, within an established regulatory framework designed to afford investors in securities with important protections. In other words, the Exchange believes its proposal offers a more transparent platform than the OTC market or other market platforms offer. It would contribute to leveling the playing field with these alternative markets and provide investors with safeguards associated with Commission and SRO oversight of the trading activity in these exchange-listed binary KPI options.

Ultimately, the Exchange believes the proposed rule change will provide investors with greater trading tools and opportunities and flexibility, resulting in investors having additional means to carry out their investment objectives and manage their risk exposures through products listed and traded on a national securities exchange. The Exchange believes the proposed rule change will offer market participants a simplified, transparent, and limited risk investment choice that may be more aligned with their specific timing needs, investment and hedging strategies, and risk tolerances. The Exchange believes it benefits the investing public to continue to enhance its listed product offerings to respond to continuously changing needs of investors and to a continuously changing competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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. The Exchange operates in an intensely competitive global marketplace for transaction services. Relying on its array of services and benefits, the Exchange competes for the privilege of providing market services to broker-dealers. The Exchange's ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to the largest number of investors, as measured by speed, likelihood and cost of executions, as well as spreads, fairness, and transparency.

Consolidation amongst U.S. options exchanges has led to concentration of ownership by certain exchange groups, thereby diminishing the competitive landscape among options exchanges. This proposal will enhance competition by allowing the Exchange to introduce a robust technology platform for trading options. The proposed rule change will insert an additional competitive dynamic into the options landscape by allowing the Exchange to compete with existing options exchanges and will promote further initiative and innovation among market centers and market participants.

The basis for the functionality contemplated by the proposed rules of 24X Options are the approved rules of MEMX Options and Cboe, which have already been found not to result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Therefore, the Exchange does not believe that any of its proposed rules raise any new or novel competitive issues that have not been previously considered by the Commission.

In addition, the Exchange does not believe that the proposed rule change related to binary KPI options 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 that the proposed rule change related to binary KPI options will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because binary KPI options will be available to all market participants who wish to trade such options on the same terms

and in the same manner (including with respect to the payout terms and amount). All market participants will be subject to the same rules applicable to binary KPI options, as described in this proposed rule change. Except as set forth in the proposed rule change, binary KPI options will trade in the same manner as binary KPI options on Cboe.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because binary KPI options have been approved to be listed on Cboe and other options exchanges may propose similar products. Additionally, as noted above, substantively similar products to binary KPI options, as proposed, are available in the OTC market and various other markets.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar products. The Exchange believes the proposed rule change will provide investors with a comparable alternative to Cboe, the OTC market and other venues. The Exchange believes it may be a more attractive alternative to the OTC market and these other venues, as market participants will benefit from being able to trade these options in an exchange environment, which provides, among other things: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness. As a result, the Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition, as it will allow the Exchange to offer a securities exchange-listed alternative to the products currently available in these other markets.

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–24X–2026–33 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–2026–33. 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–2026–33 and should be submitted on or before December 14, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[100]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–23748 Filed 11–20–26; 8:45 am]

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[100] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106926; File No. SR–CMESC–2026–009]

Self-Regulatory Organizations; CME Securities Clearing Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Operational Rule Changes

November 18, 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 6, 2026, CME Securities Clearing Inc. (''CMESC'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by CMESC. CMESC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. CMESC's Statement of the Terms and Substance of the Proposed Rule Change

The proposed rule change of CME Securities Clearing Inc. (''CMESC'') consists of amendments to the CMESC Rules[4] 101 (Definitions), 503 (Haircut Collateral), 601 (Accounts), 604 (Designation of Banks for Settling Transactions), 1503 (Novation of Transactions), 1504 (Settlement Obligations for Transactions), 1505 (Outstanding Exposure Settlement for Eligible Securities Transactions; Reports), and 1506 (Eligible Securities Transaction Fails). Each of the proposed changes is described in more detail below.

II. CMESC's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, CMESC 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. CMESC has prepared summaries, set forth in Sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] ''Rules'' refers to The Rules of CME Securities Clearing Inc., *available at https://www.cmegroup.com/rulebook/CMESC/CMESC%20Rulebook.pdf.* Capitalized terms used herein and not defined have the meanings assigned to such terms in the Rules.

and C below, of the most significant aspects of such statements.

A. CMESC's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to (i) clarify the treatment of Haircut Collateral in Clear to Hold Transactions, (ii) modify the Rules regarding accounts and banks that Participants may use to settle deliverable obligations in Cash Treasury Transactions and Clear to Deliver Transactions, (iii) modify the description of CMESC's daily settlement reports, including the content of such reports, to reflect CMESC's netting practice with respect to settlement obligations for Cash Treasury Transactions and Clear to Deliver Transactions, (iv) clarify and update the descriptions of the settlement obligations and processing in existing Rules to more align with CMESC's settlement practices with respect to Eligible Securities Transactions, (v) update the descriptions of Outstanding Exposure Settlement calculations and processes for Eligible Securities Transactions, (vi) update settlement fails provisions, and (vii) make certain other technical, administrative, clarifying and conforming changes to ensure consistency and improve clarity and readability of the Rules.

Specifically, CMESC proposes to:

1. Amend Rules 503(b) and 101 to better describe certain features of Haircut Collateral in Clear to Hold Transactions;

2. Amend Rules 601, 604, 1504(c) and 101 to provide Participants with a wider range of options for banks used to settle securities delivery obligations for Cash Treasury Transactions and Clear to Deliver Transactions;

3. Amend Rules 1504(e) and 101 regarding CMESC's daily settlement reports, including updated descriptions to reflect CMESC's practice with respect to netting settlement obligations for Cash Treasury Transactions and Clear to Deliver Transactions;

4. Amend Rules 1504(d), (f) and (g) to consolidate duplicative text and revise the descriptions of settlement and netting procedures for Clear to Deliver Transactions, Cash Treasury Transactions and Clear to Hold Transactions for greater consistency, while also amending Rule 1504(f) to permit CMESC to settle obligations resulting from a same-day settling Cash Treasury Transaction or Clear to Deliver Transaction directly with the Participant counterparties to a riskless principal, without delivering securities or making payment to the riskless principal, where the riskless principal and its Participant counterparties have identical and offsetting settlement obligations, and amending Rule 1504(f)(v) to clarify certain operational timelines;

5. Amend Rule 1505 to update the description of CMESC's calculation and processing of Outstanding Exposure Settlement for Eligible Securities Transactions, including:

a. Amending Rules 1505(a) and 1505(d) to update the description of Outstanding Exposure Settlement calculation and process for Clear to Hold Transactions;

b. Amending Rules 1505(b), 1505(c) and 1505(f) to update the description of Outstanding Exposure Settlement calculation and processing for Cash Treasury Transactions and Clear to Deliver Transactions; and

c. Amending Rule 1505(b)(ii) to address processing for atypical trades such as transfers and related cash adjustments;

6. Amend Rule 1506 to update partial settlement fails provisions for both Cash Treasury Transactions and Clear to Deliver Transactions and for Clear to Hold Transactions, including amending Rule 1506(h) to restrict CMESC's buy-in rights only to Cash Treasury Transactions and Clear to Deliver Transactions; and

7. Make certain other technical, administrative, clarifying and conforming changes to ensure consistency and improve clarity and readability of the Rules.

The proposed rule change does not impact CMESC's risk management practices or related policies. Rather, it serves to clarify and update operational processes to provide certain details that were not previously provided. Each of the proposed changes is described in more detail below.

Description of the Proposed Rule Change

1. Amendments to Rule 503(b) To Clarify Treatment of Haircut Collateral in Clear To Hold Transactions and Rule 101 To Clarify the Meaning of Haircut Collateral

CMESC proposes several non-substantive changes to Rule 503(b)(i) to clarify the treatment of Haircut Collateral for Clear to Hold Transactions. First, CMESC proposes to clarify the meaning of the first sentence in Rule 503(b)(i), which currently provides that if Participants who are parties to a Clear to Hold Transaction have calculated and posted Haircut Collateral with respect to such transaction to the Securities Settlement Bank, CMESC will deem such Haircut Collateral as pledged to CMESC. CMESC proposes to clarify this statement by further providing that that if a Participant who is a party to a Clear to Hold Transaction has posted Haircut Collateral to CMESC, CMESC will deem such Haircut Collateral as pledged to CMESC to secure obligations of the posting Participant to CMESC, by changing ''If Participants who are parties to a Clear to Hold Transaction have posted Haircut Collateral . . .'' to ''If a Participant who is a party to a Clear to hold Transaction has posted Haircut Collateral . . .'', deleting ''calculated and'' and adding ''to secure obligations of the posting Participant to the Corporation'' to the first sentence of Rule 503(b)(i).

In addition, CMESC proposes to further clarify the meaning of the second sentence in Rule 503(b)(i) to provide that CMESC will collect initial margin for each Participant for Clear to Hold Transactions novated to CMESC on a portfolio basis, rather than calculating and collecting initial margin on each individual transaction submitted for clearance and settlement, in order to better reflect CMESC's batch processing and portfolio-based margining processes as described in its documentation. Rule 503(b)(i) is being amended to provide that CMESC will ''then calculate and collect initial margin for each Clear to Hold Transaction submitted'' to CMESC ''for clearance and settlement'', by adding ''For each Participant,'' and ''Transactions novated'' to the second sentence of Rule 503(b)(i) and removing ''then calculate and'', ''each'' and ''for clearance and settlement'' from the second sentence.

The above changes do not change CMESC's practices for calculating each Participant's initial margin requirement or its treatment of Haircut Collateral posted by a Participant to the Securities Settlement Bank to secure such Participant's obligation to CMESC with respect to a Clear to Hold Transaction. These changes are intended to update descriptions in the Rulebook to better align with CMESC's initial margin practices and provide greater certainty regarding its treatment of Haircut Collateral.

Separately, CMESC proposes to amend the definition of ''Haircut Collateral'' in Rule 101 to clarify that ''Haircut Collateral'' means the ''market'' value of the Eligible Securities that the securities buyer receives under a Repo Transaction in excess of the value of funds the securities buyer

transfers to the securities seller under the Repo Transaction, in order to describe the valuation process with greater specificity.

2. Amendments to Rules 601, 604, 1504(c) and 101 With Respect to Securities Settlement Bank Arrangements and Accounts With Settlement Bank(s)

CMESC proposes to amend Rules 601, 604, 1504(c) and 101 with respect to settlement bank arrangements for settling Cash Treasury Transactions and Clear to Deliver Transactions and with respect to Securities Settlement Bank arrangements for settling Clear to Hold Transactions. Under existing Rule 604, all Members and Users must utilize the Securities Settlement Bank(s) that CMESC has designated to settle Eligible Securities Transactions. Rule 604(a) provides that CMESC must disclose to Members and Users the Securities Settlement Bank(s) it has designated to deliver and receive cash and Eligible Securities for the purpose of settlement. Under Rule 604(b), Members and Users must notify CMESC of their accounts at the designated Securities Settlement Bank(s).

CMESC proposes to amend Rule 604 (revised as ''Banks for Settling Transactions'') to provide Members and Users a greater choice of banks they may use to settle delivery obligations for Cash Treasury Transactions and Clear to Deliver Transactions with CMESC's Securities Settlement Bank(s), while clarifying that for Clear to Hold Transactions, Members and User must use the CMESC-designated Securities Settlement Bank(s). Specifically, CMESC proposes to amend Rule 604(a) as follows:

• Establish separate requirements for the Securities Settlement Bank(s) that CMESC will designate and disclose to its Participants for settlement of different types of Eligible Securities Transactions: ''(i) where the Corporation will hold accounts for the purpose of delivering'' cash and Eligible Securities to and ''receiving'' cash and Eligible Securities from ''Participants to settle Cash Treasury Transactions and Clear to Deliver Transactions'' and ''(ii) where the Corporation and Participants may hold accounts for the purpose of delivering cash and Eligible Securities to and receiving cash and Eligible Securities from one another to settle Clear to Hold Transactions and to hold Eligible Securities as collateral for such transactions.'' These changes maintain distinct settlement processes for Cash Treasury Transactions and Clear to Deliver Transactions on the one hand and Clear to Hold Transactions on the other hand, while clarifying that for purposes of settling Cash Treasury Transactions and Clear to Deliver Transactions, the Securities Settlement Bank designated by CMESC will hold CMESC's accounts and Participants are not required to maintain settlement accounts at the same designated Securities Settlement Bank, while for purposes of settling Clear to Hold Transactions, the Securities Settlement Bank designated by CMESC will hold both CMESC's and Participants' accounts; and

• Add a new sentence to Rule 604(a), consistent with the revisions outlined above, to permit Members and Users in Clear to Deliver and Cash Treasury Transactions to choose their banks for settlement, subject to satisfaction of certain conditions and CMESC's discretion to reject the Member's or User's choice of bank(s) due to operational or risk management considerations: ''Each Member and User that will clear Cash Treasury Transactions or Clear to Deliver Transactions may establish its accounts to facilitate settlement of such transactions at one or more banks or trust companies, provided that the bank or trust company is subject to supervision under Federal or State banking laws and has access to the Fedwire for securities and funds movements, provided further that the Corporation may, in its reasonable judgment, reject a bank or trust company as notified by a Participant to facilitate settlement of Cash Treasury Transactions or Clear to Deliver Transactions due to operational or risk management considerations and require the Participant to establish its account(s) at a different bank or trust company meeting the criteria set forth above.''

As a result of the proposed changes to Rule 604(a), CMESC also proposes to make conforming changes to Rule 604(b) as follows:

• Amend the first sentence of Rule 604(b) to specify that each Member and User must notify CMESC of the Securities Settlement Bank(s) ''(for Clear to Hold Transactions) or the banks or trust companies (for Cash Treasury Transactions and/or Clear to Deliver Transactions), as applicable'' that will act on its behalf with respect to handling settlement of Eligible Securities Transactions;

• Amend the second sentence of Rule 604(b) to clarify that each Member and User ''that will clear Clear to Hold Transactions'' is required to enter into an agreement with a Securities Settlement Bank from a list of institutions designated by CMESC for the settlement of ''such transactions.''; and

• Add a new sentence to the end of Rule 604(b) to expand the existing notification requirement in Rule 604(b) regarding any change in a Member's or User's Securities Settlement Bank: ''Each Member and User must immediately notify the Corporation of any change, as applicable, in any of its Securities Settlement Banks for settling and holding collateral for Clear to Hold Transactions or in any of the banks or trust companies where it maintains accounts to facilitate settlement of its Cash Treasury Transactions or Clear to Deliver Transactions.''

CMESC proposes to update the definition of ''Securities Settlement Bank'' in Rule 101 to conform to the proposed Rule 604 changes. Specifically, CMESC proposes to delete the reference to ''and designated by'' from the general definition and add language to clarify that a Securities Settlement Bank is a bank or trust company at which CMESC ''maintains one of more accounts'' for the purposes of facilitating the settlement of Eligible Securities Transactions and/or for holding collateral for Clear to Hold Transactions, as applicable. In addition, CMESC proposes to add new language to the definition to account for the requirement that ''a Member or User maintains one or more accounts at a Securities Settlement Bank pursuant to the Rules for the purposes of facilitating the settlement of and holding collateral for Clear to Hold Transactions.'' These amendments ensure that the definition applies to institutions through which Participants settle (i) Cash Treasury Transactions and Clear to Deliver Transactions; and (ii) Clear to Hold Transactions.

Further, CMESC also proposes to amend Rule 601 by adding new language to clarify that, in addition to the Accounts with CMESC, each Member and User also ''must establish accounts with one or more Banks in accordance with Rule 507 and accounts with one or more Securities Settlement Banks or other banks or trust companies in accordance with Rule 604, as pre-conditions'' to clearing Eligible Securities Transactions with CMESC, which replaces the existing language that provides ''accounts for settlement of Eligible Securities Transactions as specified and approved by the Corporation as a pre-condition''. These proposed changes are designed to set out the requirements for establishing accounts at one or more Banks for each Participant to satisfy initial margin and Outstanding Exposure Settlement requirements and for establishing

accounts at Securities Settlement Bank(s) and/or other banks or trust companies for purposes of settling Eligible Securities Transactions, in accordance with the revisions to Rule 604 described above.

Finally, CMESC also proposes to make conforming changes to Rule 1504(c) regarding ''Settlement Accounts'' to reflect the expansion of the Member's or User's settlement bank choice as described above. Specifically, CMESC proposes to delete existing language in Rule 1504(a) that requires a Participant to establish ''a settlement account at the Corporation's Securities Settlement Bank for the relevant transactions'' and ''[f]or Members and Users that are cash lenders, such Members and Users must establish a collateral account in its name and for its exclusive benefit at the Corporation's Securities Settlement Bank.'' CMESC proposes to add new language to require a Member or User to establish ''accounts in accordance with the requirements of Rule 604 for the purposes of delivering cash and Eligible Securities to and/or receiving cash and Eligible Securities from the Corporation.'' In addition, CMESC proposes to amend the last sentence in Rule 1504(c) to clarify that each Member and User is required to make available to CMESC upon request copies of its ''agreement with any Securities Settlement Bank'' and remove the existing requirement imposed on a Member or User to provide, upon CMESC's request, copies of its settlement account and collateral account agreements, as applicable.

3. Amendments to Rules 1504(e) and 101 on the Description of Daily Settlement Reports

CMESC proposes to amend existing Rule 1504(e) regarding daily settlement reports to better reflect CMESC's settlement and netting practices, including its processes for calculating net settlement obligations for Cash Treasury Transactions and Clear to Deliver Transactions. First, CMESC proposes to clarify that it will issue multiple daily settlement reports by adding new language to the first sentence to provide that CMESC will issue one or more settlement reports daily and define such settlement reports in the aggregate as ''Daily Settlement Reports.'' Further, CMESC proposes to revise the description of the content of the Daily Settlement Reports to clarify that the Daily Settlement Report will indicate whether the obligations and entitlements listed therein relate to Clear to Hold Transactions or ''to the settlement of deliverable'' Clear to Deliver Transactions and ''Cash Treasury Transactions'' to reflect the practice set forth in Rule 1504(g) with respect to determining net settlement obligations of Clear to Deliver Transactions and Cash Treasury Transactions that are scheduled to settled on the Business Day referenced in the Daily Settlement Reports. In addition, CMESC proposes to remove ''with respect to Clear to Deliver Transactions, whether settlement shall occur on a real-time gross basis or on a net basis'' to align with the updated description of the Daily Settlement Reports' content. Finally, CMESC proposes to change ''Daily Settlement Report'' in the last sentence to ''Daily Settlement Reports'' to reflect that there will be multiple settlement reports issued on each Business Day.

As a result of the proposed changes to Rule 1504(e) described above, which includes defining the term ''Daily Settlement Reports,'' CMESC proposes to add ''Daily Settlement Reports'' to Rule 101, where the term is defined as having the meaning prescribed in Rule 1504(e).

4. Amendments to Rule 1504(d), (f) and (g) To Consolidate Duplicative Text and Update the Descriptions of Settlement and Netting Procedures for Clear To Deliver Transactions and Cash Treasury Transactions and for Clear To Hold Transactions

A. Amendments to Rule 1504(d)

CMESC proposes to amend Rule 1504(d) to consolidate duplicative text. Currently, Rule 1504(d) provides that CMESC will settle same-day Repo Transactions in real time on a gross basis and will settle Cash Treasury Transactions and other Repo Transactions that settle other than same-day on a net basis, and with respect to Clear to Hold Transactions, CMESC will net settlement obligations only against additional Clear to Hold Transactions in the same General Collateral Bucket with the same scheduled settlement date. Because the procedures for settlement and netting of Eligible Securities Transactions are described in further detail in Rule 1504(f) and (g), CMESC proposes to simplify Rule 1504(d) and eliminate duplicative provisions by replacing the current rule text in its entirety with a new sentence stating that ''The Corporation may settle Eligible Securities Transactions in real time or on a deferred basis and may net settlement obligations in accordance with the procedures for settlement and netting of Clear to Hold Transactions and for Clear to Deliver Transactions and Cash Treasury Transactions in Rules 1504(f) and (g) below.''

B. Amendments to Rule 1504(f)

CMESC further proposes to amend its description of settlement procedures with respect to Eligible Securities Transactions in Rule 1504(f) as follows:

First, CMESC proposes to amend Rule 1504(f)(i) to clarify that, in addition to Clear to Deliver Transactions, Cash Treasury Transactions may also be submitted for same day (T+0) settlement. Both types of transactions will be processed and settled in real time on a gross basis. Further, CMESC proposes to provide a riskless principal transaction exception from the real-time gross settlement of same-day (T+0) Clear to Deliver Transactions and/or Cash Treasury Transactions in Rule 1504(f)(i), to allow CMESC to settle the obligations resulting from two offsetting Clear to Deliver Transactions or Cash Treasury Transactions for same-day (T+0) settlement having the same CUSIPs, same purchase price and same Participant acting as riskless principal in each offsetting transaction by settling directly with the other Participants that face the riskless principal in the offsetting transactions without delivering securities or making payment to the riskless principal. This approach eliminates unnecessary operational steps involving the riskless principal and CMESC by allowing for the settlements of cash and securities to occur between CMESC and the counterparties to the riskless principal. Finally, CMESC is proposing a conforming change to Rule 1504(f)(i) to clarify that it will instruct its Securities Settlement Bank to effect movement of collateral securities against cash upon receipt of securities from the Member's or User's settlement bank(s), as notified by the Member or User to CMESC pursuant to Rule 604(b), in accordance with the changes outlined above regarding Participants' greater choice of bank(s) for purposes of settling Clear to Deliver Transactions and Cash Treasury Transactions.

Second, CMESC proposes to amend Rule 1504(f)(ii) to make several conforming and clarifying changes to the description of settlement of Clear to Deliver Transactions and Cash Treasury Transactions on a deferred basis, for which settlement obligations will be determined on a net basis pursuant to Rule 1504(g). Specifically, CMESC proposes to clarify in two places in Rule 1504(f)(ii) that Rule 1504(f)(ii) applies to all Clear to Deliver Transactions and Cash Treasury Transactions submitted for deferred settlement, *i.e.,* settlement other than on the same day, which is not limited to T+1 settlement as reflected in the current Rules. Further,

CMESC proposes to clarify throughout Rule 1504(f)(ii) that the settlement instructions CMESC will issue to its Securities Settlement Bank for settlement on the next eligible settlement date are for the net settlement obligation resulting from the aggregate of each Participant's Clear to Deliver Transactions and Cash Treasury Transactions that are scheduled for delivery on the next eligible settlement date, rather than on the basis of ''netted'' transactions which is potentially ambiguous in meaning. CMESC is amending the final paragraph of (f)(ii) to require the Corporation's Securities Settlement Bank(s) to notify CMESC upon completion of the settlement of Clear to Deliver Transactions, Cash Treasury Transactions or the combination of both types of transaction, which is a more precise restatement of the legacy requirement to notify CMESC ''upon the settlement of any netted Clear to Deliver Transaction''. In addition, similar to the conforming change describe above, CMESC proposes to change ''the Member or User's Securities Settlement Bank, designated pursuant to Rule 604(b) to ''the Member's or User's settlement bank(s), as notified by the Member or User pursuant to Rule 604(b)'' to account for the proposed change to expand the Member's or User's choice of banks for purposes of settling Clear to Deliver Transactions and Cash Treasury Transactions, as described above.

Third, CMESC proposes to adjust Rule 1504(f)(iii) regarding settlement of Clear to Hold Transactions to describe with greater specificity the process for settling Clear to Hold Transactions via CMESC's Securities Settlement Bank(s). Existing Rule 1504(f)(iii) provides that CMESC will instruct its Securities Settlement Bank(s) to move securities against cash once Members and Users have ''funded their cash and security obligations in their settlement accounts at the Corporation's Securities Settlement Banks.'' CMESC proposes to adjust the last sentence in Rule 1504(f)(iii) to state that CMESC will instruct its Securities Settlement Bank(s) to move securities against cash once Members and Users have satisfied their cash and securities obligations by transferring cash and securities to CMESC's settlement accounts at its Securities Settlement Bank(s), which better reflects the distinct operational steps and contingencies for settling Clear to Hold Transactions.

Fourth, CMESC proposes to make several changes to Rule 1504(f)(v) to update the descriptions regarding various deadlines for submissions, processing and settlement of Eligible Securities Transactions. Specifically, CMESC proposes to:

- Modify Rule 1504(f)(v)(G) to clarify that the 3:00 p.m. Eastern Time settlement deadline on each Business Day applies to both Clear to Deliver Transactions and Cash Treasury Transactions submitted for same day (T+0) settlement, rather than only Clear to Deliver Transactions, which supports CMESC's processes for netting settlement obligations resulting from both transaction types. The modifications will also clarify that the same 3:00 p.m. Eastern Time deadline applies to the net collateral settlement obligations for the aggregate of Members' and Users' other Cash Treasury Transactions and Clear to Deliver Transactions scheduled to settle on that Business Day, rather than other Cash Treasury Transactions and Clear to Deliver Transactions from the previous Business Day, which is consistent with CMESC's proposed change to Rule 1504(f)(ii) to clarify that transactions submitted for deferred settlement are not limited only to T+1 settlement;
- Amend Rule 1504(f)(v)(I) to change the time window within which CMESC will work to resolve fails to deliver for Clear to Hold Transactions for T+0 settlement from the time window between 6:30 p.m. Eastern Time and 7:00 p.m. Eastern Time to the time window between 5:00 p.m. Eastern Time to approximately 6:30 p.m. Eastern Time and to add ''the Corporation's'' and ''the Members' and User's settlement banks'' to the last sentence of Rule 1504(f)(v)(I) to state that CMESC will coordinate with its Securities Settlement Bank(s), the Members' and Users' settlement banks and other stakeholders, as necessary, to resolve the failure to deliver, which is consistent with the expansion of the Members' and Users' choice of settlement banks as described above; and
- Make clarifying changes to Rule 1504(f)(v)(K) regarding CMESC's calculation of net collateral settlement obligations for each Participant at approximately 8:00 p.m. Eastern Time on each Business Day to better describe CMESC's settlement practice. CMESC proposes to clarify in Rule 1504(f)(v)(K) that it will calculate each Participant's net collateral settlement obligation resulting from the aggregate of such Participant's Clear to Deliver Transactions and Cash Treasury Transactions that are scheduled to settle the next Business Day. These changes are consistent with proposed changes to Rules 1504(f)(ii) and 1504(f)(v)(G) described above. As stated above, Clear to Deliver Transactions and Cash Treasury Transactions submitted for deferred settlement are not limited to T+1 settlement; therefore, on each Business Day, CMESC will process all of a Participant's deliverable transactions for deferred settlement and calculate the Participant's net collateral settlement obligation resulting from the Participant's aggregate Clear to Deliver and Cash Treasury Transactions that are scheduled to settle on the next Business Day, which will be the Participant's deliverable obligation on the next Business Day.

Fifth, CMESC proposes to make certain clarifying changes to Rule 1504(f)(vii) to update the descriptions of CMESC's settlement processes and associated transfers of cash and securities to improve clarity without substantively changing such processes. Specifically, CMESC proposes to:

- Add the phrase ''and subject to the Corporation receiving the securities required to settle the transaction in its relevant Corporation accounts'' to Rule 1504(f)(vii)(B) to clarify an implicit condition to CMESC's instructing its Securities Settlement Bank(s) to transfer cash from its account in such amount as required to meet its cash delivery obligations;
- Add ''and/'' in front of ''or'' in Rule 1504(f)(vii)(B)b. to clarify that the Member's or User's account maintained at such Member's or User's settlement bank(s) will be for settling Cash Treasury Transactions, Clear to Deliver Transactions or combination of both; and also add the phrase ''resulting from such transactions that are scheduled to settle on that Business Day'' to Rule 1504(f)(vii)(B)b. to clarify that the Member's or User's cash receipt entitlement is resulting from netting the cash settlement obligations for Cash Treasury Transactions and/or Clear to Deliver Transactions that are scheduled to settle on that Business Day, as described above;
- Add ''with respect to Clear to Hold Transactions,'' to Rule 1504(f)(vii)(C) to clarify that Rule 1504(f)(vii)(C) applies to Clear to Hold Transactions; and also add ''subject to the Corporation receiving the cash required to settle the transaction in its relevant Corporation account'' to the same paragraph to again clarify an implicit condition to CMESC's transferring or causing to be transferred securities in such amount as required to meet its settlement obligations; and
- Add ''Cash Treasury Transactions and/or'' in front of ''Clear to Deliver Transactions'' in Rule 1504(f)(vii)(C)b. to clarify that the Member's or User's account maintained at such Member's or User's settlement bank(s) will be for

settling Cash Treasury Transactions, Clear to Deliver Transactions or combination of both; and also add ''resulting from such transactions that are scheduled to settle on that Business Day'' to clarify that the Member or User's securities receipt entitlement is resulting from netting the securities settlement obligations for Cash Treasury Transactions and/or Clear to Deliver Transactions that are scheduled to settle on that Business Day.

Sixth, CMESC proposes to make certain changes to Rule 1504(f)(viii) to update the descriptions regarding additional settlement procedures for Clear to Deliver Transactions and Cash Treasury Transactions. Specifically, CMESC proposes to:

- Amend the heading of Rule 1504(f)(viii) to add Cash Treasury Transactions so the heading will become ''*Additional Settlement Procedures for Clear to Deliver Transactions and Cash Treasury Transactions*''; and also amend the lead-in language of Rule 1504(f)(viii) by removing ''settling on a real time gross basis'' and adding ''Cash Treasury Transactions and combination of the two, and except as set forth below'' to make clear that the additional settlement procedures in Rule 1504(f)(viii) apply to all Clear to Deliver Transactions, Cash Treasury Transactions and combination of the two, unless otherwise set forth in Rule 1504(f)(viii);
- Add new language to Rule 1504(f)(viii)(A) to make clear that, with respect to Clear to Deliver Transactions and Cash Treasury Transactions settling on the same day (T+0) on a real-time gross basis, the Member or User shall settle its obligations with CMESC only after it has received confirmation that the relevant transaction(s) have been novated by CMESC; and
- Amend Rule 1504(f)(viii)(B) with respect to partial delivery of a collateral settlement obligation in several respects: (i) change ''the collateral obligation'' in the first sentence to ''a collateral settlement obligation established by the Corporation'' to align with CMESC's operational practice of breaking larger settlement obligations into individual obligations, each of which would be considered a collateral settlement obligation that is subject to the partial delivery provisions in amended Rule 1504(f)(viii)(B); (ii) add new language to the second sentence to make clear that CMESC will only permit partial deliveries of a collateral settlement obligation for Clear to Deliver Transactions and/or Cash Treasury Transactions that are agreed to by the contra party and which comply with CMESC's Rules and the rules, policies, procedures and practices of the relevant Securities Settlement Bank(s) used to settle such obligations; (iii) remove ''such as by satisfying one or more exact expected delivery amounts of a total larger delivery obligation, as dictated by the Daily Settlement Report'' from the second sentence because it is unnecessary exemplary language and the other proposed amendments adequately convey the requirements; and (iv) modify the last sentence of existing Rule 1504(f)(viii)(B) by splitting it into two sentences to provide more detail. The amended first sentence will provide that, if the contra party accepts the partial offer, at the discretion of CMESC, CMESC staff may update its settlement instructions to accept partial processing of the applicable collateral settlement obligation(s). The second sentence will provide that any portion(s) of a collateral settlement obligation that are outstanding following the process described in Rule 1504(f)(viii)(B) (*i.e.,* that are subject to a partial fail) will remain open until the Business Day on which CMESC receives the outstanding Eligible Securities from the failing Member or User, which is a restatement of an existing term in Rule 1504(f)(viii)(B) that will be deleted as redundant.

Finally, CMESC also proposes certain other technical, administrative, clarifying and conforming changes to Rule 1504(f) that are not already described above. Please see the descriptions in the table under ''7. *Other Technical, Administrative, Clarifying and Conforming Changes*'' below.

C. Amendments to Rule 1504(g)

CMESC further proposes to amend its description of the netting procedures with respect to Eligible Securities Transactions in Rule 1504(g) as follows:

First, with respect to netting of cash delivery and securities settlement obligations for Clear to Hold Transactions, CMESC does not propose to change any substantive aspect of its procedures but proposes to clarify that cash or securities delivery and receipt entitlements for a given Business Day will be netted only by General Collateral Bucket for those Clear to Hold Transactions in which the Member or User is acting in the same capacity (*e.g.,* as a cash borrower or cash lender) that are scheduled to settle on that Business Day. The proposed changes to Rule 1504(g)(i)–(iii) are designed to carry through the clarification of the foregoing overarching principle underlying the netting of settlement obligations for Clear to Hold Transactions, each of which is described below:

- CMESC proposes to replace ''Repo'' Transactions with ''Clear to Hold'' Transactions throughout Rule 1504(g)(i)–(iii) to clarify that the netting procedures set forth in Rule 1504(g)(i)–(iii) apply specifically to the settlement obligations for Clear to Hold Transactions. Please see the descriptions in the table under ''7. *Other Technical, Administrative, Clarifying and Conforming changes* '' below for each replacement of ''Repo'' Transactions with ''Clear to Hold'' Transactions in Rule 1504(i)–(iii).
- With respect to netting of settlement obligations for Clear to Hold Transaction generally, CMESC proposes to add ''by General Collateral Bucket'' to the first sentence in Rule 1504(g)(i) to make clear that CMESC will separately net cash borrower and cash lender settlement obligations each Business Day for each Member and each User for all Clear to Hold Transactions by General Collateral Bucket.
- With respect to the netting of cash delivery obligations and receipt entitlements for Clear to Hold Transactions, CMESC proposes to add ''By General Collateral Bucket'' to Rule 1504(g)(ii)(A) to make clear that CMESC will net a Member's or User's cash delivery obligations and receipt entitlements by General Collateral Bucket separately for Clear to Hold Transactions in which the Member or User is acting as a cash borrower versus as a cash lender.
- In terms of netting the cash delivery obligations and receipt entitlements for a Member or User acting as a cash borrower, CMESC proposes to:
  - add ''for a given Business Day'' to Rule 1504(g)(ii)(B) to clarify that for those Clear to Hold Transactions in which a Member or User is acting as a cash borrower, CMESC will determine the Member's or User's cash delivery obligations and receipt entitlements for a given Business Day;
  - replace ''which begin on a given Business Day'' in Rule 1504(g)(ii)(B)a and ''terminating on that same Business Day'' in Rule 1504(g)(ii)(B)b. with ''in the same General Collateral Bucket which are scheduled to settle on that Business Day'' to make clear that for a given Business Day, CMESC will determine a Member's or User's cash receipt entitlement as a cash borrower based on the aggregate of all Clear to Hold Transactions in the same General Collateral Bucket which are scheduled to settle on that Business Day; and
  - add ''for each General Collateral Bucket'' to Rule 1504(g)(ii)(B)c. to make clear that CMESC will net the amounts in Rules 1504(g)(ii)(B)(a)–(b) to determine a net cash settlement delivery

obligation or receipt entitlement for each General Collateral Bucket with respect to those Clear to Hold Transactions in which the Member or User is acting as a cash borrower.

- In terms of netting the cash delivery obligations and receipt entitlements for a Member or User acting as a cash lender, CMESC proposes to mirror the changes described in the preceding paragraph to Rule 1504(g)(ii)(C). That is, CMESC proposes to:
  - add ''for a given Business Day'' to Rule 1504(g)(ii)(C) to clarify that for those Clear to Hold Transactions in which a Member or User is acting as a cash lender, CMESC will determine the Member's or User's cash delivery obligations and receipt entitlement for a given Business Day;
  - replace ''which begin on a given Business Day'' in Rule 1504(g)(ii)(C)a. and b. with ''in the same General Collateral Bucket which are scheduled to settle on that Business Day'' to make clear that, for a given Business Day, CMESC's will determine a Member's or User's cash delivery obligation as a cash lender based on the aggregate of all Clear to Hold Transactions in the same General Collateral Bucket which are scheduled to settle on that Business Day; and
  - add ''for each General Collateral Bucket'' to Rule 1504(g)(ii)(C)c. to make clear that CMESC will net the amounts in Rules 1504(g)(ii)(C)(a)–(b) to determine a net cash settlement delivery obligation or receipt entitlement for each General Collateral Bucket with respect to those Clear to Hold Transactions in which the Member or User is acting as a cash lender.
- In terms of netting the securities delivery obligations and receipt entitlements for Clear to Hold Transactions, CMESC proposes implementing clarifying changes to Rules 1504(g)(iii)(A), (B) and (C) that mirror the proposed changes to Rules 1504(g)(ii)(A), (B) and (C) described above with respect to the netting of cash delivery obligations and receipt entitlements for Clear to Hold Transactions. As a result of implementing these changes to Rules 1504(g)(iii)(A), (B) and (C), for Clear to Hold Transactions, the Rules will clarify how a Member's or User's securities delivery obligations will be netted against its securities receipt entitlements within the same General Collateral Bucket that are scheduled to settle on the same Business Day. Accordingly, CMESC proposes to delete the last sentence of Rule 1504(g)(iii)(B)c. to eliminate redundancy.

Second, with respect to netting of settlement obligations for Cash Treasury Transactions and Clear to Deliver Transaction, similar to the revised descriptions of netting procedures for Clear to Hold Transactions, CMESC does not propose to change any substantive aspect of the procedures for netting cash and securities settlement obligations for Cash Treasury Transactions and Clear to Deliver Transactions, but proposes to make a number of similar clarification changes to Rule 1504(g)(iv). Specifically, CMESC proposes to:

- Add to Rule 1504(g)(iv)(A) ''and determine the corresponding net cash settlement obligation for the aggregate for the resulting net collateral settlement obligations'' and ''and the associated cash settlement obligation'' and ''for a given Business Day'' to clarify that CMESC will net a Member's or User's cash and securities settlement obligations each Business Day for obligations to be settled on the next eligible Settlement Date by netting the Clear to Deliver Transaction Start Leg collateral settlement obligations, Clear to Deliver Transaction Off Leg collateral settlement obligations, and Cash Treasury Transaction collateral settlement obligations to determine the net collateral settlement obligations and the corresponding net cash settlement obligations, and then CMESC will determine a Member's or User's netted collateral delivery obligation and receipt entitlement (*i.e.,* the net collateral settlement obligation) per CUSIP, and the associated cash settlement obligation for each clearing account for a given Business Day by following the procedures described in Rule 1504(g)(iv)(A)a. to e. These revisions are intended to clarify the operational steps that apply where CMESC aggregates certain Cash Treasury Transactions and Clear to Deliver Transactions of a given Participant to determine its net settlement obligation;
- Replace ''for settlement on a given'' Business Day to ''to settle on that'' Business Day in Rule 1504(g)(iv)(A)a. and b. to comport with the phrase ''for a given Business Day'' in rule 1504(g)(iv)(A) and make clear that, with respect to a given Business Day, CMESC's determination of the amount of a Member or User's netted collateral delivery obligation and the amount of its netted collateral receipt entitlement is with respect to the deliverable transactions that are scheduled to settle on that Business Day;
- Replace ''transactions'' with ''Cash Treasury Transactions and/or Clear to Deliver Transactions'' and replace ''an obligation'' to ''a collateral settlement obligation'' in Rule 1504(g)(iv)(A)c. to clarify that ''transactions'' refer to Cash Treasury Transactions and/or Clear to Deliver Transactions'' and ''an obligation'' refers to ''a collateral settlement obligation'' resulting from such transactions on a standalone or combined basis, as applicable; and
- Add the word ''cash'' to the first line of Rule 1504(g)(iv)(A)e. and replace ''each'' with ''the relevant'' in two places in Rule 1504(g)(iv)(A)e. and add '', as applicable'' to the same paragraph to clarify that the calculation of cash settlement value is for each cash settlement obligation, and that the settlement value cash amount to be received or paid will be on the relevant collateral delivery obligation or collateral receipt entitlement, as applicable.

Third, CMESC proposes to delete Rule 1504(g)(v) with respect to the meaning of a Repo Transaction to ''begin on a given Business Day.'' Because CMESC proposes to add ''for a given Business Day'' in appropriate places in Rules 1504(g)(ii), (iii) and (iv), making the text of Rule 1504(g)(v) duplicative and appropriate for removal.

Finally, CMESC also proposes certain technical, administrative, clarifying and conforming changes to Rule 1504(g) that are not described above. Please see the descriptions in the table under ''7. *Other Technical, Administrative, Clarifying and Conforming changes*'' below.

5. Amendments to Rule 1505 To Update the Description of Outstanding Exposure Settlement Calculation and Processing for Eligible Securities Transactions

CMESC proposes to amend Rule 1505 to update the descriptions of Outstanding Exposure Settlement calculations and processes for Clear to Deliver Transactions, Cash Treasury Transactions and Clear to Hold Transactions, as well as the description of the form and components of Outstanding Exposure Settlement that is paid to or received from Members and Users during the intraday clearing cycle. Each of the proposed changes to Rule 1505 is described below.

First, CMESC proposes to amend Rule 1505(a) regarding Outstanding Exposure Settlement in general by adding a sentence with respect to the form(s) of Outstanding Exposure Settlement for Clear to Hold Transactions, to provide that Outstanding Exposures Settlement obligations will be met in the form(s) permitted by CMESC and the relevant Securities Settlement Bank(s). This amendment provides that acceptable forms for Outstanding Exposure Settlement must be permitted by CMESC and as well as the relevant Securities Settlement Bank(s) to ensure

that collateral acceptance operations remain aligned as between CMESC and its Securities Settlement Bank(s).

Second, with respect to Outstanding Exposure Settlement for Clear to Deliver Transactions, CMESC proposes to make the following amendments to Rule 1505(b):

- With respect to the settlement variation component of the Outstanding Exposure Settlement for Clear to Deliver Transactions described in Rule 1505(b)(i), CMESC proposes to:
  - clarify in Rule 1505(b)(i) that the loss or profit that will be paid to or collected from CMESC as a settlement variation payment is represented by the difference between the settlement prices for the applicable clearing cycles, multiplied by the par amount of the securities, instead of the difference between the settlement prices for the current and preceding clearing cycles, to reflect the practice that, for the first clearing cycle after novation of a Clear to Deliver Transaction, the settlement variation payment amount is represented by the difference between the current settlement price versus the price at which the Start Leg was purchased or sold, multiplied by the par amount of the securities;
  - add a sentence to Rule 1505(b)(i) to explain that the settlement variation payment amount for settlement cycles subsequent to the first settlement cycles shall be represented by the difference between the settlement price determined during the current settlement cycle versus the settlement price determined during the previous settlement cycle, multiplied by the par amount of the securities;
  - clarify that the accrued coupon interest included in the settlement price for Clear to Deliver Transactions is for the Business Day on which the settlement variation is to be settled, rather than the Business Day on which the settlement variation is calculated, by changing the word ''calculated'' to ''to be settled'' in the fourth sentence of Rule 1505(b)(i);
  - change the phrase ''Where a Cash Treasury Transaction is netted against another obligation'' in the fifth sentence of Rule 1505(b)(i) to ''Where the Corporation settles one or more Cash Treasury Transactions and/or Clear to Deliver Transactions on a net basis as provided in Rule 1504(g)'' to further clarify CMESC's processes for settling Cash Treasury Transaction obligations and Clear to Deliver Transaction obligations on a net basis as provided in Rule 1504(g);
  - clarify in the same fifth sentence of Rule 1505(b)(i) that CMESC will calculate settlement variation based on the resulting net delivery settlement obligation and subsequent settlement variation calculations for subsequent settlement cycles will use the settlement price for the net delivery settlement obligation determined during the previous settlement cycle as the starting price, by adding ''resulting net'', ''for subsequent settlement cycle'', ''net'', ''determined during the previous settlement cycle'' to the fifth sentence of Rule 1505(b)(i); and
  - clarify in the last sentence of Rule 1505(b)(i) that the Haircut Collateral amount will be subtracted from the par amount of the securities (instead of settlement value), when determining the settlement value, *i.e.,* settlement price multiplied by the par amount of the securities for each calculation of the settlement variation.
- With respect to the Repo Rate accrual component of the Outstanding Exposure Settlement for Clear to Deliver Transactions described in Rule 1505(b)(ii), CMESC proposes to:
  - add ''Except as otherwise provided in the Rules, the'' to the third sentence of Rule 1505(b)(ii) to account for certain special situations with respect to the calculation of daily repo rate accrual, such as transfers of positions between Accounts as described below; and
  - add a new sentence to the end of Rule 1505(b)(ii) to account for transfers of positions between Accounts pursuant to the Rules, in which case the aggregate repo rate accrual from the start date to the transfer date may be processed alongside a contrary cash adjustment at the time of the transfer.
- With respect to the Price Alignment Amount component of the Outstanding Exposure Settlement for Clear to Deliver Transactions described in Rule 1505(b)(iv), CMESC proposes to clarify the timing of resetting the calculation for the Price Alignment Amount in Rule 1505(b)(iv)(C). Currently, Rule 1505(b)(iv)(C) provides that the calculation of the Price Alignment Amount will be reset when a transaction is netted against another obligation for settlement. CMESC proposes to clarify that the Price Alignment Amount calculation will be reset when CMESC settles obligations resulting from Clear to Deliver Transactions and/or Cash Treasury Transactions on a net basis in accordance with Rule 1504(g) as described above so that the Price Alignment Amount calculation will be based on the resulting net settlement obligation. CMESC proposes to clarify its process by removing the phrase ''when a transaction is netted against another obligation for'' from Rule 1505(b)(iv)(C) and adding ''Where the Corporation settles one or more Clear to Deliver Transactions and/or Cash Treasury Transactions on a net basis as provided in Rule 1504(g),'' and ''such that it is based on the resulting net settlement obligation'' to Rule 1505(b)(iv)(C). In addition, CMESC also proposes to remove the word ''only'' and add the word ''net'' to the last part of Rule 1505(b)(iv)(C) so it is clear that any subsequent Price Alignment Amount calculations will include settlement variation received or paid related to the net delivery settlement obligation.
- With respect to Haircut Collateral collected or returned as part of the Outstanding Exposure Settlement for Clear to Deliver Transactions described in Rule 1505(b)(vii), CMESC proposes to make two clarification changes in Rules 1505(b)(vii)(A) and (B). CMESC proposes to clarify that collection of Haircut Collateral will be reflected as a debit of the ''current cash value'' of Haircut Collateral submitted on the transaction for the funds borrower and a credit for the funds lender by adding the words ''current cash value of'' and removing the word ''cash'' from Rule 1505(b)(vii)(A). Conversely, return of Haircut Collateral will be reflected as a debit of the ''current cash value of'' Haircut Collateral submitted on the transaction for the funds lender and a credit for the funds borrower and CMESC proposes to add to Rule 1505(b)(vii)(B) the words ''current cash value of'' and removing from Rule 1505(b)(vii)(B) the word ''cash'' to make this clarification.

Third, with respect to Outstanding Exposure Settlement for Cash Treasury Transactions, CMESC proposes to make the following amendments to Rule 1505(c)(i):

- Add a sentence to Rule 1505(c)(i), similar to the sentence added to Rule 1505(b)(i), that states: ''For subsequent settlement cycles for open Cash Treasury Transaction positions, the settlement variation payment amount shall be represented by the difference between the settlement price determined during the current settlement cycle versus the settlement price determined during the previous settlement cycle, multiplied by the par amount of the securities.'' This revision reflects CMESC's approach to processing and calculating settlement variation for Cash Treasury Transactions in the same manner as Clear to Deliver Transactions for each settlement cycle;
- Change the phrase ''Where a Cash Treasury Transaction is netted against another obligation'' in Rule 1505(c)(i) to ''Where the Corporation settles one or more Cash Treasury Transactions and/or Clear to Deliver Transactions on a net

basis as provided in Rule 1504(g)'' to clarify that settlement obligations for Cash Treasury Transactions and Clear to Deliver Transactions will be determined on a net basis as provided in Rule 1504(g); and

• Clarify that in circumstances where settlement obligations for Cash Treasury Transactions and/or Clear to Deliver Transactions are determined on a net basis as provided in Rule 1504(g), CMESC will calculate settlement variation based on the resulting net delivery settlement obligation and subsequent settlement variation calculations for subsequent settlement cycles will use the settlement price for the net delivery settlement obligation determined during the previous settlement cycle as the starting price. CMESC proposed to make this clarification by adding ''resulting net'', ''for subsequent settlement cycle'', ''net'', ''determined during the previous settlement cycle'' to the last sentence of Rule 1505(c)(i).

Fourth, with respect to Outstanding Exposure Settlement for Clear to Hold Transactions, CMESC proposes to make the following amendments to Rule 1505(d):

• Revise reference from ''subparagraphs (i)–(iii)'' to ''subparagraphs (i)–(v)'' to account for new paragraphs (iv) and (v) added to Rules 1504(d), as discussed below;

• Add the phrase ''subject to applicable procedures of the Corporation and the Corporation's Securities Settlement Bank(s).'' to clarify that the permitted forms of Outstanding Exposure Settlement will be subject to the applicable procedures of CMESC and the Securities Settlement Bank(s), in order to maintain consistency with the revised text of Rule 1505(a); and

• Address two additional components of the Outstanding Exposure Settlement for Clear to Hold Transactions by adding two new subparagraphs (iv) and (v) to Rule 1505(d) regarding the exchanges of Outstanding Exposure Settlement and a transfer cash component or cash adjustment amount that may be included in Outstanding Exposure Settlement for Clear to Hold Transactions:

○ Proposed new Rule 1505(d)(iv) will provide that the Settlement Variation component of Outstanding Exposure Settlement for Clear to Hold Transactions will be exchanged at least twice daily in the form of Eligible Securities collateral and at times that coincide with the processing of Outstanding Exposure Settlement for Clear to Deliver Transactions and Cash Treasury Transactions set forth in Rule 508(c)(i) and (ii), except as otherwise permitted by CMESC and applicable procedures of the relevant Securities Settlement Bank; and

○ Proposed new Rule 1505(d)(v) will provide that Outstanding Exposure Settlement for Clear to Hold Transactions that are subject to a delivery failure, default management or transfers may include a transfer cash component or other miscellaneous cash adjustment amount to be paid or collected, at the CMESC's instruction and on the timelines consistent with the Clear to Deliver timeline for settling Outstanding Exposure Settlement, through a Bank or a Securities Settlement Bank designated by CMESC.

Fifth, with respect to intraday clearing cycle on each Business Day, CMESC proposes to amend Rule 1505(f)(i) to provide more detail with respect to the form(s) and components of Outstanding Exposure Settlement for Clear to Deliver Transactions and Cash Treasury Transactions. Currently, Rule 1505(f)(i) provides that Outstanding Exposure Settlement for Clear to Deliver Transactions and Cash Treasury Transactions will be exchanged and will only be inclusive of the settlement variation calculation as detailed in Rule 1505. CMESC proposes to clarify that Outstanding Exposure Settlement for Clear to Deliver Transactions and Cash Treasury Transactions will be exchanged ''in cash unless otherwise determined or permitted by the Corporation, will include the settlement variation calculation as detailed in this Rule 1505, and may include other cash adjustments as determined by the Corporation, including repo rate accrual adjustments in special cases involving the transfer or close out of relevant transactions.''

Finally, CMESC also proposes certain technical, administrative, clarifying and conforming changes to Rule 1505(f) that are not described above. Please see the descriptions in the table under ''7. *Other Technical, Administrative, Clarifying and Conforming changes*'' below.

6. Amendments to Rules 1506 To Update Settlement Fails Provisions for Cash Treasury Transactions and Clear To Deliver Transactions and for Clear To Hold Transactions

CMESC further proposes to amend Rule 1506 to update and clarify settlement fail provisions for Cash Treasury Transactions and Clear to Deliver Transactions and for Clear to Hold Transactions as follows:

First, with respect to Repo Transaction fails, CMESC proposes to add ''for Clear to Deliver Transactions'' to Rule 1506(b)(iii) and Rule 1506(c)(ii) to clarify that the fail charge assessed against a Member or User that failed to deliver Eligible Securities in satisfaction of the settlement obligations with respect to the Start Leg or Off Leg a Repo Transaction would not apply to Clear to Hold Transactions.

Second, CMESC proposes to delete clause (ii) from Rule 1506(d) regarding Cash Treasury Transaction Fails, because repo rate assessment would not apply to Cash Treasury Transactions, and to renumber existing clause (iii) as clause (ii) due to that deletion.

Third, CMESC proposes to amend existing Rule 1506(f) to clarify that fail charges are assessed against a failing Member or User only with respect to Clear to Deliver Transactions or Cash Treasury Transactions. CMESC proposes to make this clarification by replacing the reference to ''Repo'' Transactions with ''Clear to Deliver'' Transactions in the first sentence of Rule 1506(f) and adding ''for Clear to Deliver Transactions or Cash Treasury Transactions'' to the second sentence of Rule 1506(f) to clarify that CMESC will pay collected fail charges ''for Clear to Deliver Transactions or Cash Treasury Transactions'' pro rata to the Members or Users to which CMESC allocates the fail.

Fourth, CMESC also proposes to amend Rule 1506(g) for partial deliveries of settlement obligations. Existing Rule 1506(g) outlines the procedural requirements in the event that a Member or User fails in part to satisfy its obligation to deliver Eligible Securities to settle a Repo Transaction or Cash Treasury Transaction. CMESC proposes to amend Rule 1506(g) to include two subparts: (1) proposed Rule 1506(g)(i) would apply to Clear to Deliver Transactions and Cash Treasury Transactions, and (2) proposed Rule 1506(g)(ii) would apply to Clear to Hold Transactions. Specifically:

• Existing Rule 1506(g) would become new Rule 1506(g)(i), applicable to Clear to Deliver Transactions and Cash Treasury Transactions, with the following modifications:

○ Because the first sentence of existing Rule 1506(g) describes the same requirements that are now provided in Rule 1504(f)(viii)(B), to eliminate redundancy, CMESC proposes to remove the first sentence of existing Rule 1506(g) and add to the second sentence of existing Rule 1506(g) (which now becomes Rule 1506(g)(i)) a cross reference to ''in accordance with the provisions of Rule 1504(f)(viii)(B)'';

○ Replace ''Repo'' Transaction with ''Clear to Deliver'' Transaction in the second sentence of exhibit Rule 1506(g) (now the first sentence of new Rule

1506(g)(i)) to clarify that the applicable Repo Transaction being referred to is Clear to Deliver Transaction, not a Clear to Hold Transaction; and

○ Replace ''Repo'' Transaction with ''Clear to Deliver'' Transaction ''or a Cash Treasury Transaction'' in the third sentence of existing Rule 1506(g) (now the second sentence of new Rule 1506(g)(i)) to clarify that, if a Member or User partially fails to satisfy its obligation to deliver Eligible Securities to settle the Start Leg or Off Leg of a Clear to Deliver Transaction or a Cash Treasury Transaction, CMESC's obligation to deliver Eligible Securities to the Member or User allocated the fail shall be reduced.

• New Rule 1506(g)(ii) for Clear to Hold Transaction will provide the following:

○ First, with respect to a Member or User's failure to settle the Start Leg of a Clear to Hold Transaction, new Rule 1506(g)(ii) will allow for partial delivery subject to certain conditions, as follows: ''In the event that a Member or User fails in part to satisfy its obligation to deliver Eligible Securities to settle the Start Leg of a Clear to Hold Transaction, the Corporation will allow for partial delivery of an obligation; provided that such partial deliveries comply with the rules, policies, procedures and practices of the Corporation and the relevant Securities Settlement Bank(s) and Bank(s) used to settle such obligations.''; and

○ The procedures for partial delivery for Clear to Hold Transactions in new Rule 1506(g)(ii) will be added, as follows: ''If a Member or User delivers Eligible Securities in an amount that partially satisfies its obligation to deliver Eligible Securities to settle the Start Leg of a Clear to Hold Transaction, (x) the Corporation shall deliver such Eligible Securities to the Member or User allocated the fail, and (y) the failing Member or failing User will receive cash equal to the value of Eligible Securities delivered. If a Member or User partially fails to satisfy its obligation to deliver Eligible Securities to settle the Start Leg of a Clear to Hold Transaction, the Corporation's obligation to deliver Eligible Securities to the Member or User allocated the fail shall be reduced by the amount of the failing Member's or failing User's unsatisfied delivery obligation, until the Business Day on which the Corporation has received such Eligible Securities from the failing Member or User. If the Corporation delivers Eligible Securities to the Member or User allocated the fail to settle the Start Leg of a Clear to Hold Transaction in an amount that partially satisfies the Member's or User's securities receipt entitlement with respect to such Repo Transaction, the Member's or User's obligation to deliver Eligible Securities to the Corporation on the Off Leg of such Repo Transaction shall be reduced by the amount of the Member's or User's unsatisfied securities receipt entitlement.''

Fifth, CMESC proposes to amend Rule 1506(h) (revised to refer to ''Corporation Buy-in; Clear to Deliver Transactions and Cash Treasury Transactions'') to limit CMESC's buy-in rights to Cash Treasury Transactions and Clear to Deliver Transactions by adding a new lead-in phrase ''With respect to Cash Treasury Transactions and/or Clear to Deliver Transactions:'' to clarify that Rule 1506(h) applies to only to Clear to Deliver Transactions and Cash Treasury Transactions and does not apply to Clear to Hold Transactions. In addition, CMESC proposes to make the following clarifying and clean-up changes to Rule 1506(h):

• Replace ''loaned to'' with ''owed by'' in Rule 1506(h)(i) to improve clarity and readability;

• Replace ''borrowed from'' with ''owed by'' in two places in Rule 1506(h)(iii) and changing ''was the cash borrower'' to ''is the failing party'' in the same paragraph to improve clarity and readability, as well as consistency across CMESC documentation; and

• Amend the last sentence of Rule 1506(h)(iv) to provide more detail regarding the actions CMESC will take to effect a cash settlement on the first Business Day after CMESC receives a notice of the value of the securities from a Member or User that effects a cash settlement. CMESC proposes to replace ''pay such'' with ''collect from the failing Member or failing User, and pay to the non-failing'' and to add '', as determined by the Corporation,'' and ''non-failing'' to the last sentence, which will provide: ''On the first Business Day after the Corporation receives such notice, the Corporation shall collect from the failing Member or failing User, and pay to the non-failing Member or User, any reasonable loss or cost, as determined by the Corporation, incurred in connection with such cash settlement, and such non-failing Member or User shall pay the Corporation any profit or gain made in connection therewith.''

7. Other Technical, Administrative, Clarifying and Conforming Changes

In addition to the proposed changes described above, CMESC further proposes certain technical, administrative, clarifying and conforming changes to improve readability and accuracy. The table below lists each such proposed change and its purpose.

Rule	Proposed change	Purpose
Rule 604(a)	Delete ''and Bank(s)'' from the first sentence because Banks are not relevant to settlement of Transactions.	Technical.
Rule 604(a)	Change ''if'' to ''of'' in the second sentence to correct a typographical error.	Technical.
Rule 604(a)	Change ''the'' to ''any such'' in the second sentence to improve readability.	Technical.
Rule 604(b)	Delete ''or Bank(s)'' from the first sentence and delete ''or Bank'' from the second sentence because Banks are not relevant to settlement of Transactions.	Technical.
Rule 1503(d)	Change ''Prior to the appointed settlement time of a Cash Treasury Transaction . . .'' to ''Prior to the applicable cutoff time for a Cash Treasury Transaction . . .'' to improve clarity and accuracy.	Clarification.
Rule 1503(e)(iv)	Change ''Serves'' to Serve'' to correct a typographical error	Technical.
Rule 1504(f)(iv)	Change ''account'' to ''accounts'' to reflect multiple settlement accounts at CMESC's Securities Settlement Bank(s).	Clarification.
Rule 1504(f)(iii)	Change ''security obligation'' to ''securities obligation'' to correct typographical error.	Technical.
Rule 1504(f)(v)(B), (C) and (D)	Remove the word ''Repo'' from ''Clear to Deliver Repo Transactions'' to conform to the defined term ''Clear to Deliver Transactions''.	Clarification.

Rule	Proposed change	Purpose
Rule 1504(f)(v)(F)	Change ''a Daily Settlement Report'' to ''Daily Settlement Reports'' to reflect CMESC's practice of issuing multiple Daily Settlement Reports and maintain consistency with the proposed change to Rule 1504(e) as described below.	Clarification and Conforming Change with proposed Rule 1504(e).
Rule 1504(f)(v)(L)	Add a missing period to the end of the paragraph	Technical.
Rule 1504(f)(vii)(A)	Change the lead-in phrase ''By the settlement deadline'' to ''In accordance with the settlement deadlines'' to improve clarity and readability.	Clarification.
Rule 1504(f)(vii)(A), (B)	Insert ''(v)'' after the cross-reference to Rule 1504(f) to improve precision of the cross-reference.	Clarification.
Rule 1504(f)(vii)(A)a	Change ''account'' to ''account(s)'' in three places to reflect multiple accounts a Member, User or CMESC may maintain at CMESC's Securities Settlement Bank(s) for settling Clear to Hold Transactions.	Clarification.
Rule 1504(f)(vii)(A)b	Change ''account'' to ''account(s)'' in two places to reflect multiple accounts a Member or User may maintain at its settlement bank(s) for settling each Clear to Deliver Transaction, Cash Treasury Transaction or netted settlement obligation.	Clarification.
Rule 1504(f)(vii)(A)b	Change ''Securities Settlement Bank'' to ''settlement bank'' in three places to conform to the proposed changes to Rule 604 that expand Members and Users' choice of settlement banks.	Clarification.
Rule 1504(f)(vii)(B)	Change the lead-in phrase ''By'' the settlement deadlines to ''In accordance with'' the settlement deadlines to improve clarity and readability.	Clarification.
Rule 1504(f)(vii)(B)	Change ''Daily Settlement Report'' to ''Daily Settlement Reports'' to reflect CMESC's practice of issuing multiple Daily Settlement Reports.	Clarification.
Rule 1504(f)(vii)(B)b	Change ''Securities Settlement Bank'' to ''settlement bank'' to conform to the proposed changes to Rule 604 that expand Members and Users' choice of settlement banks.	Clarification and Conforming Change with proposed Rule 1504(e).
Rule 1504(f)(vii)(C)	Change the lead-in phrase ''By the settlement deadline'' to ''In accordance with the settlement deadlines'' to improve clarity and readability.	Clarification.
Rule 1504(f)(vii)(C)	Add ''(v)'' after the cross-reference to Rule 1504(f) to improve precision of the cross-reference.	Clarification.
Rule 1504(f)(vii)(C)	Change ''Daily Settlement Report'' to ''Daily Settlement Reports'' to reflect CMESC's practice of issuing multiple Daily Settlement Reports.	Clarification.
Rule 1504(f)(vii)(C)b	Change ''Securities Settlement Bank'' to ''settlement bank'' to conform to the proposed changes to Rule 604 that expand Members and Users' choice of settlement banks.	Clarification and Conforming Change with proposed Rule 604.
Rule 1504(g)(ii)(A)	Replace ''Repo'' with ''Clear to Hold'' to clarify that the netting procedures set forth in Rule 1504(g)(ii)(A) are with respect to Clear to Hold Transactions.	Clarification.
Rule 1504(g)(ii)(B)	Replace ''Repo'' with ''Clear to Hold'' to clarify that the netting procedures set forth in Rule 1504(g)(ii)(B) are with respect to Clear to Hold Transactions.	Clarification.
Rule 1504(g)(ii)(B)c	Replace ''Repo'' with ''Clear to Hold'' to clarify that the netting procedures set forth in Rule 1504(g)(ii)(B)c. are with respect to Clear to Hold Transactions.	Clarification.
Rule 1504(g)(ii)(C)	Replace ''Repo'' with ''Clear to Hold'' to clarify that the netting procedures set forth in Rule 1504(g)(ii)(C) are with respect to Clear to Hold Transactions.	Clarification.
Rule 1504(g)(ii)(C)c	Replace ''Repo'' with ''Clear to Hold'' to clarify that the netting procedures set forth in Rule 1504(g)(ii)(C)c. are with respect to Clear to Hold Transactions.	Clarification.
Rule 1504(g)(iii)(A)	Replace ''Repo'' with ''Clear to Hold'' to clarify that the netting procedures set forth in Rule 1504(g)(iii)(A) are with respect to Clear to Hold Transactions.	Clarification.
Rule 1504(g)(iii)(B)	Replace ''Repo'' with ''Clear to Hold'' to clarify that the netting procedures set forth in Rule 1504(g)(iii)(B) are with respect to Clear to Hold Transactions.	Clarification.
Rule 1504(g)(iii)(B)c	Replace ''Repo'' with ''Clear to Hold'' to clarify that the netting procedures set forth in Rule 1504(g)(iii)(B)c. are with respect to Clear to Hold Transactions.	Clarification.
Rule 1504(g)(iii)(C)	Replace ''Repo'' with ''Clear to Hold'' to clarify that the netting procedures set forth in Rule 1504(g)(iii)(C) are with respect to Clear to Hold Transactions.	Clarification.
Rule 1504(g)(iii)(C)c	Replace ''Repo'' with ''Clear to Hold'' to clarify that the netting procedures set forth in Rule 1504(g)(iii)(C)c. are with respect to Clear to Hold Transactions.	Clarification.
Rule 1504(g)(iv)	Change ''Transactions'' to ''Transaction'' to correct typographical error.	Technical.

Rule	Proposed change	Purpose
Rule 1504(g)(iv)(A)	Replace ''Clear to Deliver Start Leg'', ''Clear to Deliver Off Leg'' and ''Cash Treasury'' with ''Clear to Deliver Transaction Start Leg'', ''Clear to Deliver Transaction Off Leg'' and ''Cash Treasury Transaction'' to conform to the defined terms ''Clear to Deliver Transaction'' and ''Cash Treasury Transaction''.	Clarification.
Rule 1504(g)(iv)(A)	Change ''the Member's or User's netted collateral delivery obligations and receipt entitlements (the collateral settlement obligation) per CUSIP'' to ''the Member's or User's netted collateral delivery obligation and receipt entitlement (*i.e.,* the collateral settlement obligation) per CUSIP'' to improve readability.	Clarification.
Rule 1504(g)(iv)(A)a	Replace ''End Leg'' with ''Off Leg'' to use the correct defined term	Clarification.
Rule 1504(g)(iv)(A)b	Replace ''End Leg'' with ''Off Leg'' to use the correct defined term	Clarification.
Rule 1505	Add a period after ''Rule 1505.'' In header to correct typographical error.	Technical.
Rule 1506	Change header from ''Rule 1506 Eligible Security Transaction Fails'' to Rule 1506. Eligible Securities Transaction Fails'' to correct typographical error.	Technical.

(b) Statutory Basis

CMESC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act. Section 17A(b)(3)(F) requires, in part, 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.[5] The proposed changes to Rules 503(b), 1503, 1504, 1505 and 1506 are designed to better describe certain features of and clarify CMESC's treatment of Haircut Collateral in Clear to Hold Transactions, as well as to clarify and update descriptions of CMESC's settlement fails provisions, its processes for settling Eligible Securities Transactions and for calculating and processing Outstanding Exposure Settlement, to better align with CMESC's operational processes and the practices of the Securities Settlement Bank(s), as applicable, and to enhance consistency and transparency. In addition, the proposed changes to Rule 604 and the associated conforming changes to Rules 601 and 101 will expand Participants' choice of settlement bank(s), subject to CMESC's discretion with respect to operational and risk management considerations. As such, CMESC believes that the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, which, in turn, promotes the protection of investors and the public interest, in furtherance of Section 17A(b)(3)(F).[6]

In addition, CMESC also believes that the proposed rule change is consistent with Rule 17ad–22(e)(9),[7] which requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to conduct its money settlements in central bank money, where available and determined to be practical by the Board, and minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used. Under the proposed changes to Rule 604 and the associated conforming changes to Rules 601 and 101, CMESC will provide Participants with greater choice of banks used to settle securities delivery obligations for Cash Treasury Transactions and Clear to Deliver Transactions, provided that such bank or trust company is subject to supervision under Federal or State banking laws and has access to the Fedwire for securities and funds movements. In addition, CMESC may, in its reasonable judgment, disallow a Participant from utilizing a bank or trust company for settling its Eligible Securities Transactions due to operational or risk management considerations. The conditions imposed on the settlement bank(s) chosen by Participants are designed to minimize and manage credit and liquidity risk arising from money settlements in commercial bank money. As such, CMESC believes that the proposed rule change is consistent with the requirements of Rule 17Ad–22(e)(9).[8]

Finally, CMESC believes that the proposed rule change is consistent with Rule 17ad–22(e)(12), which requires a covered clearing agency, for transactions that involve the settlement of two linked obligations, to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other, regardless of whether the covered clearing agency settles on a gross or net basis and when finality occurs. As stated above, the proposed rule change serves to clarify and update operational processes to provide certain details that were not previously provided and does not impact CMESC's risk management practices. In particular, the proposed rule change does not increase any principal risk for CMESC in the clearance and settlement process. CMESC's existing Rule 1504 already requires the settlement of Eligible Securities Transactions on a delivery versus payment basis, effectively conditioning the final settlement of the securities delivery obligation(s) upon the final settlement of cash payment, regardless of whether the Eligible Securities Transactions are settled on a gross or net basis. Proposed amendments to Rules 1504(d), (f) and (g) would consolidate duplicative text and revise the descriptions of settlement and netting procedures for Clear to Deliver Transactions, Cash Treasury Transactions and Clear to Hold Transactions for greater consistency in conditioning the final settlement of the securities delivery obligation upon the final settlement of the cash payment obligation, whether on gross or net basis. In addition, proposed amendments to Rule 1504(f) would permit CMESC to settle obligations resulting from a same-day settling Cash Treasury Transaction or Clear to Deliver Transaction directly with Participant counterparties to a riskless principal, without delivering securities or making payment to the riskless principal, where the riskless principal and its Participant counterparties have identical and offsetting settlement obligations, which

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *Id.*

[7] 17 CFR 240.17ad–22(e)(9).

[8] *Id.*

will promote settlement efficiency without increasing or changing CMESC's principal risk. Similarly, proposed amendments to Rule 1506 also do not change or increase CMESC's principal risk, which is eliminated under the existing Rules that already provide allocation of fails and partial delivery, but are designed to update and clarify settlement fail provisions for Cash Treasury Transactions and Clear to Deliver Transactions and for Clear to Hold Transactions. As such, CMESC believes that the proposed rule change is consistent with the requirements of Rule 17ad–22(e)(12).

B. CMESC's Statement on Burden on Competition

CMESC 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 proposed rule change does not impact CMESC's risk management practices or related policies. Rather, it serves to clarify and update operational processes to provide certain details that were not previously provided. As such, the proposed rule change does not change Participants' access to CMESC's Clearing Services or Participants' delivery or payment obligations for purposes of settlement or create additional rights and obligations of Members and Users that do not already exist under the existing Rules and other existing risk management policies. As such, CMESC does not believe the proposed rule change would have impact on burden on competition that does not already exist under the existing Rules or other existing risk management policies or is not necessary or appropriate in furtherance of the purposes of the Act.

C. CMESC's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CMESC currently does not have any Members or Users and has not received nor solicited any written comments from others related to this proposal. CMESC has not received any unsolicited written comments from any interested parties. If any written comments are received, they will be publicly filed as Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777. CMESC reserves the right to not respond to any comments 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) of the Act[9] and Rule 19b–4(f)(6)[10] 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.

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-regulations/self-regulatory-organization-rulemaking*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CMESC–2026–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–CMESC–2026–009. 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-regulations/self-regulatory-organization-rulemaking*). Copies of the filing also will be available for inspection and copying at the principal office of CMESC and on CMESC's website (*https://www.cmegroup.com/market-regulation/rule-filings.html*). 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–CMESC–2026–009 and should be submitted on or before December 14, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–23742 Filed 11–20–26; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #22074 and #22075; GUAM Disaster Number GU–20000]

Administrative Declaration of a Disaster for the Territory of Guam

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative declaration of a disaster for the Territory of Guam dated November 18, 2026.

Incident: Super Typhoon Sinlaku.

DATES: Issued on November 18, 2026.

Incident Period: April 11, 2026 through April 18, 2026.

Physical Loan Application Deadline Date: January 19, 2027.

Economic Injury (EIDL) Loan Application Deadline Date: August 18, 2027.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Jennifer Talarico, Office of Disaster

Recovery, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or in person at other locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

The following area has been determined to be adversely affected by the disaster:

Primary Area: Guam.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 220748 and for economic injury is 220750.

The Territory which received an SBA Administrative declaration is Guam.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery.

[FR Doc. 2026–23781 Filed 11–20–26; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #22072 and #22073; NEW HAMPSHIRE Disaster Number NH–20018]

Administrative Disaster Declaration of a Rural Area for the State of New Hampshire

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative disaster declaration of a rural area for the state of NEW HAMPSHIRE dated November 17, 2026.

Incident: Severe Storm and Flooding.

DATES: Issued on November 17, 2026.

Incident Period: June 10, 2026 through June 11, 2026.

Physical Loan Application Deadline Date: January 19, 2027.

Economic Injury (EIDL) Loan Application Deadline Date: August 17, 2027.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Milton Murphy, Office of Disaster Recovery, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator's disaster declaration of a rural area, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or in person at locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Carroll.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 220726 and for economic injury is 220730.

The state which received an SBA Administrative rural declaration is New Hampshire.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery.

[FR Doc. 2026–23778 Filed 11–20–26; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 13175]

Notice of Department of State Sanctions Actions

ACTION: Notice.

SUMMARY: The U.S. Department of State (State) is publishing the names of persons who have been added to the Department of the Treasury's List of Specially Designated Nationals and Blocked Persons (SDN List), administered by the Office of Foreign Assets Control (OFAC).

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: Office of Counterproliferation Initiatives, Bureau of Arms Control and Nonproliferation, Department of State, Washington, DC 20520, tel.: (202) 647–5193, email: *ACN_Sanctions@state.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning sanctions programs are available on OFAC's website (*https://ofac.treasury.gov/*).

Notice of Department of State Actions

On November 4, 2026, the Department of State, in consultation with other departments, as appropriate, determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4710–05–P

Entities

1. VANGUARD TACTICAL SUPPLY LIMITED, Stallion Estate by Lobito Crescent, Wuse 2, Abuja, Nigeria; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 20 May 2026; Registration Number 9562580 (Nigeria) [NPWMD] [IFSR] [IRAN-CON-ARMS-EO] (Linked To: NAMAZI, Behrouz).

Designated pursuant to section 1(a)(iii) of E.O. 13949 for having engaged, or attempted to engage, in any activity that materially contributes to, or poses a risk of materially contributing to, the proliferation of arms or related materiel or items intended for military end-uses or military end-users, including any efforts to manufacture, acquire, possess, develop, transport, transfer, or use such items, by the Government of Iran (including persons owned or controlled by, or acting for or on behalf of the Government of Iran) or paramilitary organizations financially or militarily supported by the Government of Iran.

Individuals

1. TOLIBOV, Mohammed Ali (a.k.a. TOLIBOV, Muhamadali; a.k.a. TOLIBOV, Mukhamadali Khaydarkhudzhaevich (Cyrillic: ТОЛИБОВ, Мухамадали Хайдархуджаевич)), Belarus; DOB 17 Jan 1982; nationality Belarus; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport MR4193252 (Belarus) (individual) [NPWMD] [IFSR] [IRAN-CON-ARMS-EO] (Linked To: ARMORY ALLIANCE LLC).

Designated pursuant to section 1(a)(iii) of E.O. 13949 for having engaged, or attempted to engage, in any activity that materially contributes to, or poses a risk

of materially contributing to, the proliferation of arms or related materiel or items intended for military end-uses or military end-users, including any efforts to manufacture, acquire, possess, develop, transport, transfer, or use such items, by the Government of Iran (including persons owned or controlled by, or acting for or on behalf of the Government of Iran) or paramilitary organizations financially or militarily supported by the Government of Iran.

2. DOMULLODZHANOV, Alisher (a.k.a. DOMULLODZHANOV, Alisher Hairulloevich), Str. 5, Bld. 6, Khripan Village, Ramenskiy Rayon, Moscow Oblast 140163, Russia; DOB 29 Nov 1989; POB Dushanbe, Tajikistan; nationality Russia; alt. nationality Tajikistan; Gender Male; Passport 769612269 (Russia) (individual) [IRAN-CON-ARMS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 13949 for having engaged, or attempted to engage, in any activity that materially contributes to, or poses a risk of materially contributing to, the proliferation of arms or related materiel or items intended for military end-uses or military end-users, including any efforts to manufacture, acquire, possess, develop, transport, transfer, or use such items, by the Government of Iran (including persons owned or controlled by, or acting for or on behalf of the Government of Iran) or paramilitary organizations financially or militarily supported by the Government of Iran.

Notice of Department of State Actions

On November 5, 2026, the Department of State, in consultation with other departments, as appropriate, determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Entities

1. BEIJING H AND C TECHNOLOGIES CO., LTD (a.k.a. BEIJING H&C TECHNOLOGIES CO., LTD; a.k.a. BEIJING HUACHENG HAOPU TECHNOLOGY CO, LTD (Chinese Simplified: 北京华成昊普科技有限公司)), Room 624, Building 2, No. 5, Tongbei Street, Wulu Road (Desheng Park), Xicheng District, Beijing 100032, China; Organization Established Date 16 Oct 2003; Organization Type: Wholesale of electronic and telecommunications equipment and parts; Target Type State-Owned Enterprise; Business Registration Number 110000006206075 (China); Unified Social Credit Code (USCC) 9111010275603610XH (China) [CUBA-EO14404].

   Designated pursuant to section 2(a)(i)(D) of E.O. 14404 of May 1, 2026 "Imposing Sanctions on Those Responsible for Repression in Cuba and for Threats to United States National Security and Foreign Policy," (E.O. 14404) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Government of Cuba or any person whose property or interests in property are blocked pursuant to this order.

2. CEIEC (Chinese Simplified: 中国电子进出口总公司) (a.k.a. CHINA NATIONAL ELECTRONIC IMPORT-EXPORT COMPANY; a.k.a. CHINA NATIONAL ELECTRONICS IMPORT AND EXPORT CORPORATION), Block A 6-23F, No. 17 Fuxing Road, Haidian District, Beijing 100036, China; Calle Orinoco, Torre Nordic, Piso 6, Las Mercedes, Caracas 1060, Venezuela;

Room 1706, 17th Floor, Building 3, No. 17, Zhongguancun South Street, Haidian District, Beijing 100089, China; Website https://www.ceiec.com; Organization Established Date 15 Apr 1980; Target Type State-Owned Enterprise; Business Registration Number 100000000001068 (China); Registration Number 16382287 (China); Unified Social Credit Code (USCC) 9111000010000106X1 (China) [VENEZUELA] [CUBA-EO14404].

Designated pursuant to section 2(a)(i)(D) of E.O. 14404 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Government of Cuba or any person whose property or interests in property are blocked pursuant to this order.

Gonzalo O. Suarez,

Deputy Assistant Secretary, Bureau of Arms Control and Nonproliferation, U.S. Department of State.

[FR Doc. 2026–23793 Filed 11–20–26; 8:45 am]

BILLING CODE 4710–05–C

DEPARTMENT OF STATE

[Public Notice: 13176]

Defense Trade Advisory Group; Notice of Open Meeting

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Defense Trade Advisory Group (DTAG) will meet in open session. The membership of this advisory committee consists of defense trade representatives, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on U.S. laws, policies, and regulations regarding exports of defense articles, defense services, and related technical data, including both Foreign Military Sales (FMS) and Direct Commercial Sales (DCS).

DATES: Tuesday, December 15, 2026, from 10:00 a.m. until 1:00 p.m. The virtual forum will open at 9:45 a.m.

ADDRESSES: The public may attend virtually via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: Dr. Allison Smith or Mrs. Quartney Ross, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; Telephone (202) 549–3128 or email *DTAG@State.gov.*

SUPPLEMENTARY INFORMATION: The DTAG was established as an advisory committee under the authority of 22 U.S.C. 2651a and 2656 and the Federal Advisory Committee Act, 5 U.S.C. 1001 *et seq.*

The purpose of the meeting will be to discuss current defense trade issues and topics for further study. The Department of State's Bureau of Political-Military Affairs asked the DTAG to present executive briefings and provide recommendations on: 1. Steps that could be taken to increase the use of ITAR section 126.4 (''by or for'' U.S. Government); 2. How to structure a common list of defense technologies/capabilities that would not require a transactional license for export to designated allies (*e.g.,* NATO); 3. How to reform the Third Party Transfer process (TPT) to eliminate the requirement for FMS customers to seek redundant TPTs authorizing access to defense articles for U.S. defense companies to perform follow-on DCS for operations and support in-country, including transfers of defense articles to and from the United States for repair and replacement purposes; and 4. Feedback on the recently updated Government-to-Government (G2G)-only criteria and the 2025 G2G-Only List.

The public can attend virtually via Microsoft Teams. There will be one virtual invitation for each attendee, and only the attendee should use the invitation. In addition, each attendee should access the virtual meeting from a private location. Please let us know if you need any of the following accommodations: live captions, digital/text versions of webinar materials, or other (please specify).

Members of the public may submit questions by email after the formal DTAG virtual presentation. Members of the public may also submit a brief statement (less than three pages) to the committee in writing for inclusion in the public minutes of the meeting. Each member of the public that wishes to attend this virtual session must provide: Name and contact information, including an email address and phone number, and any request for reasonable accommodation to the DTAG via email at *DTAG@State.gov* by COB Friday, December 11, 2026.

(Authority: 22 U.S.C. 2651a and 5 U.S.C. 1009)

Shelly M. Atkinson,

Alternate Designated Federal Officer, Defense Trade Advisory Group, U.S. Department of State.

[FR Doc. 2026–23775 Filed 11–20–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 13178]

Notice of Public Meeting To Prepare for International Maritime Organization MSC 111 Session

The Department of State will conduct a public meeting at 1:00 p.m. on Tuesday, December 8, 2026, by teleconference. The primary purpose of the meeting is to prepare for the 112th session of the International Maritime Organization's (IMO) Maritime Safety Committee (MSC 112), to be held at IMO Headquarters in London, United Kingdom from Monday, December 14, 2026, to Friday, December 18, 2026.

The agenda items to be considered include:

—Adoption of the agenda; report on credentials
—Decisions of other IMO bodies
—Amendments to mandatory instruments
—Goal-based new ship construction standards
—Development of a goal-based instrument for maritime autonomous surface ships (MASS)
—Development of a safety regulatory framework to support the reduction of GHG emissions from ships using new technologies and alternative fuels
—Measures to enhance maritime security

—Piracy and armed robbery against ships
—Ship systems and equipment (Report of the twelfth session of the Sub-Committee)
—Navigation, communications and search and rescue (Report of the thirteenth session of the Sub-Committee)
—Implementation of IMO instruments (Report of the twelfth session of the Sub-Committee)
—Carriage of cargoes and containers (Urgent matters emanating from the twelfth session of the Sub-Committee)
—Application of the Committee's method of work
—Work programme
—Election of Chair and Vice-Chair for 2027
—Any other business
—Consideration of the report of the Committee on its 112th session

Please note: The IMO may, on short notice, adjust the MSC 112 agenda to accommodate any constraints associated with the meeting. Although no changes to the agenda are anticipated, if any are necessary, they will be provided to those who RSVP.

Those who plan to participate may contact the meeting coordinator, LCDR Emily Sysko, by email at *Emily.T.Sysko@uscg.mil,* by phone at (571) 608–7756 by November 27, 2026. Members of the public needing reasonable accommodation should advise LCDR Emily Sysko no later than November 27, 2026. Requests made after that date will be considered but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Emily Gibbons,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, U.S. Department of State.

[FR Doc. 2026–23817 Filed 11–20–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2026–3321]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Domestic and International Flight Plans

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 13, 2026, three comments were received. The collection involves extracting flight data such as aircraft, routing speed, etc. from domestic and international flights. FAA Form 7233–1 (Domestic) and FAA Form 7233–4 (International), Flight Plan: Both forms are used to collect Domestic flight plan information and used to govern the flight of aircraft for the protection and identification of aircraft and property and persons on the ground. The information is used by air traffic controllers, search and rescue (SAR) personnel, flight standards inspectors, accident investigators, military, law enforcement, and the Department of Homeland Security.

DATES: Written comments should be submitted by December 23, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nathan Dekker by email at: *flightplanquestions@faa.gov*, phone: 202–267–6899.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0026.

Title: Domestic and International Flight Plans.

Form Numbers: FAA form7233–1 Domestic Flight Plan, FAA form 7233–4 International Flight Plan.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 13, 2026 (FR Citation Number 91FR 43014) The Federal Aviation Administration (FAA) is authorized and directed by Title 49, United States Code, paragraph 40103(b), to prescribe air traffic rules and regulations governing the flight of aircraft for the protection and identification of aircraft and property and persons on the ground. Title 14, CFR, part 91, subchapter F, prescribes flight rules governing the operation of aircraft within the United States. These rules govern the operation of aircraft (other than moored balloons, kites, unmanned rockets and unmanned free balloons) within the United States and for flights across international borders. Paragraphs 91.153 and 91.169, address flight plan information requirements. Paragraph 91.173 states requirements for when an IFR flight plan must be filed. Internationally, International Standards Rules of the Air, Annex 2 to the Convention on International Civil Aviation paragraph 3.3 establishes parallel requirements for international flight plans. Within the national capital region, the Washington, DC Special Flight Rules Area (SFRA) imposes additional obligations, requiring pilots operating within a certain radius of Washington, DC, including those departing from three general aviation airports in Maryland must file a flight plan regardless of whether they are operating under VFR and IFR.

This collection of information supports the Department of Homeland Security and the Department of Defense in addition to the normal flight plan purposes. The forms outline an aircraft's intended departure location, route, destination and flight duration to air traffic control for flight capabilities, and search and rescue.

Almost 100 percent of flight plans are filed electronically. However, as a courtesy to the aviation public, flight plans may be submitted in paper form. Flight plans may be filed in the following ways:

- Some air carrier and air taxi operations, and certain corporate aviation departments, have been granted authority to electronically file flight plans directly with the FAA. The majority of air carrier and air taxi flights are processed in this manner.
- Air carrier and air taxi operators may submit prestored flight plan information on scheduled flights to Air Route Traffic Control Centers (ARTCC) to be entered electronically at the appropriate times.
- Pilots may call 1–800–WX–BRIEF (992–7433) or 1–833–AK–BRIEF (252–7433) file flight plans with a flight service station specialist who enters the

information directly into a computer system that transmits the information to the appropriate air traffic facility. Pilots calling certain flight service stations have the option of using a voice recorder to store the information that will later be entered into a computer system by a specialist.

- Using internet access, pilots may file flight plans electronically through web applications provided by flight service, at no cost to the users. Third-party subscription-based vendors are also available for direct electronic filing. The vendors allow pilots to store flight data so that minimal additional information is required when filing a flight plan.
- Private and corporate pilots who fly the same aircraft and routes at regular times may store flight plans with flight service stations. The flight plans will then be transmitted automatically into the air traffic system at the appropriate time.
- Pilots who visit a flight service station in person may choose to file a flight plan by using a paper form. The data will then be entered into a computer and filed electronically. The pilot will often keep the paper copy for his/her record.

Respondents: Air carrier and air taxi operations, and certain corporate aviation departments, General Aviation Pilots.

Frequency: On occasion.

Estimated Average Burden per Response: 1 minute.

Estimated Total Annual Burden: 292,724 Hours.

Issued in Washington, DC, on November 11, 2026.

Nathan Dekker,

Air Traffic Control Specialist, Office of Flight Service Safety and Operations, AJR–B.

[FR Doc. 2026–23764 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2026–13806]

Notice of Intent To Designate as Abandoned Heli-Support, Inc. Supplemental Type Certificates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to designate supplemental type certificate as abandoned; request for comments.

SUMMARY: This notice announces the FAA's intent to designate Heli-Support, Inc. Supplemental Type Certificate (STC) Nos. SH5889NM, SR10117LA–D, SR00122LA–D, SH6024NM, SR00126LA–D, SH5474NM, SR00057DE, SH1500NM, SH8032NM, SH7054NM, SR00121LA–D, SH8046NM, SR00120LA–D, SR00127LA–D, SH6039NM, and SH8045NM as abandoned and make the related engineering data available upon request. The FAA has received a request to provide engineering data concerning these STCs. The FAA has been unsuccessful in contacting Heli-Support, Inc. concerning these STCs. This action is intended to enhance aviation safety.

DATES: The FAA must receive all comments by May 24, 2027.

ADDRESSES: You may send comments on this notice by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Ed Mills, AIR–771, Federal Aviation Administration, West Certification Branch, 2200 216th Street, Des Moines, WA 98189.
- *Email: Ed.Mills@faa.gov*. Include ''Docket No. FAA–2026–13806'' in the subject line of the message.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Mills, Manager, AIR–771, FAA; telephone: 206–231–3515; email: *Ed.Mills@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested parties to provide comments, written data, views, or arguments relating to this notice. Send your comments using a method listed under the **ADDRESSES** section. Include ''Docket No. FAA–2026–13806'' at the beginning of your comments. The FAA will consider all comments received on or before the closing date. All comments received will be available in the docket for examination by interested persons.

Background

The FAA is posting this notice to inform the public that the FAA intends to designate Heli-Support, Inc. Supplemental Type Certificate (STC) Nos. SH5889NM, SR10117LA–D, SR00122LA–D, SH6024NM, SR00126LA–D, SH5474NM, SR00057DE, SH1500NM, SH8032NM, SH7054NM, SR00121LA–D, SH8046NM, SR00120LA–D, SR00127LA–D, SH6039NM, and SH8045NM as abandoned and subsequently release the related engineering data.

Descriptions of the STC design changes and affected aircraft models are available at *https://drs.faa.gov/browse/STC/doctypeDetails*.

The FAA has received a third-party request for the release of the aforementioned engineering data under the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552. The FAA cannot release commercial or financial information under FOIA without the permission of the data owner. However, in accordance with title 49 of the United States Code § 44704(a)(5), the FAA can provide STC ''engineering data'' it possesses for STC maintenance or improvement, upon request, if the following conditions are met:

1. The FAA determines the STC has been inactive for 3 years or more;
2. Using due diligence, the FAA is unable to locate the owner of record or the owner of record's heir; and
3. The availability of such data will enhance aviation safety.

There has been no activity on this STC for more than 3 years.

On May 12, 2026, the FAA sent a certified letter to Mr. James Roberts and Heli-Support, Inc. at the last known address: 120 NE Frontage Road, Fort Collins, CO 85024. The letter was returned, unclaimed, and unable to be forwarded. The letter informed James Roberts and Heli-Support, Inc. that the FAA had received a request for engineering data related to STC No. SH5889NM and was conducting a due diligence search to determine whether this STC and 15 others were inactive and may be considered abandoned. The letter further requested that James Roberts and Heli-Support, Inc., respond in writing within 60 days and state whether he is the holder of this STC and 15 others. The FAA also attempted to make contact with James Roberts and Heli-Support, Inc., by other means, including telephone communication, without success.

Information Requested

If you are the owner or heir or a transferee of STC Nos. SH5889NM, SR10117LA–D, SR00122LA–D, SH6024NM, SR00126LA–D, SH5474NM, SR00057DE, SH1500NM, SH8032NM, SH7054NM, SR00121LA–D, SH8046NM, SR00120LA–D, SR00127LA–D, SH6039NM, or SH8045NM or have any knowledge regarding who may now hold any of these STCs, please contact Ed Mills using a method described in this notice under **FOR FURTHER INFORMATION CONTACT**. If you are the heir of the

owner, or the owner by transfer, of any of these STCs, you must provide a notarized copy of your government-issued identification with a letter and background establishing your ownership of any of these STCs and, if applicable, your relationship as the heir to the deceased holder of the STCs.

Conclusion

If the FAA does not receive any response by May 24, 2027, the FAA will consider Heli-Support, Inc. Supplemental Type Certificate (STC) Nos. SH5889NM, SR10117LA–D, SR00122LA–D, SH6024NM, SR00126LA–D, SH5474NM, SR00057DE, SH1500NM, SH8032NM, SH7054NM, SR00121LA–D, SH8046NM, SR00120LA–D, SR00127LA–D, SH6039NM, and SH8045NM as abandoned, and the FAA will proceed with the release of the requested data. This action is for the purpose of maintaining the airworthiness of an aircraft and enhancing aviation safety.

Issued on November 5, 2026.

Steven W. Thompson,

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

[FR Doc. 2026–23763 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2026–11158]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Federal Aviation Regulation Part 119—Certification: Air Carriers and Commercial Operators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 11, 2026. The collection involves requirements necessary under parts 135, 121, and 125 to comply with Federal Aviation Regulation part 119—Certification: Air Carriers and Commercial Operators. The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, if necessary, to take enforcement action on violators of the regulations.

DATES: Written comments should be submitted by December 23, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sandra L. Ray by email at: *Sandra.ray@faa.gov;* phone: 412–546–7344.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0593.

Title: Federal Aviation Regulation part 119—Certification: Air Carriers and Commercial Operators.

Form Numbers: 8400–6.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 11, 2026 (91 FR 57956). The request for clearance reflects requirements necessary under parts 135, 121, and 125 to comply with part 119. 49. 49 U.S.C. 44702 is the FAA's general certificate-issuance authority. It says the Administrator may issue numerous types of certificates—including airman, type, production, airworthiness, airport, air agency, and air carrier operating certificates—and establishes general requirements for applications and certificate issuance.

Title 49 U.S.C. 44705 is the specific statute governing air carrier operating certificates. It tells the FAA when an air carrier certificate shall be issued: after investigation, when the applicant is properly and adequately equipped and capable of operating safely. It also specifies what the certificate must contain.

The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, if necessary, to take enforcement action on violators of the regulations.

Respondents: 38 New Entrant Air Carrier and Commercial Operators.

Frequency: Once.

Estimated Average Burden per Response: 3 hours per response.

Estimated Total Annual Burden: $191,212.16.

Issued in Washington, DC, on November 19, 2026.

Sandra L. Ray,

Aviation Safety Inspector, AFS–260.

[FR Doc. 2026–23784 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to announce actions taken by Caltrans that are final agency actions. This action consists of two related actions, the Gaviota Creek Improvement Project and the Gaviota Creek Permanent Restoration Project, that have been combined for Project Approval and Environmental Document (PA&ED) and future phases, including construction if feasible. This project consists of improvements to historical fish access at several locations within Gaviota Creek and adjacent to U.S. 101 in Santa Barbara County from postmile 46.9 to 47.3. The project includes the phased removal of six grade control structures, construction of fish passage elements, removal of an existing sacked concrete revetment wall, installation of a retaining wall to stabilize the highway embankment, and native species replanting.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before April 19, 2027. If the Federal law that authorizes judicial review of a claim provides a time period

of less than 150 days for filing such claim, then that shorter time period still applies.

ADDRESSES: The categorical exclusion (CE) and additional project documents can be viewed and downloaded from the project websites at: *https://dot.ca.gov/caltrans-near-me/district-5/district-5-current-projects/05-1m440* and *https://dot.ca.gov/caltrans-near-me/district-5/district-5-current-projects/05-1r590* or by contacting Caltrans District 5 Environmental, 50 Higuera Street, San Luis Obispo, CA 93401, during normal business hours from 8 a.m. to 5 p.m. (Pacific Time), Monday through Friday, except State holidays.

FOR FURTHER INFORMATION CONTACT: Dianna Beck, Senior Environmental Scientist, (805) 459–9406, *dianna.beck@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective June 7, 2007, and as subsequently renewed on April 18, 2022, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 326. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, or approvals for the proposed highway improvement project. The actions by Caltrans on the project, and the laws under which such actions were taken, are described in the CE approved on May 21, 2026, and in other project records for the listed project. The CE and other documents for the listed project are available by contacting Caltrans at the address provided above.

The project subject to this notice is:

1. Gaviota Creek Improvement Project (05–1M440)/Gaviota Creek Permanent Restoration (05–1R590).

Project Location: The project limits are within Gaviota Creek and adjacent to U.S. 101 in Santa Barbara County from postmile 46.9 to 47.3. Proposed work includes removal of three grade control structures, construction of fish passage elements, removal of an existing sacked concrete revetment wall, installation of a retaining wall to stabilize the highway embankment, and native species replanting.

This project also includes permanent restoration in response to an emergency project initiated in 2023. Proposed work includes removal of three grade control structures, construction of fish passage elements, and native species replanting.

Project Actions: This notice applies to the CE and all other Federal agency licenses, permits, or approvals for the listed project as of the issuance date of this notice including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470aa–470mm]; Preservation of Historical and Archeological Data [54 U.S.C. 312501–312508]; Native American Graves Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013; 18 U.S.C. 1170].

3. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000d–2000d–1]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

4. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992k].

5. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11593 Protection and Enhancement of the Cultural Environment; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1)).

Antonio Johnson,

Director of Planning, Environmental and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2026–23733 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2026–1387]

Agency Information Collection Activities: Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for extension of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 22, 2027.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 1387 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Latuszek, (573) 616–0415, Office of Freight Management and Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws

OMB Control: 2125–0034.

Background: Title 23, U.S.C., section 141, requires each State, the District of Columbia and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Failure of a State to file a certification, adequately enforce its size and weight laws, and enforce weight laws on the Interstate System that are consistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat.2689, 2701) requires each

jurisdiction to inventory annually (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits, FHWA requires that each State submit to the FHWA an updated plan for enforcing their size and weight limits. The plan goes into effect at the beginning of each Federal fiscal year. At the end of the fiscal year, States must submit their certifications and sufficient information to verify that their enforcement goals established in the plan have been met.

Respondents: State Departments of Transportation (or equivalent) in the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Annually in separate collections: one certification and one plan.

Estimated Average Burden per Response: Each response required approximately 40 hours.

Estimated Total Annual Burden Hours: The total burden hours is 4,160.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: November 19, 2026.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2026–23774 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2026–1915]

Request for Comments on the Renewal of a Previously Approved Information Collection: Application To Participate; Voluntary Tanker Agreement

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: MARAD invites public comments on its intention to request Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0505 (Application to Participate; Voluntary Tanker Agreement) is used to determine capacity commitments by participants in the event the Agreement is activated to meet the essential need for the transportation of petroleum and petroleum products in bulk by sea. There are no changes since the last renewal. MARAD is required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

ADDRESSES: Written comments and recommendations for the proposed information collections 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: Richard Wanerman, 202–366–2306, Office of Sealift Support, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Richard.Wanerman@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application to Participate; Voluntary Tanker Agreement.

OMB Control Number: 2133–0505.

Type of Request: Extension with modification of a previously approved information collection.

Abstract: The Voluntary Tanker Agreement provides the United States with guaranteed, assured access to tankers for the transportation of petroleum and petroleum products for use by the armed forces of the United States in times of conflict or national emergency. MARAD personnel will use the collected information to evaluate tanker capacity and develop plans for the use of this capability to meet national emergency requirements and establish overall contingency plans, in coordination with United States Transportation Command. The contingency plans and associated tanker data are considered classified national security information and are thus unavailable to the general public.

Respondents: Owners and operators of United States-registered tankers.

Affected Public: Businesses, partnerships, and other for-profit entities.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 15.

Estimated Hours per Response: 1.

Annual Estimated Total Annual Burden Hours: 15.

Frequency of Response: Annually.

A 60-day **Federal Register** Notice soliciting comments on this information collection was published on September 10, 2026 (91 **Federal Register** (FR) 57682–83). No comments were received.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2026–23769 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2026–1948]

Request for Comments on the Renewal of a Previously Approved Information Collection: Information To Determine Seamen's Reemployment Rights—National Emergency

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: MARAD invites public comments on its intention to request Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0526 (Information to Determine Seamen's Reemployment Rights—National Emergency) is used to determine if U.S. civilian mariners are eligible for reemployment rights under the Maritime Security Act of 1996. MARAD is required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

ADDRESSES: Written comments and recommendations for the proposed information collections 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: Jennifer E. Pralgo, 202–309–7187, Office of Workforce Development and Education, 1200 New Jersey Avenue SE, MAR–650, Mail Stop 2, Washington, DC 20590, *jennifer.pralgo@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information to Determine Seamen's Reemployment Rights—National Emergency.

OMB Control Number: 2133–0526.

Type of Request: Extension without change of a previously approved collection.

Abstract: This information collection is needed in order to implement provisions of the Maritime Security Act of 1996. These provisions grant reemployment rights and other benefits to certain merchant seamen serving aboard vessels used by the United States during times of national emergencies. The Maritime Security Act of 1996 establishes the procedures for obtaining the necessary MARAD certification for re-employment rights and other benefits.

Respondents: U.S. merchant seamen who have completed designated national service during a time of maritime mobilization need and are seeking re-employment with a prior employer.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Estimated Hours per Response: 1.

Annual Estimated Total Annual Burden Hours: 10.

Frequency of Response: Annually.

A 60-day **Federal Register** Notice soliciting comments on this information collection was published on September 14, 2026 (91 FR 58250). The posting received one public comment to which MARAD responded.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2026–23770 Filed 11–20–26; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on November 19, 2026. See **SUPPLEMENTARY INFORMATION** for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420; Assistant Director for Licensing, 202–622–2480; Assistant Director for Sanctions Compliance, 202–622–2490; or *https://ofac.treasury.gov/contact-ofac.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: *https://ofac.treasury.gov.*

Notice of OFAC Actions

On November 19, 2026, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. ZHAO, Hui, Tokyo, Japan; DOB 25 Apr 1991; POB Harbin, Heilongjiang, China; nationality Cambodia; alt. nationality China; Gender Male; Passport N01749414 (Cambodia) issued 17 Sep 2019 expires 17 Sep 2029; National ID No. 232101199104254 61X (China) (individual) [CYBER4].

Designated pursuant to section 1(a)(ii)(D) of E.O. 13694 of April 1, 2015, ''Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,'' 80 FR 18077 (April 2, 2015), 3 CFR, 2015 Comp., p. 297, as amended by E.O. 13757 of December 28, 2016, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities,'' 82 FR 1 (January 3, 2017), 3 CFR, 2016 Comp., p. 659, and as further amended by E.O. 14144 of January 16, 2025, ''Strengthening and Promoting Innovation in the Nation's Cybersecurity,'' 90 FR 6755 (January 17, 2025), 3 CFR, 2025 Comp., p. 364, and E.O. 14306 of June 6, 2025, ''Sustaining Select Efforts To Strengthen the Nation's Cybersecurity and Amending Executive Order 13694 and Executive Order 14144,'' 90 FR 24723 (June 11, 2025), 3 CFR, 2025 Comp., p. 863 (collectively, ''E.O. 13694, as further amended''), for being a foreign person who is responsible for or complicit in, or has engaged in, directly or indirectly, cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States that are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States and that have the purpose or effect of causing a misappropriation of funds or economic resources, intellectual property, proprietary or business confidential information, personal identifiers, or financial information for commercial or competitive advantage or private financial gain.

2. WAH, Saw Shwe (a.k.a. WAH, Maung Shwe; a.k.a. ''WA, Saw Shwe''; a.k.a. ''WAH, Swe''), Kayin State, Burma; DOB 25 Oct 1971; POB Hpa-An, Kayin State, Burma; nationality Burma; Gender Male (individual) [CYBER4] (Linked To: DEMOCRATIC KAREN BENEVOLENT ARMY).

Designated pursuant to section 1(a)(iii)(F) of E.O. 13694, as further amended, for being or having been a leader, official, senior executive officer, or member of the board of directors of the DEMOCRATIC KAREN BENEVOLENT ARMY, a person whose property and interests in property are blocked pursuant to E.O. 13694, as further amended.

3. ONE, Saw A (a.k.a. ''ONE, Saw Eh''; a.k.a. ''WAH, Saw Ew''), Kyain Chaung Village, Payathonzu Township, Karen State, Burma; DOB 1979 to 1980; nationality Burma; Gender Male (individual) [CYBER4] (Linked To: DEMOCRATIC KAREN BENEVOLENT ARMY).

Designated pursuant to section 1(a)(iii)(F) of E.O. 13694, as further amended, for being or having been a leader, official, senior executive officer, or member of the board of directors of the DEMOCRATIC KAREN BENEVOLENT ARMY, a person whose property and interests in property are blocked pursuant to E.O. 13694, as further amended.

Entities

1. BEI FANG BO LIN CONSTRUCTION DECORATION CO., LTD., 55B, Street 369, Sk. Prek Pra, Kh. Chbar Ampov District, Phnom Penh, Cambodia; Organization Established Date 20 Jul 2018; Organization Type: Construction of buildings; Tax ID No. K005–901804544 (Cambodia); Business Registration Number 00035002 (Cambodia) [CYBER4] (Linked To: ZHAO, Hui).

Designated pursuant to section 1(a)(iii)(D) of E.O. 13694, as further amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, ZHAO HUI, a person whose property and interests in property are

blocked pursuant to E.O. 13694, as further amended.

2. ZHZ INVESTMENT CONSULTING CO., LTD., Tuek L'ak Muoy, Tuol Kuok, Phnom Penh, Cambodia; Organization Established Date 18 Jan 2018; Organization Type: Management consultancy activities; Tax ID No. K005–901803243 (Cambodia); Business Registration Number 00030982 (Cambodia) [CYBER4] (Linked To: ZHAO, Hui).

Designated pursuant to section 1(a)(iii)(D) of E.O. 13694, as further amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, ZHAO HUI, a person whose property and interests in property are blocked pursuant to E.O. 13694, as further amended.

(Authority: E.O. 13694, as further amended.)

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–23785 Filed 11–20–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on November 18, 2026. See **SUPPLEMENTARY INFORMATION** for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420; Assistant Director for Licensing, 202–622–2480; Assistant Director for Sanctions Compliance, 202–622–2490 or *https://ofac.treasury.gov/contact-ofac.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: *https://ofac.treasury.gov.*

Notice of OFAC Actions

On November 18, 2026, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

BILLING CODE 4810–AL–P

1. KHECHEN, Hassan (Arabic: حسن خشن) (a.k.a. KHASHAN, Hassan; a.k.a. KHASHAN, Hassan Muhammad), Lebanon; DOB 19 Jul 1986; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LR3765421 (Lebanon) expires 29 Jul 2034; National ID No. 000050415869 (Lebanon) (individual) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order (E.O.) 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism," 66 FR 49079, 3 CFR, 2001 Comp., p. 786, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041, 3 CFR, 2019 Comp., p. 356 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Hizballah, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. KHECHEN, Ibrahim (Arabic: ابراهيم خشن), Lebanon; DOB 10 Jun 1992; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 1352745 (Lebanon) expires 25 Jul 2009; National ID No. 000040505200 (Lebanon) (individual) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Hizballah, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. CHOUMAN, Afif Abdel Rida (Arabic: عفيف عبد الرضا□وما□) (a.k.a. AL-FADL, Abu; a.k.a. SHUMAN, Afif Abd-Al-Rida), Zefta, Nabatieh, Lebanon; DOB 21 Apr 1983; POB Zefta, Nabatieh, Lebanon; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LR2501382 (Lebanon); alt. Passport LR0248911 (Lebanon) expires 15 Feb 2022; National ID No. 000013479394 (Lebanon); Identification Number 4285034 (Lebanon) (individual) [SDGT] (Linked To: HIZBALLAH).

BILLING CODE 4810–AL–C

Entities

1. GOLD GLOBAL COMPANY (a.k.a. GOLD GLOBAL COMPANY HASSAN MOHAMAD KHECHEN AND HIS PARTNERS), Jnah. Centro Mall, Office Bldg., Floor 3, Office 44, Sidon, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 19 Mar 2021; Organization Type: Wholesale of metals and metal ores; Commercial Registry Number 5009969 (Lebanon) [SDGT] (Linked To: KHECHEN, Hassan).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Hassan Khechen, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. SANKARI GOLD KUYUMCULUK TICARET LIMITED SIRKETI (Latin: SANKARİ GOLD KUYUMCULUK TİCARET LİMİTED ŞİRKETİ) (a.k.a. SANKARI GOLD JEWELRY TRADE

LIMITED COMPANY), Yenibosna Merkez Mah. Kuyumcukent No: 4m ic Kapi No: Z132 Bahcelievler, Istanbul, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 05 Feb 2020; Organization Type: Wholesale of jewelry, watches, precious stones, and precious metals; Tax ID No. 7440967677 (Turkey); Chamber of Commerce Number 1223407 (Turkey); Registration Number 233645–5 (Turkey); Central Registration System Number 0744096767700001 (Turkey) [SDGT] (Linked To: KHECHEN, Hassan).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Hassan Khechen, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. WA TA'AWANU ASSOCIATION (Arabic: جمعية وتعاونوا) (a.k.a. WA TAAWANOU), Zefta, Nabatieh, Lebanon; Website www.wataawano.org; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date Nov 2019; alt. Organization Established Date 2021; Registration Number 387/2021 (Lebanon) issued 2021 [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Hizballah, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

(Authority: E.O. 13224, as amended)

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–23772 Filed 11–20–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activities; Comment Request Relating to Late Filing of Certification or Notices

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 22, 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. 1545–2098'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, 202–317–6009.

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: Late Filing of Certification or Notices.

OMB Control Number: 1545–2098.

Regulation Project Number: Rev. Proc. 2008–27.

Abstract: The IRS needs certain information to determine whether a taxpayer should be granted permission to make late filings of certain statements or notices under sections 897 and 1445. The information submitted will include a statement by the taxpayer demonstrating reasonable cause for the failure to timely make relevant filings under sections 897 and 1445. This revenue procedure provides a simplified method for taxpayers to request relief for late filings under sections 1.897–2(g)(1)(ii)(A), 1.897–2(h)(2), 1.1445–2(d)(2), 1.1445–5(b)(2), and 1.1445–5(b)(4) of the Income Tax Regulations.

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, Farms.

Estimated Number of Responses: 250.

Estimated Time per Response: 4.

Estimated Total Annual Burden Hours: 1,000.

Dated: November 19, 2026.

LaNita Van Dyke,

Tax Analyst.

[FR Doc. 2026–23782 Filed 11–20–26; 8:45 am]

BILLING CODE 4831–GV–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals Who Have Chosen To Expatriate; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction notice.

SUMMARY: This document contains corrections to a publication of the Quarterly Publication Of Individuals Who Have Chosen To Expatriate in accordance with IRC Section 6039G of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended that was published in the **Federal Register** on October 30, 2026.

FOR FURTHER INFORMATION CONTACT: Kevin T. Hall 267–466–0020 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The publication of the Quarterly Publication Of Individuals Who Have Chosen To Expatriate for the third quarter of 2026 is required by IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended, is the subject of this correction is under section 6039(G) of the Internal Revenue Code.

Correction of Publication

Accordingly, FR Doc. 2026–22229, the publication of the Quarterly Publication Of Individuals Who Have Chosen To Expatriate for the third quarter of 2026, appearing on page 68602 in the **Federal Register** on Friday, October 30, 2026, is corrected on page 68611, in the first column, the fiftieth line from the top of the column to read ''LESWICK.....''.

Dated: November 18, 2026.

Kevin T. Hall,

Senior Revenue Agent Team 1942, CSDC—Compliance Support, Development & Communications.

[FR Doc. 2026–23747 Filed 11–20–26; 8:45 am]

BILLING CODE 4831–GV–P

DEPARTMENT OF VETERANS AFFAIRS

[Docket No. VA–2026–VACO–0001]

Adjustment of Threshold Amount Specified in 38 U.S.C. 8104(a)(3)(A) Pursuant to GSA Cost Indexes Under 40 U.S.C. 3307(h)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Pursuant to 38 U.S.C. 8104(a)(3)(A), the threshold defining a ''major medical facility project'' is being adjusted from $30million to $34million. This adjustment aligns with updates to General Services Administration (GSA) annual prospectus thresholds under 40 U.S.C. 3307(h).

DATES: The adjusted threshold amount will be effective on January 1, 2027.

FOR FURTHER INFORMATION CONTACT: C. Brett Simms, Executive Director, Office of Asset Enterprise Management, 202–632–7092.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs (VA) is updating the statutory threshold that defines a ''major medical facility project'' under 38 U.S.C. 8104(a)(3)(A). This adjustment reflects the cost index updates issued by the General Services Administration (GSA) pursuant to 40 U.S.C. 3307(h). Under section 8104(a)(4)(B)(i)(I), the threshold may be tied to the prospectus-level amounts established by GSA, which are indexed each year to account for changes in construction costs and other relevant economic factors. Based on the most recent GSA cost indices, the applicable threshold will increase from $30,000,000 to $34,000,000. This update ensures that VA's classification of major medical facility projects remains aligned with government-wide standards and reflects current economic conditions.

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on November 13, 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. 2026–23744 Filed 11–20–26; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0768]

Agency Information Collection Activity: Program of Comprehensive Assistance for Family Caregivers (PCAFC)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before January 22, 2027.

ADDRESSES: Comments must be submitted through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Program-specific information: Rebecca Mimnall, 202–695–9434, *vhacopra@va.gov.*

VA PRA information: Shunda Willis, 202–461–1569, *VAPRA@va.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Program of Comprehensive Assistance for Family Caregivers (PCAFC), VA Form 10–10CG.

OMB Control Number: 2900–0768. https://www.reginfo.gov/public/do/PRASearch (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: Authority for this information collection is found in Public Law 111–163, Caregivers and Veterans Omnibus Health Services Act of 2010, which amended title 38 U.S.C. Chapter 17 by adding new section 1720G, ''Assistance and Support

Services for Caregivers.'' Based on the requirements in Section 1720G, VA established the Program of Comprehensive Assistance for Family Caregivers (PCAFC). Under the law, Family Caregivers participating in PCAFC are eligible to receive training, support, coaching, peer support mentoring, connection and referral to other available VA and community resources, respite care, certain beneficiary travel benefits, and counseling services. In addition to benefits available to all Family Caregivers, Primary Family Caregivers are also eligible to receive health care coverage, if qualified, certain legal and financial planning services, and a monthly stipend.

In order to administer these benefits to caregivers, it is necessary that VA receive information about the nature of benefits being sought and the persons who apply to receive these benefits. This information is collected with VA Form 10–10CG, which is completed by Veterans and active duty service members undergoing medical discharge and their caregivers to apply for PCAFC. There are minor changes to VA Form 10–10CG to update the address field and required PRA information. The estimated annual number of responses and burden hours has increased based upon historical and projected program data.

Affected Public: Individuals or Households.

Estimated Annual Burden: 32,826 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once annually.

Estimated Number of Responses: 131,304.

Authority: 44 U.S.C. 3501 *et seq.*

Lanea Haynes,

Alternate, VA PRA Clearance Officer, Office of Information Technology, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2026–23755 Filed 11–20–26; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0846]

Agency Information Collection Activity: VA–FSC Vendor File Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before January 22, 2027.

ADDRESSES: Comments must be submitted through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT:

Program-specific information: Rebecca Mimnall, 202–695–9434, *vhacopra@va.gov*.

VA PRA information: Shunda Willis, 202–461–1569, *VAPRA@va.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA–FSC Vendor File Request, VA Form 10091.

OMB Control Number: 2900–0846. https://www.reginfo.gov/public/do/PRASearch (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: This information collection is authorized under the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701, Pub. L. 104–134, 31001); the Federal Data Quality Act (also known as the Information Quality Act) of 2000 (Publ. L. 106–555, 515); and the 21st Century Integrated Digital Experience Act of 2019 (Pub. L. 115–336). VA–FSC created VA Form 10091 in 2015 to streamline the required data into a single form, consistent with the above laws, and since 2024 has offered both paper and web-based versions of the form. VA Form 10091 has been revised and reformatted to improve clarity, usability, and processing accuracy for establishing new vendor records and updating existing vendor records. The revisions do not change the purpose or substance of the collection, and there are no variances in the estimated annual number of respondents and burden hours.

Affected Public: Individuals or Households.

Estimated Annual Burden: 37,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once annually.

Estimated Number of Responses: 150,000.

Authority: 44 U.S.C. 3501 *et seq.*

Lanea Haynes,

Alternate, VA PRA Clearance Officer, Office of Information Technology, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2026–23757 Filed 11–20–26; 8:45 am]

BILLING CODE 8320–01–P

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Part II

Department of Labor

Wage and Hour Division

29 CFR Parts 500, 795, and 825

Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 500, 795, and 825

[Docket No. WHD–2026–0001]

RIN 1235–AA46

Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule rescinds the analysis for determining employee or independent contractor status under the Fair Labor Standards Act (FLSA or Act) set forth in the Department of Labor's (Department) regulations and replaces it with an analysis similar to what it published in a final rule promulgated in 2021, with several modifications and enhancements. In addition, this final rule amends provisions in the Department's regulations implementing the Family and Medical Leave Act (FMLA) and Migrant and Seasonal Agricultural Worker Protection Act (MSPA) to provide that employee or independent contractor status under those laws should be determined using the Department's FLSA analysis, as the FMLA and MSPA both incorporate the FLSA's scope of employment.

DATES: This final rule is effective on January 22, 2027.

FOR FURTHER INFORMATION CONTACT: Daniel Navarrete, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division (WHD or Division), U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Questions of interpretation or enforcement of the agency's existing regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website at *https://www.dol.gov/agencies/whd/contact/local-offices* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This final rule sets forth the analysis that the Department will apply to determine whether a worker is properly classified as an employee or independent contractor under the FLSA, FMLA, and MSPA, as the various requirements and worker protections established by these laws apply only to employees. None of these laws defines the term ''independent contractor.'' However, the FMLA and MSPA both incorporate the FLSA's statutory definitions governing employment, suggesting that the analysis applied under the FLSA to determine whether an employment relationship exists should likewise determine whether an employment relationship exists under the FMLA and MSPA.

In relevant part, the FLSA defines the term ''employer'' as ''any person acting directly or indirectly in the interest of an employer in relation to an employee,'' [1] ''employee'' as ''any individual employed by an employer,'' [2] and ''employ'' as ''includ[ing] to suffer or permit to work.'' [3] Courts and the Department have long interpreted the phrase ''suffer or permit'' as requiring a multifactor test to analyze whether a worker is an employee or an independent contractor under the FLSA. The ultimate inquiry is whether, as a matter of economic reality, the worker depends on a particular individual, business, or organization for work (and is thus an employee) or is in business for him- or herself (and is thus an independent contractor). The supporting analysis for answering this question, that is determining employee or independent contractor status under the FLSA, is commonly known as the economic reality test.

On January 7, 2021, the Department published a final rule (2021 Rule) which—for the first time—organized and distilled the longstanding economic reality factors into practical regulatory guidance for workers and businesses in any industry to aid the proper classification of employees and independent contractors under the FLSA.[4] While reaffirming the overarching concepts of economic reality and economic dependence, the 2021 Rule set forth a sharpened economic reality test with five distinct factors, instead of the six used by most courts. The 2021 Rule designated two of the five identified factors—the nature and degree of control over the work and the worker's opportunity for profit or loss—as ''core factors,'' which are the most probative and carry greater weight in the analysis.[5] The 2021 Rule stated that if these two core factors point towards the same status (*i.e.,* employee or independent contractor), there is a substantial likelihood that the indicated outcome is the worker's accurate status.[6] The 2021 Rule also identified three less probative non-core factors: the amount of skill required for the work, the degree of permanence of the working relationship between the worker and the potential employer, and whether the work is part of an integrated unit of production.[7] The 2021 Rule stated that it is ''highly unlikely'' that these three non-core factors could outweigh the combined probative value of the two core factors.[8] In addition to providing guidance for each of the five factors, the 2021 Rule advised as a general matter that the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible. Finally, the 2021 Rule provided six fact-specific examples applying the rule's factors.[9] The Department explained that the 2021 Rule was intended to combine longstanding legal and judicial frameworks in a practicable package that could be broadly applied in workplaces across the nation—promoting certainty for stakeholders, reducing litigation, and encouraging innovation in the economy.

In early 2021, the Department engaged in a pair of rulemakings to delay the effective date of and subsequently withdraw the 2021 Rule before it took effect.[10] On March 14, 2022, in response to a legal challenge against the Department alleging that the Delay Rule and Withdrawal Rule violated the Administrative Procedure Act, a district court in the Eastern District of Texas issued a decision vacating the Delay and Withdrawal Rules, concluding that the 2021 Rule ''became effective as of March 8, 2021, the rule's original effective date, and remains in effect.'' [11] WHD applied

[1] 29 U.S.C. 203(d).

[2] *Id.* at 203(e) (subject to certain exceptions).

[3] *Id.* at 203(g).

[4] *See* Dep't of Labor, Independent Contractor Status Under the Fair Labor Standards Act, Final Rule, 86 FR 1168 (Jan. 7, 2021).

[5] *See id.* at 1196–1203.

[6] *Id.* at 1246 (§ 795.105(c)).

[7] *Id.* at 1247 (§ 795.105(d)(2)).

[8] *Id.* at 1246 (§ 795.105(c)).

[9] *Id.* at 1247–48 (§ 795.110).

[10] *See* Dep't of Labor, Independent Contractor Status Under the Fair Labor Standards Act (FLSA): Delay of Effective Date, 86 FR 12535 (Mar. 4, 2021) (Delay Rule); Dep't of Labor, Independent Contractor Status Under the Fair Labor Standards Act (FLSA): Withdrawal, 86 FR 24303 (May 6, 2021) (Withdrawal Rule).

[11] *Coalition for Workforce Innovation* v. *Walsh,* No. 1:21–CV–00130, 2022 WL 1073346 (E.D. Tex. Mar. 14, 2022).

the 2021 Rule in its enforcement actions for the next 2 years.

Following publication of a Notice of Proposed Rulemaking in October 2022, on January 10, 2024, the Department published a new final rule (2024 Rule) which rescinded the 2021 Rule and replaced it with a new analysis at 29 CFR part 795.[12] While sharing some features with the 2021 Rule, the 2024 Rule set forth a six-factor economic reality test where ''no one factor or subset of factors is necessarily dispositive'' and ''the weight to give each factor may depend on the facts and circumstances of the particular relationship.'' [13] Explanatory guidance provided for several of the factors differed from the 2021 Rule in ways that made the analysis less likely to indicate independent contractor status.[14] And unlike the 2021 Rule, the 2024 Rule's regulatory text did not include any illustrative examples or address the relevance of parties' actual practice as compared to what may be contractually or theoretically possible (examples were included in the 2024 Rule's preamble). The 2024 Rule took effect on March 11, 2024. Five lawsuits were filed challenging the legality of the 2024 Rule; four of these lawsuits remain pending, though proceedings have been stayed by the presiding courts. On May 1, 2025, the Department issued a field assistance bulletin announcing that WHD would no longer apply the 2024 Rule's analysis in its enforcement actions.[15]

On February 27, 2026, the Department published a Notice of Proposed Rulemaking (NPRM) proposing to rescind the 2024 Rule and replace it with an analysis similar to the 2021 Rule.[16] The Department explained in the NPRM that, upon further consideration, the Department has concerns that the 2024 Rule failed to distill longstanding judicial precedent into an analysis for workers and employers properly to distinguish between independent contractors and employees under the FLSA that is both sufficiently clear to apply and results in legally reliable and predictable outcomes. The NPRM stated that the Department is separately concerned that the 2024 Rule's amorphous description of several economic reality factors could be viewed as so vague and expansive that it operates to set a higher bar to find independent contractor status than required by law. Among other harms, an analysis which is overly nebulous can improperly deter businesses from engaging with bona fide independent contractors or cause them unnecessarily to classify such individuals as employees—concerns emphasized by many self-identified independent contractors who participated in the Department's recent rulemakings on this topic.

The Department invited comments on its proposal and received approximately 16,500 timely comments after a 60-day comment period which ended on April 28, 2026. While the Department received many unique comments, the Department also received 14,244 similar ''campaign'' comment submissions (86.3 percent) in response to seven different organized initiatives—all of which expressed support for the rulemaking. After considering the feedback from commenters, the Department is finalizing its proposed rule with a few modifications and enhancements.

For the reasons initially explained in the NPRM and further detailed in section III, the Department concludes that it is appropriate to rescind the 2024 Rule and, to a significant degree, return to the 2021 Rule. Accordingly, the Department is finalizing at 29 CFR part 795 the proposed analysis for determining employee or independent contractor status under the FLSA, but has made several changes in response to commenter feedback. Specifically, the Department is revising some of the illustrative examples in proposed § 795.115 and adopting six additional examples to demonstrate how particular factors from the readopted analysis properly apply in factual scenarios involving digital platform workers, farm labor contractors, and truck drivers. These changes to the proposed rule are explained in greater detail below. Additionally, the Department is finalizing its proposal to amend its regulations addressing employee or independent contractor status under MSPA and the FMLA so that the analysis in part 795 applies when determining employee or independent contractor status under those statutes too.

The Department believes that this rule is likely to improve the welfare of workers, businesses, and other interested parties. With a clearer test drawn and distilled from federal case law to distinguish between employees and independent contractors, businesses may more confidently engage with independent contractors, which could increase opportunities for individuals who wish to work—whether primarily or in addition to other employment—as independent entrepreneurs. Consumers and the public, in general, will benefit from the rule's clarification that certain requirements in work arrangements regarding compliance with specific legal obligations, health and safety standards, and quality control measures do not constitute control that makes an individual more or less likely to be an employee. At the same time, this final rule provides a robust standard to guard against the misclassification of employees as independent contractors, including added clarity about the factors and common business practices that are most likely to establish that a worker is an employee because they are economically dependent on an employer for work. Relatedly, the Department expects that this rule will lead to fewer misclassification disputes and more consistent outcomes when such disputes are investigated or adjudicated, as a clearer economic reality test will be easier for all to understand and apply. In this way, the rule will be a valuable resource not only for employers and workers, but also for courts and the Department's enforcement personnel, who often evaluate classification decisions in matters that cross judicial districts and circuits.

The Department emphasizes that it remains committed to preventing the misclassification of employees as independent contractors. Such misclassification undermines the FLSA, FMLA, and MSPA by depriving employees of the protections established by those laws. It also cheats competing businesses that comply with those laws, ultimately harming consumers.[17] However, it is well established that these laws do not cover every work arrangement and were not intended to deter legitimate contracting. Upon reflection, the Department believes that returning to the analysis previously adopted in the 2021 Rule will strike a better balance by promoting the interests of employees and independent contractors alike.

[12] *See* Dep't of Labor, Employee or Independent Contractor Classification Under the Fair Labor Standards Act, Proposed Rule, 87 FR 62218 (Oct. 13, 2022); Final Rule, 89 FR 1638 (Jan. 10, 2024).

[13] 29 CFR 795.110(a)(2) (2024).

[14] *See* 91 FR 9941–42.

[15] *See* WHD Field Assistance Bulletin (FAB) No. 2025–1, FLSA Independent Contractor Misclassification Enforcement Guidance (May 1, 2025), *https://www.dol.gov/sites/dolgov/files/WHD/fab/fab2025-1.pdf*.

[16] *See* Dep't of Labor, Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act, NPRM, 91 FR 9932.

[17] *See* 29 U.S.C. 202(a)(3).

II. Background

A. Relevant FLSA, FMLA, and MSPA Definitions

Enacted in 1938, the FLSA requires covered employers to pay their nonexempt employees at least the federal minimum wage for every hour worked and overtime pay for every hour worked over 40 in a workweek, and it mandates that employers keep certain records regarding their employees.[18] Among other protections, the Act regulates the employment of minors,[19] governs the work and wages of tipped employees,[20] requires employers to provide reasonable break time and a place for covered employees who are nursing to express breast milk at work,[21] and prohibits retaliation for protected activity.[22] The FLSA's many protections apply only to employees.

Although the Act's definitions do not include the term ''independent contractor,'' it defines ''employer'' in section 3(d) to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee''; ''employee'' in section 3(e)(1) to mean, subject to certain exceptions, ''any individual employed by an employer''; and ''employ'' in section 3(g) to include ''to suffer or permit to work.'' [23] The Supreme Court has recognized that ''no definition . . . solves problems as to the limits of the employer-employee relationship under the Act.'' *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 728 (1947).

The Supreme Court has interpreted the phrase ''suffer or permit'' broadly, extending the phrase to encompass more than the common law standard of employment. In *Nationwide Mutual Insurance Co.* v. *Darden,* the Court explained that section 3(g)'s ''suffer or permit'' language ''stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles.'' [24] However, the Court also recognized that the FLSA's ''statutory definition[s] . . . have [their] limits.'' *Tony & Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 295 (1985) (internal citation omitted); *see also Walling* v. *Portland Terminal Co.,* 330 U.S. 148, 152 (1947) (''The definition 'suffer or permit to work' was obviously not intended to stamp all persons as employees[.]''). The Supreme Court specifically recognized that ''[t]here may be independent contractors who take part in production or distribution who would alone be responsible for the wages and hours of their own employees.'' *Rutherford Food,* 331 U.S. at 729. Accordingly, federal courts of appeals have long and uniformly held, and the Department has consistently maintained, that independent contractors are not ''employees'' for purposes of the Act.[25]

Enacted in 1983, MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping.[26] Agricultural employers, agricultural associations, and farm labor contractors (as those terms are defined in MSPA) must comply with such applicable standards in their employment of migrant and seasonal agricultural workers.[27] MSPA also requires farm labor contractors to register with the Department and obtain a certificate of registration.[28] It is a violation of MSPA to threaten, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker because such worker, with just cause, files a complaint, institutes a proceeding, testifies or is about to testify in a proceeding, or exercises any right under MSPA.[29] Because MSPA's worker protections apply only to migrant and seasonal agricultural workers who are ''*employed* in agricultural *employment* of a seasonal or other temporary nature,'' [30] they do not apply to agricultural workers who are independent contractors. MSPA expressly adopts the FLSA's definition of ''employ'' as MSPA's definition of ''employ'' and thus incorporates the ''suffer or permit'' standard for determining the scope of employment relationships.[31]

Enacted in 1993, the FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.[32] Eligible employees who take such leave must generally be restored to the same or an equivalent position when they return to work after FMLA leave.[33] An employer cannot interfere with, restrain, or deny an employee's exercise of or attempt to exercise any rights under the FMLA.[34] As with the FLSA and MSPA, the FMLA's protections and employer requirements do not apply to workers who are independent contractors. The FMLA adopts the FLSA's definitions of ''employ'' and ''employee'' and thus incorporates the FLSA's standard for determining the scope of employment relationships.[35]

B. Economic Dependence and the Economic Reality Test

1. Supreme Court Development of the Economic Reality Test

Less than a decade after the FLSA was enacted, the U.S. Supreme Court explored the limits of the employer-employee relationship in a series of cases from 1944 to 1947 under three different federal statutes: the FLSA, the National Labor Relations Act (NLRA), and the Social Security Act (SSA). These cases established an ''economic reality'' test to distinguish between employees and independent contractors that is still used today in FLSA cases. Although the longstanding ''economic reality'' descriptor is often repeated and is the lens through which the individual worker's relationship with the employer is viewed, the ultimate inquiry focuses on an individual's ''economic dependence'' for work.

In the first of these cases, *NLRB* v. *Hearst Publications, Inc.,* 322 U.S. 111 (1944), the Supreme Court held that the NLRA's definition of employment, which merely defined ''employee'' to ''include any employee,'' *id.* at 113 n.1,

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[18] *See* 29 U.S.C. 206(a) (minimum wage requirement); 207(a) (overtime pay requirement); 29 U.S.C. 211(c) (recordkeeping requirements).

[19] 29 U.S.C. 212.

[20] 29 U.S.C. 203(m)(2); 203(t).

[21] *See* 29 U.S.C. 218d (added by the PUMP for Nursing Mothers Act, Public Law 117–328, 136 Stat. 4459 (Dec. 29, 2022)).

[22] *See* 29 U.S.C. 215(a)(3).

[23] 29 U.S.C. 203(d), (e), (g). The FLSA defines a ''person'' as ''an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.'' 29 U.S.C. 203(a).

[24] 503 U.S. 318, 326 (1992); *see also United States* v. *Rosenwasser,* 323 U.S. 360, 362–63 (1945) (explaining that ''[a] broader or more comprehensive coverage of employees within the stated categories would be difficult to frame'' in ruling that employees paid by piece rates may be covered by the FLSA's requirements).

[25] *See, e.g., Saleem* v. *Corp. Transp. Grp., Ltd.,* 854 F.3d 131, 139–40 (2d Cir. 2017); *Karlson* v. *Action Process Serv. & Private Investigation, LLC,* 860 F.3d 1089, 1092 (8th Cir. 2017).

[26] *See generally* 29 U.S.C. 1801, *et seq.*

[27] *See* 29 U.S.C. 1821–1823, 1831–1832, 1841–1844.

[28] *See* 29 U.S.C. 1811–1815.

[29] 29 U.S.C. 1855(a).

[30] 29 U.S.C. 1802(8), (10) (emphases added).

[31] 29 U.S.C. 1802(5) (''The term 'employ' has the meaning given such term under [the FLSA, 29 U.S.C. 203(g)].'').

[32] *See* 29 U.S.C. 2611–2614.

[33] *See* 29 U.S.C. 2614.

[34] *See* 29 U.S.C. 2615.

[35] 29 U.S.C. 2611(3) (providing that the terms ''employ'' and ''employee'' for purposes of the FMLA have the same meanings given such terms in 29 U.S.C. 203(e) and (g)). The FMLA has its own definitions for whether an employee is ''eligible'' for FMLA leave and whether his or her employer is covered by the FMLA. *See* 29 U.S.C. 2611(2), (4).

was broader than that of the common law. *Id.* at 123–25. Congress responded by amending the definition of employment under the NLRA on June 23, 1947, with the ''obvious purpose of . . . hav[ing] the [National Labor Relations] Board and the courts apply general agency principles in distinguishing between employees and independent contractors under the [NLRA].'' [36]

On June 16, 1947, a week before Congress amended the NLRA in response to *Hearst,* the Supreme Court decided *United States* v. *Silk,* 331 U.S. 704 (1947), which addressed the distinction between employees and independent contractors under the SSA (which did not define ''employee''). In that case, the Court relied on *Hearst* to hold that ''economic reality,'' as opposed to ''technical concepts'' of the common law, such as master and servant, determines a worker's employment status. *Id.* at 712–14. Although the Court found it to be ''quite impossible to extract from the [SSA] a rule of thumb to define the limits of the employer-employe[e] relationship,'' it identified five factors as ''important for decision'': ''degrees of control, opportunities for profit or loss, investment in facilities, permanency of relation[,] and skill required in the claimed independent operation.'' *Id.* at 716. The Court added that ''[n]o one [factor] is controlling nor is the list complete.'' *Id.* Nevertheless, based on the factors that it identified, the Court found that the coal unloaders were employees by referencing, among other things, the employer's supervision and the workers' lack of opportunity for profit based on initiative and investment.[37] In addition, the Court held that the truck drivers in that case were independent contractors by emphasizing facts related to control, opportunity for profit, initiative and investment.[38]

One week after *Silk* and on the same day Congress amended the NLRA, the Court reiterated these five factors in *Bartels* v. *Birmingham,* 332 U.S. 126 (1947), another case involving employee or independent contractor status under the SSA. In *Bartels,* the Court explained that under the SSA, employee status ''was not to be determined solely by the idea of control which an alleged employer may or could exercise over the details of the service rendered to his business by the worker''; instead, employees are ''those who as a matter of economic reality are dependent upon the business to which they render service.'' *Id.* at 130. The Court held that a dance hall's contractual right of control was insufficient to establish an employment relationship with a band leader that it hired. *Id.* at 132.

The same day as it decided *Silk,* the Court ruled in *Rutherford Food* that certain workers at a slaughterhouse were employees under the FLSA, and not independent contractors, by examining facts pertaining to most of the five factors identified in *Silk.*[39] The Court also considered whether the work was ''a part of the integrated unit of production'' (meaning whether the putative independent contractors were integrated into the assembly line alongside the company's employees) to assess whether they were employees or independent contractors under the FLSA. *Id.* at 729–30.

In November 1947, nearly half a year after *Silk* and *Rutherford Food* were decided, the Department of the Treasury proposed regulations defining when an individual was an independent contractor or employee under the SSA, which used a test that balanced the following factors: (1) degree of control of the individual, (2) permanency of relation, (3) integration of the individual's work in the business to which he renders service, (4) skill required by the individual, (5) investment by the individual in facilities for work, and (6) opportunity of the individual for profit or loss.[40]

Factors one, two, and four through six corresponded directly with the five factors identified as being ''important for decision'' in *Silk,* 331 U.S. at 716, and the third factor corresponded with *Rutherford Food*'s consideration of the fact that the workers were ''part of an integrated unit of production.'' 331 U.S. at 729. The Treasury proposal further relied on *Bartels,* 332 U.S. at 130, to apply these factors to determine whether a worker was ''dependent as a matter of economic reality upon the business to which he renders services.'' [41]

Congress rejected the interpretations of the definitions of ''employee'' adopted in *Hearst* for the NLRA and in *Silk* and *Bartels* for the SSA by amending both acts ''to demonstrate that the usual common-law principles were the keys to meaning.'' *Darden,* 503 U.S. at 324–25. Congress did not, however, similarly amend the FLSA following *Rutherford Food.*

In 1961, in *Goldberg* v. *Whitaker House Cooperative, Inc.,* the Supreme Court revisited independent contractor status under the FLSA and reaffirmed that ''the 'economic reality' rather than 'technical concepts' '' is ''the test of employment'' under the FLSA.[42] It found that certain homeworkers were ''not self-employed . . . [or] independent, selling their products on the market for whatever price they can command,'' but instead were ''regimented under one organization, manufacturing what the organization desires and receiving the compensation the organization dictates,'' and thus employees.[43] Finally, in *Darden,* the Supreme Court reiterated that the FLSA's test for employee status comes from its definition of ''employ'' in 29 U.S.C. 203(g) as including to ''suffer or permit'' to work and is thus broader than the common law test.[44]

2. Application of the Economic Reality Test by WHD and Federal Courts of Appeals

a. WHD's Early Guidance Applying Economic Reality Test Under the FLSA

Since the *Silk, Rutherford Food,* and *Whitaker House* decisions, WHD has applied variations of the economic reality analysis when considering whether a worker is an employee under the FLSA or an independent contractor, with an eye to facilitating its real-world application by workers and businesses.

For example, on June 23, 1949, WHD issued an opinion letter distilling six ''primary factors which the Court considered significant'' in *Rutherford*

[36] *NLRB* v. *United Ins. Co. of Am.,* 390 U.S. 254, 256 (1968).

[37] *Silk,* 331 U.S. at 717–18 (finding that the employer ''was in a position to exercise all necessary supervision over their simple tasks'' and that the unloaders ''had no opportunity to gain or lose except from the work of their hands and the[ir] simple tools'').

[38] *Id.* at 719 (''They own their own trucks. They hire their own helpers. In one instance they haul for a single business, in the other for any customer. The distinction, though important, is not controlling. It is the total situation, including the risk undertaken, the control exercised, the opportunity for profit from sound management, that marks these driver-owners as independent contractors.'').

[39] For example, the Court noted that the slaughterhouse workers performed work on the ''premises and equipment of [the employer],'' indicating little investment by the workers. 331 U.S. at 730. The workers had a continuous relationship with the slaughterhouse, indicating a permanent work arrangement. *Id.* ''The managing official of the plant kept close touch on the operation,'' indicating control by the alleged employer. *Id.* And ''[w]hile profits to the boners depended upon the efficiency of their work, it was more like piecework than an enterprise that actually depended for success upon the initiative, judgment or foresight of the typical independent contractor.'' *Id.*

[40] *See* 12 FR 7966.

[41] *Id.* The Treasury proposal was never finalized because Congress amended the SSA to foreclose the proposal.

[42] 366 U.S. 28, 33 (1961) (citing the FLSA's definition of ''employ,'' *Silk,* 331 U.S. at 713, and *Rutherford Food,* 331 U.S. at 729).

[43] *Id.* at 32.

[44] 503 U.S. at 326 (citing *Rutherford Food,* 331 U.S. at 728).

Food and *Silk:* ''(1) the extent to which the services in question are an integral part of the 'employer[']s' business; (2) the amount of the so-called 'contractor's' investment in facilities and equipment; (3) the nature and degree of control by the principal; (4) opportunities for profit and loss; . . . (5) the amount of initiative judgment or foresight required for the success of the claimed independent enterprise[;] and [(6)] permanency of the relation.'' [45] The 1949 opinion letter cautioned that no single factor is controlling, and ''[o]rdinarily a definite decision as to whether one is an employee or an independent contractor under the [FLSA] cannot be made in the absence of evidence as to [the worker's] actual day-to-day working relationship with [their] principal. Clearly a written contract does not always reflect the true situation.'' [46]

Subsequent WHD opinion letters addressing employee or independent contractor status under the FLSA have provided similar recitations of the factors, sometimes omitting one or more of the six factors described in the 1949 opinion letter, and sometimes adding (or substituting) a seventh factor: the worker's ''degree of independent business organization and operation.'' [47] In 1964, WHD stated: ''The Supreme Court has made it clear that an employee, as distinguished from a person who is engaged in a business of his own, is one who as a matter of economic reality follows the usual path of an employee and is dependent on the business which he serves.'' [48] Indeed, the various factors are directed to evaluating the nature of an individual's ''dependence'' for work.

In 1962, the Department revised the regulations in 29 CFR part 788, which generally provides interpretive guidance on the FLSA's exemption for employees in small forestry or lumbering operations, and added a provision addressing the distinction between employees and independent contractors.[49] Citing to *Silk, Rutherford Food,* and *Bartels,* the regulation advised that ''an employee, as distinguished from a person who is engaged in a business of his own, is one who 'follows the usual path of an employee' and is dependent on the business which he serves.'' [50] To ''aid in assessing the total situation,'' the regulation then identified a partial list of ''characteristics of the two classifications which should be considered,'' including ''the extent to which the services rendered are an integral part of the principal's business; the permanency of the relationship; the opportunities for profit or loss; the initiative, judgment or foresight exercised by the one who performs the services; the amount of investment; and the degree of control which the principal has in the situation.'' [51]

In 1972, the Department added similar guidance on independent contractor status at 29 CFR 780.330(b), in a provision addressing the employment status of sharecroppers and tenant farmers under the FLSA.[52] This regulation was nearly identical to the independent contractor guidance for the logging and forestry industry previously promulgated at 29 CFR 788.16(a), including an identical description of the same six economic reality factors.[53] Both provisions—29 CFR 780.330(b) and 788.16(a)—remained unchanged until 2021.

b. Federal Appellate Courts' Application of the Economic Reality Test

In the 1970s and 1980s, federal courts of appeals began to adopt versions of a multifactor ''economic reality'' test based on *Silk, Rutherford Food,* and *Bartels* and similar to WHD's early guidance to analyze whether a worker was an employee or an independent contractor under the FLSA. Drawing on the Supreme Court precedent discussed above, courts have recognized that the heart of the inquiry is whether ''as a matter of economic reality'' the workers are ''dependent upon the business to which they render service.'' *Usery* v. *Pilgrim Equip. Co.,* 527 F.2d 1308, 1311 (5th Cir. 1976) (quoting *Bartels,* 332 U.S. at 130); *see also Mednick* v. *Albert Enters., Inc.,* 508 F.2d 297, 299–300 (5th Cir. 1975). Courts have clarified that this question of economic dependence may be boiled down to asking ''whether, as a matter of economic reality, the workers depend upon someone else's business for the opportunity to render service or are in business for themselves.'' *Saleem,* 854 F.3d at 139 (internal quotation marks and citations omitted).[54] Courts have also explained that a non-exhaustive set of factors—derived from *Silk* and *Rutherford Food*—frame and guide this inquiry. *See, e.g., Usery,* 527 F.2d at 1311 (identifying ''[f]ive considerations [which] have been set out as aids to making the determination of dependence, vel non''); *Real* v. *Driscoll Strawberry Assocs., Inc.,* 603 F.2d 748, 754 (9th Cir. 1979) (articulating a six-factor test).

In *Driscoll,* the Ninth Circuit Court of Appeals described its six-factor test as follows: (1) the degree of the alleged employer's right to control the manner in which the work is to be performed, (2) the alleged employee's opportunity for profit or loss depending on his managerial skill, (3) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers, (4) whether the service rendered requires a special skill, (5) the degree of permanency of the working relationship, and (6) whether the service rendered is an integral part of the alleged employer's business. 603 F.2d at 754.

Most courts of appeals articulate a similar test, but application between courts may vary. *Compare, e.g., Sec'y of Labor* v. *Lauritzen,* 835 F.2d 1529, 1534–35 (7th Cir. 1987) (applying six-factor economic reality test to hold that pickle pickers were employees under the FLSA), *with Donovan* v. *Brandel,* 736 F.2d 1114, 1117 (6th Cir. 1984) (applying the same six-factor economic reality test to hold that pickle pickers were not employees under the FLSA). Courts of appeal also vary somewhat in their articulation of the factors. For example, the Second Circuit has analyzed opportunity for profit or loss and investment (the second and third factors listed above) together as one factor. *See, e.g., Brock* v. *Superior Care, Inc.,* 840 F.2d 1054, 1058 (2d Cir. 1988). The Fifth Circuit has not adopted the sixth factor listed above, which analyzes the integrality of the work, as part of its standard, *see, e.g., Usery,* 527 F.2d at 1311, but has at times assessed integrality as an additional factor, *see, e.g., Hobbs* v. *Petroplex Pipe & Constr., Inc.,* 946 F.3d 824, 836 (5th Cir. 2020).

[45] WHD Op. Ltr. (June 23, 1949).

[46] *Id.*

[47] *See, e.g.,* WHD Op. Ltr. (Aug. 13, 1954) (applying six factors); WHD Op. Ltr. (Oct. 12, 1965) (discussing degree of independent business organization); WHD Op. Ltr. (Feb. 18, 1969) (same); WHD Op. Ltr. FLSA–314 (Dec. 21, 1982) (discussing three of the *Silk* factors); WHD Op. Ltr. FLSA–164 (Jan. 18, 1990) (discussing four of the *Silk* factors); WHD Op. Ltr., 2000 WL 34444352, at *1 (Jul. 5, 2000) (identifying seven factors); WHD Op. Ltr., 2000 WL 34444342, at *3–6 (Dec. 7, 2000) (discussing six factors); WHD Op. Ltr., 2002 WL 32406602, at *2–3 (Sept. 5, 2002) (same).

[48] WHD Op. Ltr. (Sept. 30, 1964).

[49] 27 FR 8032; *see* 29 U.S.C. 213(b)(28) (previously codified at 29 U.S.C. 213(a)(15)).

[50] 27 FR 8033 (29 CFR 788.16(a)).

[51] *Id.*

[52] *See* 37 FR 12084, 12102 (introducing 29 CFR 780.330(b)).

[53] *Id.*

[54] *See also Chavez-DeRemer* v. *Med. Staffing of Am., LLC,* 147 F.4th 371, 397 (4th Cir. 2025); *Parrish* v. *Premier Directional Drilling, L.P.,* 917 F.3d 369, 379 (5th Cir. 2019); *Keller* v. *Miri Microsystems LLC,* 781 F.3d 799, 807 (6th Cir. 2015); *Iontchev* v. *AAA Cab Serv., Inc.,* 685 F. App'x 548, 551 (9th Cir. 2017); *Dole* v. *Snell,* 875 F.2d 802, 804 (10th Cir. 1989); *Scantland* v. *Jeffry Knight, Inc.,* 721 F.3d 1308, 1311 (11th Cir. 2013).

Some courts of appeals have made noteworthy modifications to the economic reality factors as originally articulated in 1947 by the Supreme Court.[55] First, the ''skill required'' factor identified in *Silk,* 331 U.S. at 716, is now articulated more expansively by some courts to include ''initiative.'' *See, e.g., Parrish,* 917 F.3d at 379 (considering ''the skill and initiative required in performing the job''); *Karlson,* 860 F.3d at 1093 (same); *Superior Care,* 840 F.2d at 1058–59 (considering ''the degree of skill and independent initiative required to perform the work'').

Second, *Silk* analyzed workers' investments, 331 U.S. at 717–19. However, the Fifth Circuit has revised the ''investment'' factor to instead consider ''the extent of the relative investments of the worker and the alleged employer.'' *Hopkins* v. *Cornerstone America,* 545 F.3d 338, 343 (5th Cir. 2008). Some other circuits also apply this ''relative investment'' approach but continue to use the phrase ''worker's investment'' to describe the factor. *See, e.g., Keller,* 781 F.3d at 810; *Snell,* 875 F.2d at 805, 810.

Third, although the permanence factor under *Silk* was understood to mean the continuity and duration of working relationships, *see* 12 FR 7967, some courts of appeals have expanded this factor to also consider the exclusivity of such relationships. *See, e.g., Scantland,* 721 F.3d at 1319; *Keller,* 781 F.3d at 807.

Finally, *Rutherford Food*'s consideration of whether work is ''part of an integrated unit of production,'' 331 U.S. at 729, has now been replaced by many courts of appeals by consideration of whether the service rendered is ''integral,'' which those courts have applied as meaning important or central to the potential employer's business. *See, e.g., Verma* v. *3001 Castor, Inc.,* 937 F.3d 221, 232 (3rd Cir. 2019) (concluding that workers' services were integral because they were the providers of the business's ''primary offering''); *Acosta* v. *Off Duty Police Servs., Inc.,* 915 F.3d 1050, 1055 (6th Cir. 2019) (concluding that services provided by workers were ''integral'' because the potential employer ''built its business around'' those services); *McFeeley* v. *Jackson St. Ent., LLC,* 825 F.3d 235, 244 (4th Cir. 2016) (considering ''the importance of the services rendered to the company's business'').

Courts of appeals have cautioned against the ''mechanical application'' of the economic reality factors. *See, e.g., Saleem,* 854 F.3d at 139. ''Rather, each factor is a tool used to gauge the economic dependence of the alleged employee, and each must be applied with this ultimate concept in mind.'' *Cornerstone Am.,* 545 F.3d at 343. Further, courts of appeals make clear that the analysis should draw from the totality of circumstances, with no single factor being determinative by itself. *See, e.g., Keller,* 781 F.3d at 807 (''No one factor is determinative.''); *Baker* v. *Flint Eng'g & Constr. Co.,* 137 F.3d 1436, 1441 (10th Cir. 1998) (''None of the factors alone is dispositive; instead, the court must employ a totality-of-the-circumstances approach.'').

c. The Department's More Recent Application of the Economic Reality Test Under the FLSA, FMLA, and MSPA

In 1995, the Department promulgated a regulation at 29 CFR 825.105(a) addressing employee status under the FMLA and the distinction between employees and independent contractors.[56] The regulation explains that ''[t]he definition of employ for purposes of FMLA is taken from the Fair Labor Standards Act, § 3(g), 29 U.S.C. 203(g),'' meaning a broader scope of employment than at the common law.[57] The regulation further explains that determining employee status ''depends 'upon the circumstances of the whole activity' including the underlying 'economic reality.' '' [58] The regulation adds that: ''In general an employee, as distinguished from an independent contractor who is engaged in a business of his/her own, is one who 'follows the usual path of an employee' and is dependent on the business which [he or she] serves.'' [59] The regulation does not provide any specific economic reality factors to apply. A separate regulation, 29 CFR 825.102, defines various terms under the FMLA, and consistent with the FMLA's adoption of the FLSA's statutory definitions, defines ''employ'' to mean ''to suffer or permit to work'' and ''employee'' to generally mean ''any individual employed by an employer.''

In 1997, the Department promulgated a regulation applying a multifactor economic reality analysis for distinguishing between employees and independent contractors under MSPA, which—like the FMLA—statutorily adopts the FLSA's ''suffer or permit'' definition of employment by reference.[60] The regulation explains that ''[t]he definition of the term *employ* may include consideration of whether . . . an *independent contractor* or *employment* relationship exists under the Fair Labor Standards Act.'' [61] The regulation advises that in determining if the farm labor contractor or worker is an employee or an independent contractor, the ultimate question is the economic reality of the relationship—whether there is economic dependence upon the agricultural employer/association or farm labor contractor, as appropriate.[62] The regulation elaborates that ''[t]his determination is based upon an evaluation of all of the circumstances, including the following: (i) The nature and degree of the putative employer's control as to the manner in which the work is performed; (ii) The putative employee's opportunity for profit or loss depending upon his/her managerial skill; (iii) The putative employee's investment in equipment or materials required for the task, or the putative employee's employment of other workers; (iv) Whether the services rendered by the putative employee require special skill; (v) The degree of permanency and duration of the working relationship; (vi) The extent to which the services rendered by the putative employee are an integral part of the putative employer's business.'' [63] This description of six economic reality factors is very similar to the earlier description of the six-factor test to evaluate the economic reality, that is an individual's economic dependence for work, on a putative employer, provided in 29 CFR 780.330(b) and 788.16(a).

Also in 1997, WHD issued Fact Sheet #13, ''Employment Relationship Under the Fair Labor Standards Act (FLSA).'' [64] Like WHD opinion letters, Fact Sheet #13 advises that an employee, as distinguished from a person who is engaged in a business of their own, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves. The fact sheet identifies six familiar economic realities factors, as well as consideration of the worker's degree of independent business organization and operation.

[55] *See* 85 FR 60603–04.

[56] *See* 60 FR 2240.

[57] 29 CFR 825.105(a); *see also* 29 U.S.C. 2611(3).

[58] 29 CFR 825.105(a).

[59] *Id.*

[60] *See* 62 FR 11734, 11747; *see also* 29 U.S.C. 1802(5) (''The term 'employ' has the meaning given such term under section 3(g) of the [FLSA]'').

[61] 29 CFR 500.20(h)(4).

[62] *Id.*

[63] *Id.*

[64] *See* WHD Fact Sheet #13 (1997), *https://web.archive.org/web/19970112162517/http://www.dol.gov/dol/esa/public/regs/compliance/whd/whdfs13.htm.* WHD made minor revisions to Fact Sheet #13 in 2002 and 2008, before a more substantial revision in 2014. In 2018, WHD reverted back to the 2008 version of Fact Sheet #13 (available at *https://www.dol.gov/sites/dolgov/files/WHD/fact-sheets/whdfs13.pdf*).

On July 15, 2015, WHD issued Administrator's Interpretation No. 2015–1, ''The Application of the Fair Labor Standards Act's 'Suffer or Permit' Standard in the Identification of Employees Who Are Misclassified as Independent Contractors'' (AI 2015–1).[65] AI 2015–1 explained that, ''under the FLSA, courts use the multi-factorial 'economic realities' test, which focuses on whether the worker is economically dependent on the employer or in business for him or herself,'' and it identified and provided guidance regarding the application of six economic reality factors. AI 2015–1 further explained that its FLSA analysis ''should also be applied in determining whether a worker is an employee or an independent contractor in cases arising under [MSPA] and the [FMLA]'' because both statutes adopt the FLSA's definition of ''employ.''

In 2019, WHD issued an opinion letter, FLSA2019–6 (later redesignated as FLSA2025–2),[66] addressing whether service providers who used a ''virtual marketplace'' company to be referred to end-market consumers were employees or independent contractors of the virtual marketplace company under the FLSA. The opinion letter generally applied principles and factors similar to those described in the prior opinion letters and the 2008 version of Fact Sheet #13, but not the ''independent business organization'' factor because it did not add to the analysis as a separate factor and was ''[e]ncompassed within'' the other factors. WHD Opinion Letter FLSA2025–2 at 5. It also stated that the investment factor should focus on the ''amount of the worker's investment in facilities, equipment, or helpers.'' *Id.* Based on the facts provided, WHD concluded that the service providers at issue appeared to be independent contractors and not employees of the virtual marketplace company. WHD found that it was ''inherently difficult to conceptualize the service providers' 'working relationship' with [the virtual marketplace company], because as a matter of economic reality, they are working for the consumer, not [the company].'' *Id.* at 7–8. Because ''[t]he facts . . . demonstrate economic independence, rather than economic dependence, in the working relationship between [the virtual marketplace company] and its service providers,'' WHD opined that they were not employees of the company under the FLSA but rather were independent contractors. *Id.* at 11.

C. The 2021 Rule

In the 2021 Rule, the Department affirmed the ''economic reality'' test under the FLSA to determine whether a worker is in business for himself or herself (an independent contractor) or is instead economically dependent on an employer for work, as an employee conventionally depends on his employer for work.[67] Specifically, it organized and distilled the longstanding legal analysis and factors in a practical and accessible way, so that workers and businesses could properly apply them, thereby accurately classifying workers in any industry as employees or independent contractors under the FLSA.

The Department framed five familiar factors, drawn from the longstanding approach articulated by the Supreme Court and courts of appeals, to guide the determination of workers' ''economic reality.'' Like the components of those tests, the Department explained that the ''factors are not exhaustive'' and ''no single factor is dispositive.''[68] The Department further identified two of those factors (the nature and degree of control over the work and the individual's opportunity for profit or loss) as ''core'' factors that, across a wide spectrum of work arrangements, are ''the most probative as to whether or not an individual is an economically dependent 'employee' '' and ''therefore typically carr[y] greater weight in the analysis than any other factor.''[69] The Department added that, ''[g]iven these two core factors' greater probative value, if they both point towards the same classification, whether employee or independent contractor, there is a substantial likelihood that is the individual's accurate classification.''[70] Similarly, the Department explained that other factors are ''less probative and, in some cases, may not be probative at all'' in answering the ultimate ''economic reality'' inquiry to which these tests are directed. Typically, these other factors ''are highly unlikely, either individually or collectively, to outweigh the combined probative value of the two core factors.''[71] Ultimately, the Department aimed to combine longstanding judicial frameworks in a practical package—one that could be reliably applied in workplaces across the nation and, therefore, promote certainty for stakeholders, reduce litigation, and encourage economic innovation.

The Department provided guidance in the 2021 Rule on how to apply the control and opportunity for profit or loss factors, including that an individual's opportunity for profit or loss could be based on ''his or her exercise of initiative (such as managerial skill or business acumen or judgment) or management of his or her investment in or capital expenditure on, for example, helpers or equipment or material to further his or her work.''[72] The Department identified three other factors to be considered with the two core factors and provided guidance on each: the amount of skill required for the work, the degree of permanence of the working relationship between the individual and the potential employer, and whether the work is part of an integrated unit of production.[73] The Department added that ''[a]dditional factors may be relevant in determining whether an individual is an employee or independent contractor for purposes of the FLSA, but only if the factors'' are directly material to the ''economic reality'' inquiry that determines whether an individual's relationship with a potential employer is more akin to that of another business or an employee.[74] The Department further advised that, when applying the factors, ''the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible.''[75] The Department also provided six ''illustrative examples'' of how the factors may be applied in certain factual situations.[76] And, the Department included a severability provision explaining that the Department would still give ''maximum effect'' to the rule in the event that any of its provisions are enjoined or invalidated.[77]

In the 2021 Rule, the Department also revised the industry-specific guidance provided at 29 CFR 780.330(b) (addressing the employment status of sharecroppers and tenant farmers) and 788.16(a) (workers in forestry or logging). The Department replaced the recitation of the six economic reality factors identified in those regulatory subsections with cross-references to the

[65] AI 2015–1 was withdrawn on June 7, 2017, and is no longer in effect.

[66] WHD withdrew WHD Opinion Letter FLSA2019–6 on February 19, 2021, but reissued the opinion letter on May 2, 2025, redesignating it as Opinion Letter FLSA2025–2, available at *https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FLSA/FLSA2019-6.pdf.*

[67] 86 FR 1246 (§ 795.105(b)).

[68] 86 FR 1246 (§ 795.105(c)).

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] 86 FR 1246–47 (§ 795.105(d)(1)(i)–(ii)).

[73] 86 FR 1247 (§ 795.105(d)(2)(i)–(iii)).

[74] 86 FR 1247 (§ 795.105(d)(2)(iv)).

[75] 86 FR 1247 (§ 795.110).

[76] 86 FR 1247–48 (§ 795.115).

[77] 86 FR 1248 (§ 795.120).

2021 Rule's updated and generally applicable guidance.[78]

Finally, the 2021 Rule noted that the Department had received several comments addressing the possibility of applying that rule's analysis to determining employee or independent contractor status under MSPA, including by revising 29 CFR 500.20(h)(4).[79] The Department recognized in the 2021 Rule that ''MSPA adopts by reference the FLSA's definition of 'employ,' *see* 29 U.S.C. 1802(5), and that 29 CFR 500.20(h)(4) considers 'whether or not an independent contractor or employment relationship exists under the Fair Labor Standards Act' to interpret independent contractor status under MSPA.''[80] The Department added that ''the regulatory standard for determining an individual's classification status under MSPA is generally consistent with the FLSA guidance finalized in this rule.''[81] The Department determined at the time that it did ''not see a compelling need to revise'' the MSPA regulation because it was ''unsure whether application of the six factor economic reality test described in that regulation has resulted in confusion and uncertainty in the more limited MSPA context similar to that described in the FLSA context.''[82] The Department concluded that it ''prefers to proceed incrementally at this time by leaving the MSPA regulation at 29 CFR 500.20(h)(4) unchanged.''[83]

The effective date of the 2021 Rule was March 8, 2021.

D. Attempts To Delay and Withdraw the 2021 Rule

On March 4, 2021, the Department published a final rule (Delay Rule) delaying the effective date of the 2021 Rule until May 7, 2021—60 days after its original March 8, 2021, effective date.[84] The Delay Rule stated that it took effect immediately upon its publication in the **Federal Register**.[85] On May 6, 2021, the Department published a final rule withdrawing the 2021 Rule (Withdrawal Rule).[86] The Withdrawal Rule stated that it took effect immediately upon its publication in the **Federal Register**.[87]

On March 14, 2022, in a lawsuit challenging the Department's Delay and Withdrawal Rules under the Administrative Procedure Act (APA), a district court in the Eastern District of Texas issued a decision vacating the Department's Delay and Withdrawal Rules. *See Coalition for Workforce Innovation* v. *Walsh,* No. 1:21–CV–130, 2022 WL 1073346 (E.D. Tex. Mar. 14, 2022). While acknowledging that the Department engaged in separate notice-and-comment rulemakings in promulgating both of these rules, the district court concluded that the Department ''failed to provide a meaningful opportunity for comment in promulgating the Delay Rule,'' *id.* at *9,[88] failed to show ''good cause for making the [Delay Rule] effective immediately upon publication,'' *id.* at *11, and acted in an arbitrary and capricious manner in its Withdrawal Rule by ''fail[ing] to consider potential alternatives to rescinding the [2021] Rule,'' *id.* at *13. Accordingly, the district court vacated the Delay and Withdrawal Rules and ruled that the 2021 Rule ''became effective as of March 8, 2021, the rule's original effective date, and remains in effect.'' *Id.* at *20.

The Department appealed the district court's decision in the Fifth Circuit Court of Appeals. *See Coal. for Workforce Innovation* v. *Su,* No. 22–40316 (5th Cir. appeal filed, May 13, 2022). The Fifth Circuit entered successive orders staying the appeal while the Department engaged in further rulemaking. Once the Department's further rulemaking concluded, the Fifth Circuit dismissed the appeal, vacated the district court's decision as moot, and remanded the case to the district court. *See* No. 22–40316, 2024 WL 2108472 (5th Cir. Feb. 19, 2024).

E. The 2024 Rule

On January 10, 2024, the Department published the 2024 Rule, which rescinded the 2021 Rule and replaced it by adopting a modified analysis for determining employee or independent contractor classification under the FLSA in 29 CFR part 795.[89] Like the 2021 Rule, the 2024 Rule advised that the FLSA's ''definitions are meant to encompass as employees all workers who, as a matter of economic reality, are economically dependent on an employer for work,'' elaborating that ''[a] worker is an independent contractor, as distinguished from an 'employee' under the [FLSA], if the worker is, as a matter of economic reality, in business for themself.''[90] The 2024 Rule identified six factors as ''tools or guides to conduct a totality-of-the-circumstances analysis'': (1) opportunity for profit or loss depending on managerial skill, (2) investments by the worker and the potential employer, (3) degree of permanence of the work relationship, (4) nature and degree of control, (5) extent to which the work performed is an integral part of the potential employer's business, and (6) skill and initiative.[91] The 2024 Rule did not identify any core factors or otherwise elaborate on the relative importance of these factors, advising instead that ''no one factor or subset of factors is necessarily dispositive'' and ''the weight to give each factor may depend on the facts and circumstances of the particular relationship.''[92] The 2024 Rule noted that the six factors ''are not exhaustive'' and ''[a]dditional factors may be relevant in determining whether the worker is an employee or independent contractor for purposes of the FLSA, if the factors in some way indicate whether the worker is in business for themself, as opposed to being economically dependent on the potential employer for work.''[93] The 2024 Rule commented that the outcome of its analysis ''does not depend on isolated factors but rather upon the circumstances of the whole activity to answer the question of whether the worker is economically dependent on the potential employer for work or is in business for themself.''[94]

In addition, the Department made minor revisions to the industry-specific guidance provided at 29 CFR 780.330(b) and 788.16(a) by updating the cross-references to 29 CFR part 795 that the 2021 Rule had added.[95] Also, like the 2021 Rule, the Department included a severability provision in the 2024 Rule.[96]

Like in the 2021 Rule, the Department in the 2024 Rule ''did not propose to make any revisions to the MSPA regulation, which adopts by reference the FLSA's definition of 'employ,' and considers 'whether or not an independent contractor or employment relationship exists under the Fair Labor Standards Act' to interpret employee or independent contractor status under MSPA.''[97] The Department explained

[78] 86 FR 1246.
[79] 86 FR 1177.
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *See* 86 FR 12535.
[85] *See id.* at 12537.
[86] *See* 86 FR 24303.
[87] *See id.* at 24320.
[88] The district court specifically faulted the Department's use of a shortened 19-day comment period (instead of 30 days) in its proposal to delay the 2021 Rule's original effective date, and for failing to consider comments beyond its proposal to delay the 2021 Rule's effective date. 2022 WL 1073346, at *7–10.
[89] *See* 89 FR 1638.
[90] 29 CFR 795.105(b) (2024).
[91] 29 CFR 795.110(a)(1), (b)(1)–(6) (2024).
[92] 29 CFR 795.110(a)(2) (2024).
[93] 29 CFR 795.110(a)(2), (b)(7) (2024).
[94] 29 CFR 795.110(a)(1) (2024).
[95] *See* 89 FR 1741.
[96] *See* 29 CFR 795.115 (2024).
[97] 89 FR 1664.

that the guidance provided in the MSPA regulation is ''substantially similar'' to the economic reality test adopted by the 2024 Rule, the comments received did not address MSPA, and the Department ''is not revising the MSPA regulation at this time.'' [98]

Unlike the 2021 Rule, the 2024 Rule's regulatory text did not include any illustrative examples of how to apply the economic reality test or address the relevance of parties' actual practice as compared to what may be contractually or theoretically possible. However, the Department provided examples of how to apply each economic reality factor and addressed the actual practice issue in the 2024 Rule's preamble.[99]

The 2024 Rule took effect on March 11, 2024.

F. Litigation Challenging the 2024 Rule

Five lawsuits were filed challenging the legality of the 2024 Rule. Four lawsuits remain pending, although each has been stayed based on the Department's representation that it intended to reconsider the 2024 Rule, including whether to issue a notice of proposed rulemaking to rescind the rule.

In *Frisard's Transportation, L.L.C.* v. *Department of Labor,* the district court denied a motion for temporary restraining order and preliminary injunction that sought to enjoin the 2024 Rule because the trucking companies and business association challenging the 2024 Rule failed to meet their burden of showing irreparable harm. *See* Dkt. No. 19, No. 2:24–cv–00347–EEF–MBN (E.D. La. Mar. 8, 2024). The trucking companies and business association appealed the denial of preliminary injunction to the Fifth Circuit Court of Appeals, and the district court later stayed its proceedings. The Fifth Circuit has stayed the appeal.

In *Warren* v. *Department of Labor,* the district court ruled in favor of the Department without addressing the legality of the 2024 Rule, concluding that the freelancers challenging the 2024 Rule did not have standing to do so. *See* Dkt. No. 42, No. 2:24–CV–7–RWS (N.D. Ga. Oct. 7, 2024). The freelancers appealed to the Eleventh Circuit Court of Appeals, which stayed the appeal until it was dismissed by stipulation of the parties in March 2026.

In *Colt & Joe Trucking, LLC* v. *Department of Labor,* the district court ruled in favor of the Department, concluding that the trucking company challenging the 2024 Rule did not have standing to do so and also rejecting its various arguments that the 2024 Rule was unlawful. *See* No. 24–cv–00391–KWR–GBW, 2025 WL 56658 (D.N.M. Jan. 9, 2025). The trucking company appealed to the Tenth Circuit Court of Appeals, which stayed the appeal.

In *Littman* v. *Department of Labor,* the district court ruled in favor of the Department without addressing the legality of the 2024 Rule, affirming the magistrate judge's report and recommendation that found that the freelancers challenging the 2024 Rule did not have standing to do so. *See* No. 3:24–cv–00194, 2025 WL 763583 (M.D. Tenn. Mar. 11, 2025). The freelancers appealed to the Sixth Circuit Court of Appeals, and that appeal was stayed by the court's Mediation Office.

In *Coalition for Workforce Innovation* v. *Walsh,* the business associations that had challenged the Delay and Withdrawal Rules amended their complaint following remand to challenge the 2024 Rule. Dkt. No. 40, No. 1:21–CV–130 (E.D. Tex. Mar. 5, 2024). In 2024, the business associations filed a motion for summary judgment arguing that the 2024 Rule was unlawful, and the Department filed a cross-motion arguing that the case should be dismissed for lack of standing and that it should be granted summary judgment because the 2024 Rule was lawful. The parties fully briefed the motions, and the district court later stayed the case.

On May 1, 2025, WHD published Field Assistance Bulletin (FAB) 2025–1, ''FLSA Independent Contractor Misclassification Enforcement Guidance'' (FAB 2025–1).[100] FAB 2025–1 provided enforcement guidance in FLSA cases and explained that the Department had taken the position in the lawsuits challenging the 2024 Rule that it was reconsidering the rule, including whether to rescind it. This FAB added that ''WHD is currently reviewing and developing the appropriate standard for determining FLSA employee versus independent contractor status,'' and advised Division staff that ''WHD will no longer apply the 2024 Rule's analysis when determining employee versus independent contractor status in FLSA investigations.'' In its place, ''WHD will enforce the FLSA in accordance with [the 2008 version of Fact Sheet #13], and as further informed by [WHD Opinion Letter FLSA2025–2] with respect to any matters for which no payment has been made, directly to individuals or to DOL, for back wages [or] civil money penalties as of May 1, 2025.'' FAB 2025–1 noted that, ''[u]ntil further action is taken, the 2024 Rule remains in effect for purposes of private litigation and nothing in this FAB changes the rights of employees or responsibilities of employers under the FLSA.''

G. The 2026 NPRM

On February 27, 2026, the Department published an NPRM proposing to rescind the 2024 Rule's analysis of employee or independent contractor status under the FLSA set forth in 29 CFR part 795 and to replace it with a version of the analysis similar to that which it published in the 2021 Rule.[101] Moreover, unlike either the 2021 or 2024 Rules, the NPRM proposed to revise the Department's regulations addressing employee or independent contractor status under the FMLA and MSPA so that the FLSA analysis in part 795 would apply when determining employee or independent contractor status under the FMLA and MSPA as well. The Department added that its proposed rescission of the 2024 Rule would operate independently of any regulatory guidance adopted in its place, as the Department intended for its proposed rescission of the 2024 Rule to be independent and severable from its proposal to readopt guidance from the 2021 Rule.

In the NPRM, the Department expressed concern that the 2024 Rule failed to provide an analysis for distinguishing between independent contractors and employees under the FLSA that was sufficiently clear and led to predictable outcomes. The Department expressed a separate concern that the 2024 Rule's description of several ''economic reality'' factors could be viewed as setting a higher bar to find independent contractor status than required under longstanding judicial precedent, and that an analysis which is ambiguous or perceived as too restrictive of independent contracting could deter businesses from engaging with bona fide independent contractors. The Department explained that replacing the 2024 Rule with a modified and updated analysis from the 2021 Rule would avoid this outcome and facilitate the more accurate and reliable classification of individuals, with a

[98] *Id.*

[99] *See* 89 FR 1718–22 (discussing the relevance of actual practice); *see also id.* at 1722–24 (discussing commenter feedback on illustrative examples provided in the preamble of the Department's 2022 NPRM).

[100] The FAB is available at *https://www.dol.gov/sites/dolgov/files/WHD/fab/fab2025-1.pdf.*

[101] The NPRM specifically proposed to readopt the 2021 Rule's FLSA guidance with a substantive edit to proposed § 795.105(b), one non-substantive edit to proposed § 795.105(d)(2)(iii), and a few small modifications to the illustrative examples in proposed § 795.115. *See* 91 FR 9961.

familiar and clear analysis drawn from established case law that is more amenable to the modern economy and fully effective in preventing the misclassification of employees.[102]

H. Commenter Feedback

The Department received approximately 16,500 comments during the NPRM's 60-day comment period.[103] These came from a diverse array of stakeholders, including workers, self-identified independent contractors, businesses, trade associations, labor unions, advocacy groups, law firms, policy experts, members of Congress, and various officials from state and local governments. Of the approximately 16,500 comments submitted, 14,244 (86.3 percent) were either identical or constituted highly similar submissions grouped in seven different comment campaigns—all of which expressed support for the proposal. The Department did not identify any comment campaigns expressing opposition to the proposal.

Apart from the supportive campaign comments, commenter feedback on the proposed rule generally split into three groups. In one camp, numerous businesses, business advocacy groups, management-side law firms, self-identified independent contractors, and some elected officials expressed strong support for the NPRM, asserting that it would better facilitate legitimate independent contracting arrangements by increasing clarity and reducing legal risk as compared to the 2024 Rule. Among this group of commenters, many requested modifications or additions to the proposed analysis, including additional ''safe harbor'' provisions for certain business practices or illustrative examples specific to particular industries or occupations.

By contrast, many labor unions, worker advocacy groups, plaintiff-side law firms, some individual workers, and other elected officials expressed strong opposition to the NPRM, asserting that it would increase the misclassification of employees as independent contractors and disadvantage businesses that hire workers as employees. Many of these commenters criticized specific features of the NPRM, including its identification of two core factors, its description of particular economic reality factors, and its emphasis on the actual practice of the parties over contractual abilities.

Some commenters—including several truck drivers and digital platform workers—were neutral or generally supportive of the NPRM but requested the Department to address certain business practices they believe to be coercive or exploitative.[104] As one anonymous commenter wrote: ''My goal is not to be reclassified as an employee. My goal is to preserve legitimate independent contracting while ensuring that companies cannot exert hidden or algorithmic control over workers while still claiming we are independent.'' *See also, e.g.,* Digital Platform Worker (''[W]hile the flexibility [of independent contractor status] is real, there are areas where the system could be improved so that independent contractors, customers, and the platform itself all benefit more fairly''); Terry Bratt (truck driver who generally supported the NPRM but believed that ''it doesn't go far enough'' in protecting independent owner-operators from certain business practices). One group representing many independent contractors, the Owner-Operator Independent Drivers Association (OOIDA), ''generally support[ed]'' the NPRM, but requested that the Department ''amend or clarify the NPRM to ensure that [motor] carriers cannot micromanage owner-operators through 'safety' requirements'' that are not required by law and separately ''protect truckers by . . . address[ing] lease-purchase agreements in a final rule,'' which OOIDA characterized as ''[a] blatant example of misclassification'' which resembles ''indentured servitude.''

Farmworker Justice and National Center for Law and Economic Justice asserted in their comments that it was ''impossible for the public to provide thoughtful and complete comments on the [NPRM] without the opportunity to fully review [the Department's proposed rule on joint employer status] [105] that was released on April 23, 2026, several days prior to the April 28th deadline for submission of comments for the [NPRM].'' Northwest Workers' Justice Project (NWJP) agreed, saying that it was ''a procedural error and indication of inadequate and flawed reasoning to attempt to address the rules separately'' and requested additional comment time to ''analyze the proposed rules together.'' The Department disagrees. Like the legal frameworks from which they are derived, the independent contractor and joint employer proposed rules each provide a separate legal standard and distinct reasons for adopting the respective standards. Neither the standards nor reasoning in either is dependent on or otherwise tied to the other; the public did not need to be aware of both to comment on this NPRM. Moreover, the Department afforded a 60-day period to comment on this NPRM, and nothing prevented any person from addressing joint employment in the manner suggested by these commenters. This is the Department's third major rulemaking addressing employee or independent contractor status over the past six years (excluding the Delay and Withdrawal rulemakings), so the Department believes that interested parties were well-positioned to provide informed comments on any aspect of the proposal, including implications for joint employment.

The Department appreciates the commenter feedback submitted in response to the NPRM and has carefully considered commenter views and arguments. Significant issues raised in the comments received are discussed in subsequent sections of this preamble, along with the Department's responses to those comments.[106] Comments germane to the need for this rulemaking are discussed in section III, comments about the NPRM's specific proposals are discussed in section IV, and comments about the potential costs, benefits, and other impacts of this rulemaking are discussed in sections VI and VII. All comments received may be viewed on the *http://www.regulations.gov* website, docket ID WHD–2026–0001.

III. Need for Rulemaking

As a general matter, this rulemaking achieves three objectives: (1) rescission of the 2024 Rule, which the Department ceased applying in its enforcement actions; (2) restoration of the streamlined analysis distilled from federal case law for both workers and businesses more easily and accurately to determine employee or independent contractor status under the FLSA adopted in the 2021 Rule, with a few enhancements; and (3) clarification that the analysis used to determine employee or independent contractor status under the Act also should be

[102] *See* 91 FR 9939.

[103] As in the 2021 and 2024 Rules, the Department has provided a round estimate of the total number of comments received due to a small number of duplicate comments submitted in each rulemaking. *See* 89 FR 1639; *see also* 86 FR 1171.

[104] Apart from addressing business practices that may be relevant in the analysis used to distinguish between employees and independent contractors under the FLSA, FMLA, and MSPA, this rulemaking cannot and does not purport to address business practices in general.

[105] *See* Dep't of Labor, Joint Employer Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act, Notice of Proposed Rulemaking, 91 FR 21878 (Apr. 23, 2026).

[106] The Department received some comments addressing issues unrelated to this rulemaking, such as alleged fraud in the H–2B visa program. This final rule does not address or respond to commenter views on issues outside the scope of this rulemaking.

applied to make that determination under the FMLA and MSPA, which incorporate the FLSA's scope of employment provisions. The NPRM provided an extensive explanation of the need to achieve—and value of achieving—these objectives, highlighting:

- concerns that the 2024 Rule failed to provide an analysis for determining independent contractor and employee status under the FLSA that is sufficiently clear and amenable to application by workers and businesses, thus failing to produce predictable outcomes;
- concerns that the 2024 Rule's description of several economic reality factors could have been viewed as setting a higher bar to find independent contractor status than required under the law;
- concerns over the 2024 Rule's compatibility with the modern economy, including that the predictive accuracy of certain economic reality factors may be waning due to the evolution of work in America;
- concerns over negative effects if the 2024 Rule were left in place, including the unnecessary classification of economically independent workers as employees and the deterrence of bona fide independent contracting and related efficiencies and innovations in the broader economy; and
- the need for uniformity and consistency in the analysis of employee or independent contractor status under the FLSA, FMLA, and MSPA.

The subheadings below summarize the NPRM's discussion of these policy concerns and respond to commenter feedback on them, as well as commenter views on other issues relevant to the need for this rulemaking. The Department's response to commenter feedback on the analysis proposed to replace the 2024 Rule appears in section IV, while the potential economic consequences of this final rule are discussed in greater detail in the regulatory impact analysis in section VI.

A. Concerns That the 2024 Rule Failed To Provide a Clear Analysis for Workers and Businesses Properly To Classify Workers as Employees or Independent Contractors

As explained in the NPRM, the Department believes that the principal flaw of the 2024 Rule was its failure to provide effective guidance on how different factors in its multifactor balancing test should be weighed or applied together. In the absence of such guidance, engaging individuals as independent contractors was both confusing and potentially posed significant legal risk, especially when different factors arguably pointed to different classification outcomes. One can frame a myriad of scenarios involving workers who are in business for themselves (and thus are bona fide independent contractors), but where two or more factors from the 2024 Rule arguably indicate an employment relationship, particularly in industries where those workers are ''integral'' to the businesses in those industries. As Judge Frank Easterbrook noted, '' '[economic] reality' encompasses millions of facts, and unless we have a legal rule with which to sift the material from the immaterial, we might as well examine the facts through a kaleidoscope. Which facts matter, and why? A legal approach calling on judges to examine all of the facts, and balance them, avoids formulating a rule of decision.'' [107]

Indeed, it was this very ambiguity that initially motivated the Department to propose regulations in 2020 for analyzing employee or independent contractor status under the FLSA. In that rulemaking, after reviewing decades of judicial decisions applying *Silk* and *Rutherford Food,* the Department determined that federal courts tend to focus on two of the economic reality factors—control and the opportunity for profit or loss. The Department concluded that courts tended to treat the direction in which they pointed as a reliable indicator of employee or independent contractor status, effectively—if not formally—giving them more weight and an elevated status as reliable indicators of employment or independent contractor status. As the Department explained, this is because control and opportunity ''strike at the core of what it means to be in business for oneself.'' [108] It is logical that those factors would and should have primacy in position and weight in assessing the legality of an independent contractor arrangement over ancillary considerations regarding the skill of the individual worker at issue, the permanency of the individual's relationship with a particular business, and whether the work is an ''integral part'' of that business.[109]

In recent rulemakings, numerous independent contractors and business stakeholders that engage independent contractors asserted that the 2021 Rule's identification of core factors brought helpful clarity and assurance.[110] While the Department disagreed with such views in the 2024 Rule and the Withdrawal Rule,[111] the Department acknowledged in the NPRM that, upon reflection, the need for added clarity on how different factors from the economic reality test should be balanced in a consistent and predictable fashion is compelling. As explained in greater detail in section IV.F. below, the Department can apply an economic reality test grounded in federal case law that provides more clear, reliable, and predictable results to interested stakeholders than an unguided ''totality-of-the-circumstances analysis'' in which ''the weight to give each factor may depend on the facts and circumstances of the particular relationship.'' [112] In advising the public on how it intends to weigh the different economic reality factors, the Department—taking its lead from the outcomes of decades of federal appellate court decisions—can and should do better than ''it depends.'' *See Grossbaum* v. *Indianapolis-Marion Cnty. Bldg. Auth.,* 100 F.3d 1287, 1299 (7th Cir. 1996) (noting Judge Easterbrook's observation that real world actors need guidance ahead of time rather than critiques afterward).

The Department is additionally concerned that the 2024 Rule featured numerous redundancies in its description of the different factors in its economic reality test. For example, the phrases ''managerial skill (including initiative or business acumen or judgment),'' ''business-like initiative,'' and ''independent business initiative'' appeared in the guidance provided for three different factors in the 2024 Rule.[113] Both the ''control'' and the ''opportunity for profit or loss'' factors considered whether the worker determines or negotiates their pay.[114]

[107] *Lauritzen,* 835 F.2d at 1539 (Easterbrook, J., concurring).

[108] 86 FR 1199. The 2021 Rule reflected comprehensive analysis of the case law that has situated the core of the employee or independent contractor analysis in the control and opportunity for profit and loss factors. The 2024 Rule did not cite a single case where these two core factors (when pointing to the same classification) were contrary to the court's ultimate classification decision.

[109] *See* 86 FR 1196–97.

[110] *See* 86 FR 1197 (2021 Rule); 86 FR 24308–09 (Withdrawal Rule); 89 FR 1650, 1666–67 (2024 Rule).

[111] *See* 89 FR 1654 (asserting that the identification of ''core'' and ''non-core'' factors ''would . . . likely [cause] confusion and uncertainty'' if left in place); 86 FR 24310 (''While the Department is always seeking to improve clarity for workers and employers, the [2021] Rule's formulaic and mechanical weighting of factors is precisely what courts have cautioned against for decades[.]'').

[112] 29 CFR 795.110(a)(2) (2024).

[113] 29 CFR 795.110(b)(1), (3), and (6) (2024).

[114] *Compare* 29 CFR 795.110(b)(1) (2024) (examining ''whether the worker determines or can meaningfully negotiate the charge or pay for the work provided'') *with id.* at 795.110(b)(4)

The ''opportunity'' factor considered ''whether the worker makes decisions to hire others, purchase materials and equipment, and/or rent space,'' [115] despite a separate factor examining ''evidence of capital or entrepreneurial investment.'' [116] The control factor examined ''whether the potential employer . . . explicitly limits the worker's ability to work for others'' or ''places demands or restrictions on workers that do not allow them to work for others,'' [117] while the ''permanence'' factor separately inquired whether ''the work relationship is . . . exclusive of work for other employers.'' [118] Finally, the ''permanence'' factor stated in circular fashion that an impermanent work arrangement is only indicative of independent contractor status if it is ''based on the worker being in business for themself,'' [119] which of course is the overarching inquiry of the economic reality test.[120] And, the factor further stated that a worker must be ''marketing their services or labor to multiple entities'' for an impermanent relationship to be indicative of independent contractor status, when ''whether the worker engages in marketing, advertising, or other efforts to expand their business or secure more work'' was separately considered under the 2024 Rule's ''opportunity'' factor.[121]

The Department acknowledged in the preamble of the 2024 Rule that ''certain relevant facts may overlap among the factors,'' but explained that it ''does not wish to be overly prescriptive'' about such overlap for fear of establishing ''a formulaic or rote analysis'' that would not be ''flexible enough to apply to all kinds of work, and all kinds of workers.'' [122] While some degree of factual overlap may be inevitable in a multifactor analysis, the Department now believes that the 2024 Rule crossed the line from natural overlap into unhelpful repetition—particularly where the same concepts (such as ''business initiative'') were presented as required elements of multiple factors but applied for different purposes. These redundancies risked confusing businesses and workers alike, creating uncertainty about whether the same considerations must be counted multiple times or weighed differently depending on the factor in which they appear. Indeed, the 2024 Rule not only added unnecessary and unhelpful elements to the tests employed by federal circuit courts, but it also emphasized the breadth of potential considerations in each while at the same time declining to explain—much less demonstrate—how they should be applied. As explained in the NPRM, the Department concludes that a clear articulation and deduplication of the elements of each factor together with unambiguous direction regarding their application and several examples will not only enhance the utility of the Department's regulations on the economic reality test but also make it more likely that workers will be properly classified.

As in previous rulemakings, many businesses and independent contractors asserted that the 2021 Rule would provide greater clarity and consistency as compared to the 2024 Rule or the Department's current enforcement policy, which applies the Department's pre-2021 interpretive guidance.[123] For example, U.S. Chamber of Commerce asserted that ''[t]he 2021 Rule provided workers and businesses with an easily understood, unambiguous, updated, and uniform test to determine whether a worker was an employee or an independent contractor,'' whereas ''the [Department's] pre-2021 formulations (as well as the 2024 Rule) . . . failed to produce consistent outcomes, which is what truly matters to stakeholders.'' Self-identified independent contractor Connie Kirkpatrick commented that ''[b]y refusing to weight any factor more heavily than another, the [2024 Rule] created a situation in which the classification of a worker could shift unpredictably depending on the circumstances of each individual engagement,'' which ''[f]or a contractor like me, whose services vary from client to client by design, . . . was a daily operational problem.'' *See also, e.g.,* National Newspaper Association (''Without guidance on which elements of independence made the most sense, publishers were perplexed and frustrated [under the 2024 Rule].''); Portfolio Resources Group (''A more predictable standard allows firms to focus resources on serving clients rather than defending classification decisions.''); Transportation Intermediaries Association (''A framework that does not clearly indicate which factors are most telling invites inconsistent enforcement and defensive overclassification of independent contractors as employees.'').

Several commenters agreed with the NPRM's assessment that the 2024 Rule had too many overlapping considerations among its different economic reality factors. For example, Coalition for Workforce Innovation (CWI) commented that ''permitting considerations to overlap among the multiple factors creates confusion about how to evaluate a set of facts without affording outsized weight to those facts merely because they tangentially touch on multiple factors.'' Similarly, Coalition to Promote Independent Entrepreneurs asserted that the ''uncertainty and unpredictability of the [2024 Rule's] open-ended multi-factor test . . . was exacerbated by the test's redundant consideration of the same facts for purposes of multiple factors.'' *See also, e.g.,* American Securities Association (''[M]inimizing overlap among factors provides greater clarity and efficiency.''); Forest Resources Association et al. (asserting that ''the [2024 Rule's] use of the same or similar language to describe the application and analysis of the factors [was], in the real world, of no practical use to parties seeking to establish an understanding of their relationship''); Littler Mendelson's Workplace Policy Institute (Littler WPI) (asserting that the NPRM would ''avoid inefficient, duplicative, and often confusing analyses that historically resulted from the overlap of certain factors'').

By contrast, numerous commenters opposed to the NPRM asserted that restoring the 2021 Rule would reduce clarity because, in their view, most courts will continue to apply a more holistic analysis based on longstanding circuit court precedent. *See, e.g.,* Getman, Sweeney & Dunn, PLLP; National Employment Law Project (NELP); Nichols Kaster, PLLP. For example, AFL–CIO predicted that the proposal would result in a ''fragmentation'' in the analysis applied across jurisdictions as ''different courts may give varying degrees of deference to the Department's interpretation,'' asserting that ''[w]orkers, employers, and enforcement agencies will be forced to test the contours of the new framework in court, resulting in years, if not decades, of uncertainty as conflicting interpretations are resolved.''

(examining ''control over prices or rates for services . . . provided by the worker'').

[115] 29 CFR 795.110(b)(1) (2024).

[116] 29 CFR 795.110(b)(2) (2024).

[117] 29 CFR 795.110(b)(4) (2024).

[118] 29 CFR 795.110(b)(3) (2024). The 2024 Rule also addressed ability to work for others in its preamble discussion of the ''investments'' factor. *See* 89 FR 1681 (''A worker's investments are most likely to be capital or entrepreneurial in nature if they create or further the worker's ability to work for multiple employers.'').

[119] 29 CFR 795.110(b)(3) (2024).

[120] 29 CFR 795.110(a)(1) (2024) (advising that employee or independent contractor status turns on ''whether the worker is economically dependent on the potential employer for work or is in business for themself'').

[121] 29 CFR 795.110(b)(1) (2024). Marketing is also arguably an example of ''business-like initiative,'' a required element of the 2024 Rule's ''skill and initiative'' factor.

[122] 89 FR 1670.

[123] *See supra* n.100.

See also NWJP (predicting ''a deluge of new litigation to understand whether, and to what extent, the law has shifted''). In a joint comment, Allegheny County, PA, the City of Baltimore, MD, the County of Santa Clara, CA, and the City and County of San Francisco, CA (Allegheny County et al.) asserted that ''predictability about the Department's analysis is not helpful to workers and employers if courts rightfully disregard it in favor of a more faithful reading of the statute and longstanding court precedent.'' *See also* American Federation of State, County and Municipal Employees (AFSCME) (''The Department cannot, by fiat, resolve judicial differences in the application of this test, and in attempting to do so, will only misinform employers and expose them to legal liability[.]''); International Brotherhood of Teamsters (IBT) (''A clearer rule that produces wrong answers is worse than a totality test that requires careful analysis.''); International Association of Sheet Metal, Air, Rail and Transportation Workers & the Sheet Metal and Air Conditioning Contractors' National Association (SMART & SMACNA) (''Even the most pro-employer management law firms acknowledge that employers would act at their own peril in choosing to ignore 80 years of judge-made law in favor of the proposed regulations[.]'').[124]

Two commenters, NWJP and a coalition of various state or city labor agencies and attorneys general (Coalition of State Officials), asserted that the NPRM would cause confusion by creating different ''economic reality'' tests under state and federal law.[125] One organization opposed to the proposal, The Workers Lab, stated that it ''share[s] the Department's stated goal of clarity'' and agreed that ''[t]he current patchwork of classification standards is genuinely difficult for workers and businesses alike to navigate,'' but asserted that the NPRM's proposed analysis would ''not meaningfully simplify that landscape'' because it ''narrows protections while leaving the underlying complexity intact.'' Farmworker Justice noted that the Department concluded in the 2024 Rule that retaining the 2021 Rule ''would have a confusing and disruptive effect on workers and businesses alike due to its departure from case law,'' [126] asserting that the NPRM ''does not explain [the Department's] reversal of this conclusion.'' *See also* Signatory Wall and Ceiling Contractors Alliance (SWACCA) (quoting from the Department's Withdrawal Rule to assert that the 2021 Rule would ''cause confusion or lead to inconsistent outcomes rather than provide clarity or certainty, as intended'').[127] Relatedly, SMART & SMACNA commented that ''subregulatory and regulatory guidance that changes with every presidential administration provides no long-term predictability or clarity''—a concern that some supporters of the NPRM seemed to share. *See* National Small Business Association (urging the Department ''to consider the cumulative toll that repeated, administration-by-administration reversals of classification standards have taken on the small-business community'' and asserting that ''clarity of substance alone is insufficient if the regulatory framework remains vulnerable to wholesale reversal with each change of administration''); *see also* National Lumber and Building Material Dealers Association (NLBMDA) (''To provide lasting clarity and stability, NLBMDA urges the Department to work with Congress to codify this framework and prevent future regulatory reversals.'').

The Department appreciates that commenters disagree over whether this rulemaking will increase or decrease clarity over the analysis to determine employee or independent contractor status under the FLSA, particularly in light of regulatory reversals. Indeed, several commenters seemed to question the value of any rulemaking in the absence of formal judicial deference. As the Department has previously explained,[128] the value of a regulation such as this one does not stem from a binding command of deference. To the contrary, regulations should reliably explain, clarify, and assist individuals and entities in efforts to follow the law's requirements. Here, the analysis adopted in this rule will facilitate the proper classification of workers at the outset of a work arrangement, which has always remained the Department's objective. Merely pointing to or parroting circuit law as a regulation is not helpful for most workers and businesses, much less the Division's enforcement personnel, who often must apply standards in investigations that bridge multiple circuits. Judicial tests, developed in multiple cases over time, are designed and applied by judges on a factual record compiled via the adversarial process in pleadings, discovery, and trial. Asking lay workers and businesses to correctly identify, understand, interpret, remain current with, and correctly apply federal circuit law to classify workers without a legal record is a recipe for widespread misclassification. Instead, this rule sets forth a test which is distilled from federal circuit law but framed in an accessible way, allowing workers and businesses to apply it in clear, reliable, and predictable ways with accurate and proper classification outcomes that would stand up in court. At the very least, the rule is more calibrated to achieve reliable classification outcomes from workers and businesses than the 2024 Rule.

It is notable that some of the parties most directly affected by this rulemaking—independent contractors and the entities that regularly engage independent contractors—overwhelmingly support the NPRM and view its proposed analysis (*i.e.,* the 2021 Rule's analysis with small modifications) as clearer, simpler, and providing more predictable outcomes than the analysis adopted in the 2024 Rule. The Department agrees with this assessment, which is apparent when comparing the 2021 and 2024 Rules (as the Department does throughout this final rule). Unlike the former, the latter featured an economic reality test with

[124] Many commenters disagreed with concerns over whether courts will adopt the NPRM's proposed analysis. For example, Landmark Legal Foundation commented that ''[b]usinesses applying the [NPRM's] framework would be better positioned in litigation precisely because they would be working from a standard that courts are likely to affirm[.]'' *See also, e.g.,* CPAC Foundation Center for Regulatory Freedom (''By aligning more closely with longstanding doctrine, the proposed rule contributes to a more stable and predictable regulatory environment.''); Center for Workplace Compliance (asserting that the NPRM is ''consistent with the economic reality test that has been applied for decades by both federal appellate courts and the Department,'' notwithstanding ''targeted refinements that . . . promot[e] more consistent and administrable application while preserving the test's holistic nature''); Washington Legal Foundation (characterizing the NPRM's analysis as ''the best reading of the statute'') (quoting *Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369, 400 (2024)).

[125] Flex Association, which commented in support of the NPRM, ''urge[d] the Department . . . to affirmatively acknowledge this divergence as a policy concern, and to express its view that state courts and administrative agencies adjudicating worker classification questions under state wage and hour laws . . . should give meaningful weight to the Department's interpretive guidance,'' as ''[u]ptake by state authorities would multiply the already substantial benefits the rule promises to create.'' *See also* National Home Delivery Association (''[M]any states have wage and hour statutes patterned on the FLSA and look to the FLSA interpretations as persuasive, so the Proposed Rule's predictability and consistency effects will apply, in some cases, to litigation under parallel state laws.''); Scopelitis, Garvin, Light, Hanson & Feary P.C. (similar statement).

[126] 89 FR 1639.

[127] 86 FR 14034.

[128] *See, e.g.,* 86 FR 1176 (explanation in 2021 Rule that the Department ''has a long history of offering interpretations in this area and believes this rulemaking has great value regardless of what deference courts ultimately give to it'').

more factors (six instead of five), more overlapping considerations across multiple factors (initiative, investment, marketing, and exclusivity), no guidance on the relative importance of the different factors, no guidance on the relative importance of actual practices versus contractual possibilities, and no illustrative examples.[129] In these respects, the 2024 Rule was a step backwards from the 2021 Rule and its clarifying refinements. Unsurprisingly and tellingly, few commenters who opposed the NPRM defended the 2024 Rule as providing a clearer or more accessible standard for employee or independent contractor classification than the analysis proposed in the NPRM.[130] To the contrary, even some commenters who opposed the proposed analysis seemed to acknowledge the need for a clearer alternative to the 2024 Rule. *See* Joint Center for Political and Economic Studies (''Just as the NPRM outlines, there is a need for simplified, clearer, and unified guidelines to help accurately classify workers under the FLSA, FMLA, and MSPA.''); *see also* IBT (''If additional clarity is needed, [the Department should] provide supplemental guidance through illustrative examples tailored to modern employment models[.]'').

Some commenters defended the 2024 Rule's ''flexibility'' as an asset rather than a liability. *See* Coalition of State Officials (''While a six-factor test may lack the virtue of providing definitive guidance to those affected, it allows for flexible application to the myriad different working relationships that exist in the national economy.'') (quoting *McFeeley,* 825 F.3d at 241); NELP (asserting that '' 'nonexclusive and overlapping set of factors' helps to 'ensure that the economic realities test mandated by the Supreme Court is sufficiently comprehensive and flexible to give proper effect to the broad language of the FLSA' '') (quoting *Barfield* v. *N.Y.C. Health & Hospitals Corp.,* 537 F.3d 132, 143 (2d Cir. 2008)); *see also* GFI; New York City Comptroller. In response to these comments, the Department agrees that Supreme Court precedent forecloses the adoption of a rigid checklist where the presence or absence of any individual factor would be ''controlling'' of a worker's employment classification,[131] such as under the ''ABC'' test adopted in some states.[132] But that is not true of, and does not describe, the analysis adopted in this rule. The Department concludes that an economic reality test with excessive redundancy and no guidance for how the different factors should be weighed, compared, and applied against or in concert with each other is unacceptably opaque,[133] including (and perhaps especially) for individuals wishing to understand their own classification as an employee or independent contractor. Instead, greater clarity and accuracy can be provided in more cases consistent with these principles.

The Department does not share commenter concerns over whether courts will adopt the analysis in this final rule or arrive at different classification outcomes than those produced by this rule. As the Department explained in the NPRM (and in section IV of this rule), this rule's analysis is derived from existing judicial precedent and, as a general matter, the Department does not believe it will result in different outcomes.[134] Thus, the Department disagrees with commenter assertions that this rulemaking risks exposing businesses to potential liability.[135] To the extent that the economic reality test adopted in this rule is clearer than the economic reality test described in earlier court decisions, the Department believes that courts (federal or state) will find this rule to be a helpful resource in applying or refining their own judicial precedent, and much more so than the 2024 Rule. That the regulation would not bind or control the courts—only Department investigators—is unremarkable. Courts have always been the final word on the meaning and application of the law. However, the Department's regulation sets forth a national framework for the correct application of important legal standards regarding the coverage of its statutes. Far from a replacement of judicial tests refined in numerous decisions by the Supreme Court and various courts of appeals, the regulation translates those decisions so that they may be correctly applied by workers and businesses. Workers, businesses, courts, and the economy benefit from the proper classification of employees and independent contractors at the outset of a working relationship—not after the fact, years later upon litigation to final judgment. Ultimately, this rule complements the judicial tests and gives the principles in the case law a broader and more practical reach and impact than the 2024 Rule's analysis. Moreover, by engaging in notice-and-comment rulemaking to revise its guidance on FLSA employee or independent contractor status in part 795, the Department has ensured that its revisions have benefited from public input and thorough consideration, which should enhance the persuasive power of this rule in the eyes of federal judges.[136]

The Department appreciates that revisions to its rules are not cost-free, including where—as here—an important rule is delayed, withdrawn, found to have taken effect by a court, rescinded and replaced, and finally re-promulgated, even with improvements and enhancements.[137] Such developments can be difficult to follow for regulated entities and the rest of the public. However, the Department is persuaded that the 2021 Rule's clearer

[129] The 2024 Rule provided illustrative examples in its preamble discussion of the rule's six economic reality factors but did not codify those examples in its regulatory text. As noted in section IV.I., this made the examples less accessible to the public, as regulatory text in the Code of Federal Regulations is easier to locate than preamble language published in the **Federal Register**.

[130] *But see* Texas RioGrande Legal Aid (asserting that the proposed analysis ''introduces a new set of undefined and manipulable concepts''). As explained in greater detail in section IV, the Department disagrees that any of the provisions in its proposed analysis were undefined or manipulable. Moreover, the novelty of the 2021 Rule's identification of two ''core factors'' is not a persuasive critique in light of its consistency with the outcomes of precedential court decisions and the enhanced predictability it brings to interested parties. In any event, germane to the Department's severable proposal to rescind the 2024 Rule, Texas RioGrande Legal Aid did not defend the 2024 Rule as providing an objectively clear analysis.

[131] *See Silk,* 331 U.S. at 716 (advising that ''no one [factor] is controlling'' in the economic reality test); *see also Rutherford Food,* 331 U.S. at 730 (''[D]etermination of the [employment] relationship does not depend on . . . isolated factors but rather upon the circumstances of the whole activity.'')

[132] *See infra* section VI.G.3.

[133] *See* Pacific Legal Foundation (''The [Supreme] Court has never said that the FLSA demands a balancing test in which no factor can be prioritized, in which weighting is always situational, or in which ex ante predictability is impossible.'').

[134] 91 FR 9961; *see also* 86 FR 1240 (explaining that the Department's pre-2021 guidance was ''neither more nor less permissive of independent contractor relationships as compared to'' the 2021 Rule).

[135] The Department notes that the Portal-to-Portal Act of 1947 provides parties with a defense against FLSA liability for any acts or omissions made in good faith reliance ''on any written administrative regulation, order, ruling, approval, or interpretation'' issued by the Administrator of the Wage and Hour Division, to the extent such reliance occurs before the guidance at issue—such as this final rule—is ''modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.'' 29 U.S.C. 259; *see also* 29 CFR 790.13–.19 (elaborating on the requirements for a ''good faith reliance'' defense under the Portal-to-Portal Act).

[136] *See Loper Bright,* 603 U.S. at 388 (advising that the ''weight'' of agency interpretive guidance depends in part ''upon the thoroughness evident in its consideration'') (quoting *Skidmore* v. *Swift & Co.,* 323 U.S. 134, 140 (1944); *see also United States* v. *Mead Corp.,* 533 U.S. 218, 228 (2001) (noting that, among other factors, ''courts have looked to the degree of the agency's care'' and ''formality'' in determining the measure of deference to afford agencies' interpretations of their statutes) (citations omitted).

[137] *See supra* section II.B.–G.

analysis of independent contractor status and downstream policy benefits (addressed in sections III.D. and VI.E.) are worth the transition costs, particularly when compared to the 2024 Rule or the absence of any standard. In the absence of federal legislation, the Department is optimistic that this rulemaking will provide interested parties with far greater clarity and certainty over employee or independent contractor status under the FLSA, constituting a much-needed improvement to the status quo. *See* Institute for the American Worker (asserting that ''Congress is best equipped to clarify independent contractor status'' but supporting the NPRM as ''a significant step in the right direction'').

B. Concerns That the 2024 Rule's Description of the Factors Could Have Been Perceived as Too Restrictive of Independent Contracting and a Departure From the Supreme Court's Application

In addition to concerns about the 2024 Rule's lack of clarity, the Department expressed a separate concern in the NPRM that the 2024 Rule could be viewed as more restrictive of independent contracting than the law requires. Specifically, several of the economic reality factors in the 2024 Rule were framed in ways that depart from the Supreme Court's articulation of the factors, effectively distorting the analysis. By expanding the test to include additional considerations that must be satisfied, but only for the factor to indicate independent contractor status, the 2024 Rule stacked the analysis so that it could be viewed as more likely to point to employee classification than a conventional application of judicial tests. The Department noted that by making the proper classification of independent contractors more difficult than the law requires, the 2024 Rule could deter businesses from engaging with bona fide independent contractors or induce them to unnecessarily classify such contractors as employees.

The ''investments'' factor at 29 CFR 795.110(b)(2) in the 2024 Rule is instructive. Before the 2024 Rule, when the Department would enumerate the multifactor economic reality test for assessing independent contractor arrangements, the Department's description of the investments factor would generally focus on any investments (or lack thereof) made by the individual worker.[138] However, the 2024 Rule expanded this factor to examine ''investments by the worker *and the potential employer,*'' with guidance elaborating that ''the worker's investments should be considered on a relative basis with the potential employer's investments in its overall business.'' [139] The Department recognizes that this additional consideration of comparing the worker's investment to the potential employer's investment is applied by some courts, but that approach finds no support in Supreme Court cases. Moreover, comparing investments diminishes the probative value of the investment, if any, by the worker. For example, a worker's investments will almost invariably be smaller than the potential employer's ''investments in its overall business,'' [140] so comparing their investments is unbalanced in favor of employee status and fails to offer any insight into distinguishing between employee and independent contractor status. In response to commenter concerns on this point, the Department recognized this problem and sought to address it in the 2024 Rule's regulatory text by stating that the ''worker's investments need not be equal to the potential employer's investments and should not be compared only in terms of the dollar values of investments or the sizes of the worker and the potential employer.'' [141] Nevertheless, the 2024 Rule's ''investments'' factor still undertook this comparative approach, which departed from *Silk* and significantly reduced the probative value of the worker's investments.

The 2024 Rule's ''permanence'' factor (in § 795.110(b)(3)) is another example. The operative text advised that ''[t]his factor weighs in favor of the worker being an employee when the work relationship is indefinite in duration, continuous, or exclusive of work for other employers,'' while it ''weighs in favor of the worker being an independent contractor when the work relationship is definite in duration, non-exclusive, project-based, or sporadic based on the worker being in business for themself and marketing their services or labor to multiple entities.'' [142] Here, the conditional language following the word ''sporadic'' seemed to add further considerations than the law requires in order for an impermanent relationship to indicate independent contractor status. Adding to the perception that it could be more difficult to find that this factor weighed in favor of independent contractor status, the 2024 Rule additionally advised, as some courts have, that ''this [permanence] factor is not necessarily indicative of independent contractor status'' where ''a lack of permanence is due to operational characteristics that are unique or intrinsic to particular businesses or industries and the workers they employ . . . unless the worker is exercising their own independent business initiative.'' [143] But there was no corresponding language in the other direction, categorically discounting industries where lengthy professional relationships between businesses and independent contractors might be commonplace. The result was a factor framed in a way that could indicate an FLSA employment relationship when permanence existed but unnecessarily require additional considerations to indicate independent contractor status when permanence did not exist.

The 2024 Rule's ''skill and initiative'' factor operated in a similar fashion. The regulatory text began with straightforward guidance that a lack of skills indicated that a worker was an employee: ''This factor indicates employee status where the worker does not use specialized skills in performing the work or where the worker is dependent on training from the potential employer to perform the work.'' [144] However, the text did not correspondingly state that specialized skills indicated that the worker is an independent contractor and instead included an additional consideration that had to be met for this factor to indicate that a worker with specialized skills is an independent contractor: ''Where the worker brings specialized skills to the work relationship, this fact is not itself indicative of independent contractor status because both employees and independent contractors may be skilled workers. It is the worker's use of those specialized skills in connection with business-like initiative that indicates that the worker is an independent contractor.'' [145] Here

[138] *See* WHD Fact Sheet #13 (July 2008), *https://www.dol.gov/sites/dolgov/files/WHD/fact-sheets/whdfs13.pdf* (assessing ''[t]he amount of the alleged contractor's investment in facilities and equipment''); *see also, e.g.,* WHD Op. Ltr. (June 23, 1949) (examining ''the amount of the so-called 'contractor's' investment in facilities or equipment''); WHD Op. Ltr. (Aug. 13, 1954) (examining ''the amount of investment on the part of the one who performs the service''); WHD Op. Ltr. FLSA2019–6 (April 29, 2019) (considering ''the amount of the worker's investment in facilities, equipment, or helpers'').

[139] 29 CFR 795.110(b)(2) (2024) (emphasis added).

[140] *Id.; see* 89 FR 1683–84.

[141] 29 CFR 795.110(b)(2) (2024); *see also* 89 FR 1684 (explaining that the Department intended for the analysis to ''compar[e] the qualitative (rather than primarily the quantitative) value of the investments'').

[142] 29 CFR 795.110(b)(3) (2024).

[143] *Id.; see* 89 FR 1688 n.330.

[144] *See* 29 CFR 795.110(b)(6) (2024).

[145] *Id.*

again, the Department recognizes that some form of this approach is applied by some courts, but the 2024 Rule articulated this factor in a way that made it more difficult than the law requires to establish that a worker might be an independent contractor rather than an employee. While it is true that ''both employees and independent contractors may be skilled workers,'' the converse is also true, as other workers who may not possess ''specialized skills'' are both employees and independent contractors. Moreover, although the 2024 Rule's consideration of initiative as part of the skill factor is supported by some courts, the Supreme Court has not considered initiative in terms of skill. Instead, and as discussed in section IV.G.1, it has consistently analyzed whether initiative contributes to the success or profitability of the claimed independent business.[146]

The 2024 Rule's ''integral'' factor departed from *Rutherford Food's* consideration of whether a worker is part of an ''integrated unit,'' instead examining whether work is ''critical, necessary, or central to the potential employer's principal business.'' [147] This framing may have unreasonably frustrated a finding of independent contractor status because, in some sense, all work performed is in some way necessary to the employer's business. If not, the business would not pay for it to be performed.[148]

Finally, in its descriptive guidance for the ''control'' factor, the 2024 Rule gave several examples of facts relevant to a potential employer's control over workers but did not provide similar examples of facts relevant to a worker's control, further implying that this factor was not a balanced aid in determining proper classification.[149] Taken together, these aspects of the 2024 Rule appeared to be misaligned with Supreme Court precedent and may have created the perception of an economic reality test with a number of considerations that would make it harder to conclude that an individual who is in business for him- or herself is an independent contractor. While the Department maintains that preventing the misclassification of FLSA-covered employees as independent contractors is an important policy goal, it is equally important that the Department's guidance not be viewed as chilling independent contracting arrangements that comply with the Act.

These features were lost on the regulated community. Numerous commenters asserted that the 2024 Rule's analysis was ''slanted,'' ''tilted,'' or ''biased'' against findings of independent contractor status. *See* CWI; Financial Services Institute (FSI); Landmark Legal Foundation; U.S. Chamber; *see also, e.g.,* Institute for the American Worker (asserting that the 2024 Rule ''presented a thumb on the scale in favor of employment status rather than clear lines between employment and independence''). While many of these commenters agreed with the NPRM's critique of certain economic reality factors in the 2024 Rule (as discussed above), FSI additionally asserted that ''the 2024 Rule pushed the overall inquiry toward employee classification by making a lack of entrepreneurial drive or skill count multiple times, across different factors, against independent contractor status.'' Two commenters, independent contractor Natasha Taylor and Truckers Integral to Our Economy, asserted that the 2024 Rule effectively established a presumption of employee status. Similarly, the National Association of Small Trucking Companies characterized the 2024 Rule as ''exceptionally restrictive, overly complicated, and hostile toward independent contractor status,'' while the Worker and Farmer Labor Association (WAFLA) asserted that the 2024 Rule's economic reality test was ''not neutral'' but was instead ''structured in a way that made it difficult to conclusively reach [an independent contractor outcome].''

Commenters who opposed the NPRM defended the 2024 Rule by asserting its consistency with longstanding judicial precedent. *See, e.g.,* GFI; Nichols Kaster; United Brotherhood of Carpenters and Joiners of America (UBC). Some of these commenters seemed to embrace the difficulty of classifying workers as independent contractors under the 2024 Rule, quoting from (withdrawn) AI 2015–1 to assert that ''most workers'' should be FLSA-covered employees under the economic reality test. Coalition of State Officials; NELP; *see also* SMART & SMACNA (asserting that AI 2015–1 ''effectively created a presumption that workers are employees under the FLSA'' and recommending the Department to endorse a rebuttable presumption for workers in the construction industry). Alternatively, some commenters acknowledged the Department's concerns over the 2024 Rule's description of certain economic reality factors but recommended the Department to consider targeted adjustments to the 2024 Rule in lieu of the proposed replacement. *See* NWJP (acknowledging that the NPRM ''raises some . . . specific small concerns about what [the Department] considers lopsided framing of the 2024 [Rule]'' but asserting that ''[t]hese small issues do not warrant a wholesale repeal''); UBC (''Instead of [restoring the 2021 Rule], the Proposed Rule could clarify the conditional and other language it finds objectionable in the 2024 Rule.''). Merits of the 2024 Rule aside, many commenters asserted that the analysis proposed to replace the 2024 Rule would be inappropriately biased in favor of independent contractor status. *See, e.g.,* Farmworker Justice (''It is clear that the Proposed Rule, like the 2021 IC Rule, aims to classify more workers as independent contractors, by narrowing the test for employment in a way that Congress had explicitly rejected when enacting the FLSA[.]''); Nichols Kaster (asserting that the NPRM's ''[e]mployer-[f]riendly'' interpretations of the factors will narrow the scope of FLSA coverage).

The Department reiterates that the goal of this rulemaking is to establish a clear and appropriate analysis for determining employee or independent contractor status under the FLSA—not to favor one status over the other. Given that the 2024 Rule could have been viewed as significantly favoring classification of workers as employees, this final rule, like any middle-of-the-road proposal, could result in *comparatively* more workers being classified as independent contractors.[150] But that does not mean the Department's rule favors contractors in ways that the 2024 Rule favored employees. To the contrary, it returns to the test derived from decades of federal case law that no more favors contractors than it does employees. While courts and the Department have long interpreted the FLSA's ''suffer or permit'' language as establishing a broader scope of employment than what exists under the common law, neither the FLSA nor any of the Supreme Court cases addressing the classification of independent contractors require an economic reality test that is perceived to lead to an employee rather than independent contractor outcome. For

[146] *Silk,* 331 U.S. at 716 (finding that truck drivers ''depend upon their own initiative, judgment and energy for a large part of their success''); *Rutherford Food,* 331 U.S. at 730 (finding that workers' ''profits'' did not depend ''upon the initiative, judgment or foresight of the typical independent contractor'').

[147] 29 CFR 795.110(b)(5) (2024).

[148] *Lauritzen,* 835 F.2d at 1539 (Easterbrook, J., concurring) (''*Everything* the employer does is 'integral' to its business—why else do it?'').

[149] 29 CFR 795.110(b)(4) (2024).

[150] Although, as explained later in this rule's economic analysis, the effect should be minimal and most of these independent contractors will result from business' creation of new roles.

example, to the extent that an individual's lack of specialized skills is correlated with employee status and thus indicative of an employment relationship, the converse should also be true—*i.e.,* an individual's possession of specialized skills should be indicative of independent contractor status, regardless of whether his or her skills are exercised ''in connection with business-like initiative.'' Similarly, if an indefinite or continuous work relationship with a particular hiring party is indicative of an employment relationship, a definite or sporadic work relationship with a hiring party should be indicative of independent contractor status, regardless of whether such impermanence is attributable to ''operational characteristics that are unique or intrinsic to particular businesses or industries.'' Notably, the Department's 1997 MSPA regulation did not feature this kind of language in its application of the ''skill'' and ''permanence'' factors,[151] underscoring that the 2024 Rule represented a departure from the Department's prior application of the economic reality test. Ultimately, the Department's place is not to pick favorites, but rather provide a clear analysis that workers and businesses alike may use to properly classify employees and contractors.

While some commenters defended the 2024 Rule's comparative approach to investment,[152] no commenter disputed the Department's central concern—shared by many commenters—that this approach risks indicating the existence of an employment relationship in many cases simply because the worker's investments are smaller than the potential employer's ''investments in its overall business.'' Here again, as with the ''skill'' and ''permanency'' factors, the 2024 Rule's formulation of the ''investment'' factor departed from the Department's longstanding application of the economic reality test in a way that made a finding of independent contractor status harder than what is required by the law.[153] Thus, having considered commenter feedback, the Department concludes that the 2024 Rule's description of the investment factor could have been perceived as unduly restrictive of independent contracting.

The Department acknowledges that the 2024 Rule's ''integral part'' factor was generally consistent with the Department's pre-2021 guidance and the way most courts apply this factor today. *See, e.g.,* AFL–CIO; Coalition of State Officials; Farmworker Justice. However, as explained in the 2021 Rule and in the NPRM, the Supreme Court in *Rutherford Food* originally examined whether the workers at issue were part of the hiring party's ''integrated unit,'' [154] which is more probative of employee or independent contractor status than an inquiry into whether services are ''integral'' (*i.e.,* ''critical, necessary, or central'') to the hiring party. Upon reconsideration, the Department believes that the 2024 Rule's ''integral part'' factor was a missed opportunity to return to *Rutherford Food's* original focus on integration.

The Department notes that many commenters who opposed the NPRM objected that its proposed analysis would ''make it easier'' to classify workers as independent contractors. Center for WorkLife Law; Farmworker Justice; North America's Building Trades Unions (NABTU); Sen. Elizabeth Warren. As the Department has noted repeatedly, the objective is the proper classification of workers under the law—not to make classification in any direction more or less *easy* or *difficult* than another. Indeed, the Department believes that the clearer distillation of the legal analysis will be easier for entities to apply than a confusing one; in this respect, the Department expects that this rule will make it easier for entities to appropriately classify all workers, including employees. More fundamentally, it is not the Department's role to encourage, discourage, expand, or restrict independent contracting any more or less than employment. The law allows—and workers, businesses, and the economy benefit from—the diversity of opportunities and protects those workers who are employees. Indeed, the Department recognized in the 2024 Rule that ''independent contractors and small businesses play an important role in our economy,'' [155] expressing at the time that the 2024 Rule was ''not intended to disrupt the businesses of independent contractors who are, as a matter of economic reality, in business for themselves.'' [156] Upon reconsideration, the Department shares the expressed concerns of many commenters that retaining the 2024 Rule would have such a disruptive effect, in part because the 2024 Rule's description of various economic reality factors appeared to be more restrictive of independent contractor classification than the Department's pre-2021 guidance, or the Supreme Court's application of the economic reality test. Ensuring that the Department's enforcement of federal wage and hour law does not deter or inhibit legitimate independent contracting or result in the unnecessary or mistaken classification of economically independent workers as employees are appropriate policy considerations.

C. Concerns Over the 2024 Rule's Compatibility With the Modern Economy

In the 2021 Rule, the Department explained that certain technological and social changes have made the traditional articulation of the economic reality test more difficult to apply in the modern economy. For example, it highlighted the effects of several types of change, including societal transition from a predominantly industrial-based to a more knowledge-based economy and shorter job tenures among employees.[157] In 2024, the Department disagreed with its past statements and arguments from some commenters that the 2021 Rule was better suited to the modern economy, asserting that ''[m]odern work arrangements . . . are best addressed using the [2024 Rule's] economic reality test, which considers the totality of the circumstances in each working arrangement and offers a flexible, comprehensive, and appropriately nuanced approach which can be adapted to disparate industries and occupations.'' [158] However, as discussed earlier in section III.A., generalizing an already complicated legal analysis in ways that expand ''flexibility'' injects further ambiguity and can undermine the utility of a rule—namely to clarify the proper application of statutory provisions, which provides regulated entities with the reasonable certainty and predictability they need to do business. This is particularly true for practices which might be novel and innovative. Moreover, in the 2024 Rule, the Department did not address, much less refute, the points made by the 2021 Rule that the predictive accuracy of certain economic reality factors

[151] *See* 29 CFR 500.20(h)(4)(iv)–(v) (1997) (examining ''whether the services rendered by the putative employee require special skill'' and ''the degree of permanency and duration of the working relationship'').

[152] *See infra* section IV.F.2.

[153] *Cf.* 29 CFR 500.20(h)(4)(iii) (1997) (considering ''[t]he *putative employee's* investment in equipment or materials required for the task, or the *putative employee's* employment of other workers'') (emphasis added); *see also Silk,* 331 U.S. at 719 (holding that ''where the arrangements leave driver-owners so much responsibility for investment and management as here, they must be held to be independent contractors,'' noting that the drivers at issue ''own their own trucks'' and ''hire their own helpers'').

[154] 331 U.S. at 729.

[155] 89 FR 1646.

[156] 89 FR 1638.

[157] *See* 86 FR 1175.

[158] 89 FR 1649.

(investments, permanence, and integrality) may be waning due to recent workplace trends. These trends are no less true today than they were in 2021, reinforcing the need for prioritization among the factors of the economic reality test.

Numerous self-identified independent contractors and business organizations asserted that the 2024 Rule is ill-suited for the modern economy. Many of these commenters emphasized that, instead of a ''flexible'' standard, businesses need regulatory certainty to plan, invest, and innovate. *See* Christine Byrne (''I need to be able to rely on a consistent and predictable standard when making decisions about how to structure my business.''); CPAC Foundation Center for Regulatory Freedom (''When the classification standard is unclear, firms may be reluctant to experiment with new approaches . . . [and] potential entrants may delay or abandon new ventures due to concerns about compliance risk.''). Several commenters asserted that regulatory uncertainty imposes a disproportionate burden on independent contractors and small businesses, which lack the resources of larger firms. *See* American Society of Travel Advisors; Institute for the American Worker; National Federation of Independent Business (NFIB); Small Business Administration (SBA) Office of Advocacy. Many commenters emphasized the critical role that independent contracting plays in their industries, which they believed would be harmed if the 2024 Rule were left in place. *See, e.g.,* American Association of Advertising Agencies; Direct Selling Association; National Association of Home Builders; National Association of Realtors; National Council of Agricultural Employers; Truckload Carriers Association. Relatedly, several commenters criticized the 2024 Rule's retention of an ''integral part'' economic reality factor, asserting that the factor fails to recognize the degree to which independent contractors are critical, necessary, or central. *See, e.g.,* National Association of Home Builders; ShiftKey; Transportation Intermediaries Association.

As with the ''integral part'' factor, several commenters asserted that changes in the economy have diminished the predictive accuracy of the skill and permanence factors, which the 2024 Rule places on equal footing with control and opportunity. For example, in questioning the need for a factor examining a worker's amount of skill, CWI asserted that ''[t]oday's expansive independent work opportunities encompass a far wider array of individuals who may not possess a 'skill' that is a part of a traditional learned profession or trade'' and that ''almost anyone [can] enter into distribution and other service industries and design their own opportunity, often by accessing platforms that connect workers with business opportunities.'' *See also* U.S. Chamber; Littler WPI. Similarly, several commenters questioned the probative value of the ''permanence'' factor, noting that many independent contractors choose to voluntarily reengage with particular entities in the context of a successful business relationship. *See, e.g.,* CWI; FedEx; Scopelitis, Garvin, Light, Hanson & Feary P.C. (Scopelitis); U.S. Chamber.

Some commenters defended the 2024 Rule as more compatible with the modern economy than the NPRM. For example, GFI asserted that because ''independent contracting—both in legitimate forms and via misclassification—occurs through a wide variety of working arrangements,'' the Department should retain a ''flexible, comprehensive'' analysis instead of one that ''focus[es] on core factors that may not capture all relevant features of the relationship.'' *See also* Coalition of State Officials (asserting that ''the gig economy, changes in technology, and their impacts on workplace dynamics . . . highlight[] the need for a flexible test, like the one set forth in the 2024 rule''). Coalition of State Officials additionally commented that, unlike the NPRM's proposed analysis, the 2024 Rule included language identifying ''whether the potential employer uses technological means to supervise the performance of the work (such as by means of a device or electronically)'' as a relevant consideration within the control factor,[159] asserting that the NPRM's silence on such control contradicts the stated rationales for this rulemaking. *See also* Allegheny County et al. (asserting that the NPRM ''ignores that modern employers commonly use technology and algorithms to automatically and invisibly track, supervise, and control the conditions of work for supposed independent contractors''); NELP (asserting that the NPRM ''misses the sophisticated yet nuanced ways that corporations set or control the material terms of the work . . . including [with] productivity trackers, webcam monitoring, wearable devices, and algorithms and apps used for wage-setting'').

Having reviewed these comments, the Department remains persuaded, as it made clear in 2021, that the diversity of work arrangements in the modern economy underscores the need for an analysis that provides more predictable outcomes than the 2024 Rule. In particular, the 2024 Rule's failure to provide guidance on the relative importance of the different economic reality factors was a missed opportunity to promote more consistent classification outcomes—even in similar factual circumstances.[160] While some degree of flexibility in the economic reality test is necessary and required by Supreme Court precedent,[161] an analysis which is too flexible can result in arbitrary and unpredictable outcomes. ''People are entitled to know the legal rules before they act, and only the most compelling reason should [justify] an approach under which no one can know where he stands until litigation has been completed.'' [162]

Moreover, an analysis which affords equal weight to every economic reality factor fails to account for the fact that some characteristics no longer correlate as strongly as they once did with a particular classification outcome—and is at odds with how courts have considered and applied these factors in practice. To be specific, commenter feedback (described above) suggests that more independent contractors today lack ''specialized skills,'' perform work which is ''integral'' to their clients, and have lengthy, recurring relationships with their clients. Accordingly, a rule prioritizing the economic reality factors that remain most relevant and indicative of the difference between employees and independent contractors—control and opportunity—would be a better fit for the modern economy than the 2024 Rule.

Finally, as explained later in section IV.F.1. of this final rule, the Department's omission of regulatory text from the 2024 Rule noting that workers may be supervised through ''technological means'' is not tantamount to ''[e]ncouraging courts to

[159] 89 FR 1743.

[160] As the Department noted in the 2021 Rule, judicial application of an unweighted economic reality test has resulted in conflicting classification outcomes. 86 FR 1170; *compare Lauritzen,* 835 F.2d at 1534–35 (applying a six-factor economic reality test to hold that pickle pickers were employees under the FLSA), *with Brandel,* 736 F.2d at 1117 (applying the same six-factor economic reality test to hold that pickle pickers were not employees under the FLSA); *compare also Cromwell* v. *Driftwood Elec. Contractors, Inc.,* 348 F. App'x 57 (5th Cir. 2009) (holding that cable splicers hired by BellSouth to perform post-Katrina repairs were employees), *with Thibault* v. *BellSouth Telecomms., Inc.,* 612 F.3d 843 (5th Cir. 2010) (holding that a cable splicer hired by the same company to perform the same post-Katrina repair work was an independent contractor).

[161] *See Silk,* 331 U.S. at 716 (''No one [factor] is controlling nor is the list complete.'').

[162] *Lauritzen,* 835 F.2d at 1539 (Easterbrook, J., concurring).

ignore these practices,'' as asserted by Coalition of State Officials. As under the 2021 Rule, where the NPRM's proposed regulatory text identified considerations which should be excluded from the analysis, the text does so explicitly—including in the control factor.[163] As explained in greater detail in section IV.F.1, the Department believes that all relevant facts should be considered, including ways in which new technologies can both empower individuals to be in business for themselves and can serve to control employees as supervisors or managers have historically done. To the extent that the 2024 Rule's regulatory text implied that any technological influence in a work arrangement is evidence of employment, the Department agrees with the advocacy group TechNet that such a perception ''would undermine both innovation and the Department's broader goals of preparing the workforce for an AI-driven economy'' in a manner neither required by law nor advisable as policy.

D. Concerns Over Negative Effects if the 2024 Rule Were Left in Place

As a downstream consequence of the 2024 Rule's analytical flaws, the Department is concerned that leaving the 2024 Rule in effect could have led to undesirable policy outcomes. Specifically, a classification analysis which is ambiguous or is perceived as overly restrictive of independent contracting may induce businesses to unnecessarily classify economically independent workers as employees or deter businesses from engaging with such individuals at all—outcomes with harmful consequences for the broader economy.

As the Department acknowledged in the 2024 Rule, ''independent contractors and small businesses play an important role in our economy.'' [164] Independent contracting offers individuals the ability to control when, where, and how they work, and it provides businesses—particularly small enterprises and new ventures—with access to specialized skills and scalable workforces.[165]

While independent contractors are not entitled to FLSA protections, they often prize the autonomy and flexibility their work affords; indeed, many pursue contracting arrangements as a preferred mode of work.[166] A rule that operates to complicate or discourage these arrangements may inadvertently limit work opportunities for individuals seeking flexibility due to caregiving responsibilities, education, retirement, geographic constraints, or other personal circumstances. For businesses, unclear or one-sided regulations can deter growth and investment. To the extent that the 2024 Rule curtailed or discouraged legitimate independent contracting, investment, and innovation, it may have led to negative effects on consumers, who may have faced higher prices and a reduced number of alternatives to meet their needs. These potential effects are discussed in greater detail in the regulatory impact analysis for this rule in section VI. Ultimately, this rule helps workers and businesses properly classify employees and independent contractors under the law at the outset of their work arrangements. It neither favors nor disfavors employees or independent contractors—and it neither facilitates nor complicates classification in any one direction over the other.

Many commenters agreed with the NPRM's assessment that leaving the 2024 Rule in place could have harmful policy consequences. As an initial matter, several commenters asserted that the 2024 Rule's classification analysis imposed avoidable compliance costs for independent contractors and their business partners. *See, e.g.,* Competitive Enterprise Institute; Engine Advocacy; Small Business & Entrepreneurship Council; U.S. Hispanic Business Council. For example, SBA's Office of Advocacy reported that, to mitigate perceived legal risk, ''multiple small businesses commented [at a recent SBA roundtable] that they only hire independent contractors that form their own business entity,'' while independent contractor Connie Kirkpatrick wrote that, in her view, the 2024 Rule resulted in her having to use formal written contracts with clients, which felt ''disproportionate to the scope of what [her clients] were seeking.'' Some of these commenters elaborated that time and resources expended in response to the 2024 Rule were diverted from more productive economic activity. *See* Louisville Beauty Academy (asserting that ''[s]mall school owners were forced to spend thousands of dollars on HR consultations to determine if a guest educator visiting for one day might trigger an audit or misclassification lawsuit,'' and that such ''costs are a drain on resources that could otherwise be used for student scholarships or tuition matching''); *see also* CPAC Foundation Center for Regulatory Freedom; Truckers Integral to Our Economy.

Several commenters asserted that legal risk attributable to the 2024 Rule resulted in the unnecessary ''overclassification'' of economically independent individuals as employees. CPAC Foundation Center for Regulatory Freedom commented that ''[t]he consequences of misclassification—particularly the potential for back wages, penalties, and litigation—are significant, while the consequences of overclassification are comparatively limited. This imbalance creates a strong incentive for businesses to adopt conservative classification practices, even when those practices do not reflect the underlying economic reality of the working relationship.'' *See* American Society for Travel Advisors (''[O]ut of either an abundance of caution or genuine confusion, [businesses] may simply choose to classify all workers as employees . . . [which is not] desirable for the business in question or from a macroeconomic perspective.''); *see also* Brittany VanDerBill (independent contractor); Littler WPI; Transportation Intermediaries Association. Many self-identified independent contractors expressed their perception that they would not or could not continue working if the structure of their working relationships were changed. *See, e.g.,* Delivery Platform Worker 1; Delivery Platform Worker 2; Delivery Platform Worker 3; Delivery Platform Worker 4; Delivery Platform Worker 5; Karla White; *see also* FSI (reporting a survey finding that '''up to a fifth of independent financial advisors' would potentially retire if they were reclassified as employees'').

[163] *See* 91 FR 9974 (''Requiring the individual to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships) does not constitute control that makes the individual more or less likely to be an employee under the Act.'').

[164] 89 FR 1646.

[165] *See, e.g.,* Liya Palagashvili, *Exploring How Regulations Shape Technology Startups,* Mercatus Research 23 (May 2021), *https://www.mercatus.org/media/74416/* (reporting that 57 percent of surveyed tech startups indicated that the use of independent contractors was ''an indispensable or essential part of their business models'').

[166] For example, in 2023, the Bureau of Labor Statistics reported that 80.3 percent of independent contractors prefer their work arrangement, compared to just 8.3 percent who would prefer a ''traditional work arrangement.'' Bureau of Labor Statistics, U.S. Department of Labor, *Contingent and Alternative Employment Arrangements—July 2023,* USDL–24–2267 (Nov. 8, 2024), *https://www.bls.gov/news.release/pdf/conemp.pdf.* The Department notes that to the extent the discussion herein could be interpreted to mean that individuals may choose whether to be an employee or an independent contractor as a matter of law under the FLSA, as discussed in the 2021 Rule, ''workers who are employees under the facts and law [may not] waive the FLSA's protections by classifying themselves as independent contractors.'' 86 FR 1179; *see also* 89 FR 1671 (similar discussion in 2024 Rule preamble).

Many commenters also asserted that, instead of defensive ''overclassification,'' many independent contractor arrangements would be avoided or discontinued altogether if the 2024 Rule were left in place. For example, FSI speculated that ''[i]f reclassification under the 2024 Rule were to drive medium-sized businesses that frequently hire independent contractors above the [Affordable Care Act's] fifty-employee threshold, they may respond by laying off employees to remain under the threshold and so avoid the requirement to provide health insurance.'' [167] Americans for Tax Reform asserted that because ''small businesses are much less able to absorb new labor costs'' than larger businesses, ''[m]any could be forced to shut down if they are forced to cease their collaborations with independent contractors.'' Some commenters alleged that the 2024 Rule has already resulted in the avoidance or discontinuation of certain work opportunities. *See* Connie Kirkpatrick (''Despite clear contract language and my direct reassurances that the agreement did not commit them to an ongoing relationship, some [of my] clients declined to proceed.''); CWI (''Member companies have deferred or abandoned independent contractor arrangements due to legal uncertainty.''); Flex Partners (''[A] significant client eliminated all contractors—including [Flex Partners]—following the [2024 Rule], which was viewed as less predictable and riskier.''); Louisville Beauty Academy (''Schools began eliminating guest artist programs to avoid legal risk, directly reducing the quality of instruction and the variety of techniques available to students.''). Citing to various studies, Littler WPI asserted that ''[a] large and growing body of literature has shown that overly strict classification rules destroy jobs.''

Many commenters emphasized potential harms to consumers and the broader economy if the 2024 Rule were left in place. For example, noting that ''the trucking industry continues to face driver recruitment challenges and supply chain pressures,'' the Intermodal Association of North America commented that retaining the 2024 Rule would result in workforce disruption, supply chain instability, reduced investment and entrepreneurship, and increased costs for consumers. *See also* Truckers Integral to Our Economy (''At a time when policymakers across the political spectrum have identified supply chain resilience as a national priority, restoring clarity in independent contractor law is a directly supply-chain-strengthening action.''). Similarly, FSI asserted that retaining the 2024 Rule ''would lead to mass retirements of independent financial advisors, raise the cost of obtaining critical retirement planning and other financial guidance, and reduce services for underserved populations, including rural areas.'' *See also* First Command Financial Services; National Association of Insurance and Financial Advisors. Finally, several commenters asserted that the 2024 Rule's narrower exclusion from the control factor of ''[a]ctions taken by the potential employer for the sole purpose of complying with a specific, applicable Federal, State, Tribal, or local law or regulation'' would deter businesses from adopting safety or consumer protection measures which exceed minimum legal requirements. *See* FSI (''The 2024 Rule's approach created a perverse incentive for businesses to seek only minimal regulatory compliance; a race to the bottom in workplace safety, financial services, and other areas is the opposite of what the government should encourage.''); *see also* Lyft; WAFLA.

Commenters who opposed the NPRM generally did not address the possibility that leaving the 2024 Rule in place could have negative consequences for independent contractors, businesses, and consumers. *But see* Adam Anderson (asserting that the NPRM provided ''theoretical concerns rather than evidence'' of such harms); Coalition of State Officials (similar). Instead, many commenters asserted that rescinding the 2024 Rule and replacing it with the NPRM's proposed analysis would result in the reclassification or misclassification of employees as independent contractors, which they alleged would have various downstream harms. *See, e.g.,* Coalition of State Officials (asserting that ''unscrupulous or unsophisticated employers may take advantage of the confusion which may arise from this rule to misclassify their workers and incur certain savings''); Economic Policy Institute (''DOL's NPRM will encourage misclassification schemes and a race to the bottom, where employers will be able to reclassify their employees as independent contractors and evade their obligations under [the FLSA, FMLA, and MSPA].''); National Urban League (''If finalized, this rule would significantly narrow the scope of workers entitled to federal labor protections . . . and weaken the economic security of those who drive the economy.''). Several commenters noted that the Department previously determined that the 2021 Rule could have such effects in the 2024 Rule, asserting that the NPRM failed to explain the Department's reversal of its earlier findings. *See* GFI; NWJP; SWACCA.

Commenters who opposed the NPRM asserted that employees reclassified or misclassified as independent contractors as a consequence of this rulemaking would no longer enjoy worker protections established under the FLSA, FMLA, or MSPA, such as the right to receive no less than the federal minimum wage, the right to receive overtime pay, and the right to take job-protected leave for serious medical conditions. In a joint comment, the National Partnership for Women & Families and 35 other organizations asserted that this rulemaking would have ''especially harmful consequences'' for women workers because depriving workers of FLSA employee status ''will strip workers of the right to be free from pay discrimination and to access workplace lactation accommodations'' under the Equal Pay Act and PUMP Act, which are codified in the FLSA.[168] *See also* Center for Worklife Law; National Women's Law Center. Several commenters asserted reclassification or misclassification facilitated by this rulemaking would shift payroll tax burdens to workers and deprive federal and state governments of tax revenue for certain employment and safety net programs, such as Social Security, Medicare, unemployment insurance, and workers compensation insurance. *See, e.g.,* AFL–CIO; Allegheny County et al.; IBT. Numerous commenters asserted that this rulemaking would place law-abiding employers at a competitive disadvantage against businesses that misclassify their workforce as independent contractors. *See* AFL–CIO; Allegheny County et al.; Mechanical Contractors Association of America; NABTU; Reps. Bobby Scott and Ilhan Omar; SWACCA. Some commenters asserted that confusion and increased misclassification attributable to the NPRM would burden state and local governments by forcing them to increase spending on labor law enforcement or public outreach. *See* AFL–CIO; Allegheny County et al.; Coalition of State Officials. Invoking many of the alleged harms described in this paragraph, AFL–CIO asserted that the

[167] Under the Affordable Care Act, employers with 50 or more full-time employees must either offer health insurance coverage to their employees and their dependents or pay an ''employer shared responsibility payment'' to the federal government. *See* 26 U.S.C. 4980H. The Department notes that this rule solely pertains to the FLSA, FMLA, and MSPA; it does not affect the scope of employment for purposes of other federal laws such as the Affordable Care Act.

[168] *See* 29 U.S.C. 206(d); 29 U.S.C. 218d.

NPRM ''fails to account for the substantial reliance interests that have developed around the existing interpretation of the FLSA'' for workers, unions, employers, and enforcement institutions. *See also* GFI (asserting that the NPRM ''fails to adequately consider the serious reliance interests of workers who have depended on the current regulations for legal certainty''). Finally, AFL–CIO, Center for Law and Social Policy (CLASP), and GFI objected that the NPRM would exacerbate ''fissuring'' in the labor market, where lead companies outsource core functions to smaller subcontractors and independent contractors rather than hiring employees directly.

The Department appreciates that commenters strongly disagree on the potential risks and benefits of the analysis contained in the 2021 and 2024 Rules. On balance, the Department is persuaded by commenter feedback that the latter carries greater risks than the former—though to be clear, the Department does not agree that either rule would result in all of the consequences asserted by their respective critics and certainly not to the same degree. The Department notes that several commenters attributed the loss or discontinuation of specific independent contracting opportunities to the 2024 Rule, whereas commenters who opposed this rulemaking did not present any examples attributing the misclassification of employees as independent contractors to the 2021 Rule.[169] More importantly, the Department disagrees that the analysis adopted in this rulemaking will increase the misclassification of employees as independent contractors. A primary objective of this rule is the proper classification of workers; it neither tolerates the misclassification of employees as independent contractors nor the ''overclassification'' of independent contractors as employees. While most commenters tended to criticize one effect or the other, the Department rejects the premise that it must choose between the lesser of these two evils. As explained more fully in section IV of this notice, the economic reality test adopted in this rulemaking is consistent with longstanding judicial precedent, notwithstanding refinements that will make the test more predictable and easier to apply. The adopted analysis establishes a broader scope of employment than a common law control test, but is neither more nor less permissive of independent contracting than the Department's current (and pre-2021) enforcement policy.[170]

The Department acknowledges that, in the 2024 Rule, it explained that its rulemaking to rescind and replace the 2021 Rule was motivated, in part, by concerns that the 2021 Rule had ''increased the risk of worker misclassification'' by ''improperly narrow[ing] the focus of the inquiry in a way that may have led employers to believe the test no longer includes as many considerations,'' asserting that ''confusion and misapplication of [the 2021 Rule] could deprive many workers of protections they are entitled to under the FLSA.'' [171] However, apart from highlighting statements made by some commenters,[172] the Department did not demonstrate that the 2021 Rule was actually being misapplied in ways that resulted in the misclassification of FLSA-covered employees as independent contractors.[173] To the contrary, the Department issued numerous press releases between 2022 and 2024 announcing successful enforcement actions where WHD applied the 2021 Rule's analysis.[174] This suggests that the 2021 Rule was no impediment to the Department to appropriately identify, pursue, and remedy the misclassification of FLSA-covered employees as independent contractors, consistent with its duty to enforce the FLSA.

As noted in the NPRM, the Department estimates that this rulemaking will reduce the likelihood that businesses will unnecessarily classify economically independent workers as employees. The downstream consequences of reducing defensive overclassification are addressed in greater detail in the regulatory impact analysis in section VI of this rule. However, the Department notes that policies which facilitate legitimate independent contracting do not necessarily come at the expense of traditional employment. To the contrary, several commenters asserted that independent contractors can help to create and preserve employee jobs. For example, emphasizing the importance of freelance photographers and other independent contractors in the local newspaper industry, the National Newspaper Association commented that ''[w]e do not see the use of independent contractors as a deterrent to employment. Rather the contractors strengthen the product, which draws more subscribers and helps our employees to keep their jobs.'' Similarly, Flex Association commented that ''[g]rocery delivery workers bring new revenue to grocery stores, which can then hire more employees. Meal-delivery workers bring new revenue to restaurants, which can also hire more employees. Rideshare drivers bring revenue to all kinds of local businesses, which can hire even more people. . . . What's more, the companies that power these transactions also employ their own workers—engineers, customer-service agents, salespeople, marketing professionals, and more. In short, self-employment and W–2 employment do not compete with each other; instead, they feed into a virtuous cycle of job growth.''

With respect to commenter concerns over increased ''fissuring'' in the labor market, the Department does not believe that this rulemaking will result in any substantial outsourcing of work from employees to independent contractors.[175] In any event, consistent with the scope of its authority, the Department's objective in this rulemaking is to set forth an analysis which more clearly and consistently distinguishes between employees and independent contractors—not to shape or reshape the broader labor market.

The Department disagrees that this rulemaking will disadvantage law-abiding employers or burden state and local governments. Commenter

[169] Responding to the Department's observation in the NPRM that there did not appear to be any significant reclassification of employees as independent contractors following publication of the 2021 Rule, *see* 91 FR 9961, SWACCA asserted that such a finding ''is a *non sequitur* because DOL withdrew the 2021 final rule before it took effect.'' However, as discussed in section II.D. of this rule, a federal district court invalidated the Department's withdrawal of the 2021 Rule on March 14, 2022, and the Department subsequently applied the 2021 Rule to assess independent contractor status in enforcement actions involving work performed on or between March 8, 2021, and March 10, 2024 (before the 2024 Rule's rescission of the 2021 Rule formally took effect on March 11, 2024).

[170] *See infra* section VI.G.

[171] 89 FR 1658.

[172] 89 FR 1656–57.

[173] *See* 89 FR 1726 (suggesting in the 2024 Rule's regulatory impact analysis that the 2024 Rule ''*may* reduce misclassification of employees as independent contractors'' to the extent that ''confusion about how to apply the analysis in the 2021 IC Rule . . . *could* lead to misclassification'') (emphasis added).

[174] *See, e.g.,* U.S. Department of Labor Recovers $168K in Back Wages for 51 Storm Recovery Workers Misclassified as Independent Contractors, Denied Overtime, WHD Press Release (Jan. 23, 2024), *https://www.dol.gov/newsroom/releases/whd/whd20240123;* U.S. Department of Labor Recovers $532K in Back Wages for 67 Workers After Montgomery Home Care Employer Misclassifies Them as Contractors, WHD Press Release (Nov. 14, 2023), *https://www.dol.gov/newsroom/releases/whd/whd20231114-0;* Department of Labor Recovers $1.6M in Back Wages, Damages from North Carolina Contractor for 188 Workers Misclassified as Independent Contractors, WHD Press Release (Aug. 9, 2023), *https://www.dol.gov/newsroom/releases/whd/whd20230809.*

[175] *See infra* section VI.

assertions to this effect are premised on the assumption that this rulemaking will increase the misclassification of employees as independent contractors which—as discussed earlier and throughout this rule—the Department does not anticipate. Although the FLSA was enacted in part to prevent ''unfair method[s] of competition in commerce,'' [176] the Act was not intended to disrupt legitimate independent contracting.[177] The Department notes that none of the federal wage and hour statutes at issue in this rulemaking preempt state law, so states and localities remain free to enforce or enact tests that are more restrictive of independent contracting if they so choose.[178]

Correctly classifying workers, whether as employees or independent contractors, remains vitally important to the proper application and enforcement of the FLSA. One of the most effective ways to prevent misclassification is to clarify how workers and businesses may properly and reliably apply the appropriate analysis across a wide array of industries, companies, and individual working arrangements. The Department's role is not to incentivize or disincentivize companies from classifying workers as employees or independent contractors, either by placing a regulatory finger on one side of the scale or the other or by allowing legal ambiguity to discourage the correct classification of individuals. In this rulemaking, the Department is adopting a rule that is more consistent with Supreme Court precedent, provides a cogent synthesis of the over 80 years of case law since the FLSA's enactment that has helped to interpret the relevant statutory terms, and also seeks to minimize potential negative effects on independent contractors and their business partners while still effectively addressing misclassification and abuse.

E. The Need for Uniformity and Consistency in the Analysis of Employee or Independent Contractor Status Under the FLSA, FMLA, and MSPA, Which Share the Same Statutory Definitions of Employment

As noted earlier, the FMLA and MSPA both incorporate the FLSA's broad definition of ''employ,'' including ''to suffer or permit to work.'' *See* 29 U.S.C. 2611(3) (FMLA); 29 U.S.C. 1802(5) (MSPA). Thus, it has been the Department's longstanding position that the analysis for determining whether a worker is an employee or an independent contractor should be the same under all three statutes—*i.e.,* the analysis which applies under the FLSA.

However, as noted in the NPRM, the Department's regulations have not reflected a single standard for the three statutes.[179] For example, the MSPA regulation noted that MSPA and the FLSA share the same employment definitions and advised that a determination of employee or independent contractor status ''may include consideration of whether'' there is an employee or independent contractor relationship under the FLSA.[180] However, the regulation also advised that determining whether agricultural workers or farm labor contractors are independent contractors ''should be resolved in accordance with the factors set out'' therein, ''based upon an evaluation of all of the circumstances.'' [181] Those factors are not exactly the same as the factors that the Department is adopting in this rule, and of particular relevance, the MSPA regulation did not—like this rule's FLSA analysis—advise how to weigh the factors. There are also differences between the economic reality factors in the MSPA regulation and some of the factors described in the 2024 Rule and the analysis from FAB 2025–1 that the Department applied under the FLSA beginning in May 2025. Thus, retaining the MSPA regulation's instruction to assess employee or independent contractor status ''in accordance with'' that regulation's enumerated factors could create uncertainty over whether any FLSA guidance issued by the Department on this topic—including the analysis adopted in this rulemaking—also applies in MSPA cases.

Failing to make conforming edits to the MSPA regulation risks confusing agricultural employers, agricultural associations, and farm labor contractors which might be subject to both the FLSA and MSPA, as well as the agricultural workers that such entities engage. Revising the MSPA regulation (29 CFR 500.20(h)(4)) to conform it to the Department's FLSA regulatory guidance resolves these concerns and provides uniformity between MSPA and the FLSA on this issue.

The FMLA regulation's guidance for assessing employee or independent contractor status could be similarly unclear if conforming edits are not made. The regulation defined ''Employee'' as having the same meaning as that term has under the FLSA and noted that the ''definition of employ for purposes of FMLA is taken from the [FLSA].'' [182] However, the FMLA regulation did not mention the economic reality factors used to distinguish between employees and independent contractors under the FLSA or advise how the factors should be weighed. Instead, the regulation explained generally that ''courts have said that there is no definition that solves all problems as to the limitations of the employer-employee relationship.'' [183] It further advised that ''an employee, as distinguished from an independent contractor who is engaged in a business of his/her own, is one who 'follows the usual path of an employee' and is dependent on the business which [he or she] serves.'' *Id.* This language, although accurate in describing the overall analysis, could be misinterpreted as suggesting that—unlike the FLSA (and MSPA)—there is no set of factors for distinguishing between employees and independent contractors in FMLA cases. The Department did not intend to create or imply any discrepancy between the FMLA and FLSA when it added the language in 29 CFR 825.105(a) in 1995.[184] The Department believes that adding cross-references to part 795 in 29 CFR 825.102 (definition of ''Employee'') and 825.105(a) addresses this concern and provides useful guidance when making the determination under the FMLA.

The risk that employee or independent contractor status under the FMLA could be assessed without

[176] 29 U.S.C. 202(a).

[177] *See Rutherford Food,* 331 U.S. at 729–30 (acknowledging that the FLSA permits independent contracting and distinguishing the workers at issue from ''the typical independent contractor'').

[178] 29 U.S.C. 218(a); *see, e.g.,* section VI.G.3. (analyzing the ''ABC'' test adopted by some states as a regulatory alternative to the analysis adopted in this rule).

[179] The FMLA and MSPA both authorize the Department to issue regulations interpreting their provisions. *See* 29 U.S.C. 2654 (FMLA); 29 U.S.C. 1861 (MSPA).

[180] 91 FR 9943 (citing 29 CFR 500.20(h)(1)–(4) (1997)).

[181] 29 CFR 500.20(h)(4) further advised that the determination should also be made in accordance with ''the principles articulated by the federal courts in'' five cited court decisions—*Rutherford Food,* 331 U.S. 722, and four appellate cases addressing the FLSA employment status of farm labor contractors or agricultural workers: *Real* v. *Driscoll Strawberry Assocs., Inc.,* 603 F.2d 748 (9th Cir. 1979); *Sec'y of Labor* v. *Lauritzen,* 835 F.2d 1529 (7th Cir. 1987); *Beliz* v. *McLeod,* 765 F.2d 1317 (5th Cir. 1985); and *Castillo* v. *Givens,* 704 F.2d 181 (5th Cir. 1983).

[182] 91 FR 9944 (citing 29 CFR 825.102, 825.105(a) (1995)).

[183] 29 CFR 825.105(a) (1995).

[184] *See* 60 FR 2186 (''If a particular arrangement in fact constitutes an employee-employer relationship within the meaning of the FLSA (and case law thereunder) as contemplated by the statutory definitions, and the 'employee' satisfies FMLA's eligibility criteria, the employee is entitled to FMLA's benefits. A true independent contractor relationship within the meaning of the FLSA would not constitute an employee-employer relationship.'').

applying FLSA principles is not merely theoretical. In *Alexander* v. *Avera St. Luke's Hospital,* 768 F.3d 756, 763–64 (8th Cir. 2014)—the only federal circuit-court-level case to decide such a dispute arising under the FMLA—the Eighth Circuit expressly declined to apply an FLSA economic reality test to determine whether the plaintiff was an employee or independent contractor. While acknowledging that the FMLA incorporates the FLSA's ''suffer or permit'' language, the Eighth Circuit concluded that ''simply applying'' an FLSA economic reality test in that FMLA case would ''not [be] appropriate,'' noting that the plaintiff's ''work in a 'professional capacity' was totally exempt from the FLSA's minimum standards.'' *Id.* at 763 (citing 29 U.S.C. 213(a)(1)). The Department believes that the Eighth Circuit's approach in *Alexander,* even if limited to cases where the worker would be exempt from the FLSA if an employee, is inconsistent with the FMLA's statutory text and the Department's regulations and guidance, as well as the approach taken by most federal district courts, which do apply an FLSA economic reality test to adjudicate employee or independent contractor disputes under the FMLA. *See, e.g., Hay* v. *ALH Admin. Servs.,* 283 F. Supp. 3d 1273, 1276 (M.D. Fla. 2017); *Nichols* v. *All Points Transp. Corp. of Mich., Inc.,* 364 F. Supp. 2d 621, 630 (E.D. Mich. 2005); *Edwards* v. *Cmty. Enters., Inc.,* 251 F. Supp. 2d 1089, 1103 (D. Conn. 2003).

Although the Department is not aware of any court that has declined to apply an economic reality test under MSPA, several courts have cited to the Department's MSPA regulation and applied its formulation of the economic reality test at 29 CFR 500.20(h)(4) to determine whether an individual is an independent contractor or employee under MSPA. *See, e.g., Fanette* v. *Steven Davis Farms, LLC,* 28 F. Supp. 3d 1243, 1255–56 (N.D. Fla. 2014); *Arredondo* v. *Delano Farms Co.,* 922 F. Supp. 2d 1071, 1075–82 (E.D. Cal. 2013); *Luna* v. *Del Monte Fresh Produce (Se.), Inc.,* No. 1:06–CV–2000–JEC, 2008 WL 754452, at *7–9 (N.D. Ga. Mar. 19, 2008). Of course, it is entirely appropriate for courts to apply the Department's MSPA regulation to adjudicate employee or independent contractor disputes under MSPA, as the Department's MSPA regulation is a legislative rule issued pursuant to an express delegation of rulemaking authority that is binding on regulated entities.[185] However, to the extent the MSPA regulation's specific articulation of the economic reality test differed in meaningful ways from the Department's FLSA guidance (including the analysis proposed in this rulemaking), the Department does not believe it is appropriate to have separate economic reality tests for employee or independent contractor status under laws which share the same statutory definitions for employment.

The Department declined to revise the MSPA regulations in the 2021 and 2024 Rules as it did not see a compelling need to do so at those times,[186] emphasizing in the 2021 Rule, for example, the Department's preference to ''proceed incrementally.'' [187] However, the Department recognizes that many stakeholders desire greater uniformity in the analysis for determining employee or independent contractor status across federal laws that explicitly share common statutory terms. As a result, the Department now agrees that it should make clear that the analysis is consistent under the FLSA, FMLA, and MSPA because these statutes share the same scope of employment.

Many commenters agreed with the NPRM's assessment that the analysis for independent contractor status should be the same across the FLSA, FMLA, and MSPA. Noting that the three laws share the same definition of ''employ,'' the Washington Legal Foundation commented that ''harmonizing the relevant FLSA regulatory definition with the FMLA's and MSPA's is just good housekeeping.'' Numerous commenters asserted that adopting a uniform classification analysis across all three laws would reduce confusion and compliance costs. *See, e.g.,* Association for Competitive Technology; FSI; National Watermelon Association; NFIB. The Wisconsin Institute of Liberty commented that ''[w]orkers, employers, and small businesses should not be required to navigate multiple classification standards across statutes administered by the same agency.''

Though several commenters made policy or legal criticisms of the NPRM's proposed analysis which were unique to the FMLA and MSPA,[188] few commenters opposed to the NPRM disagreed that analysis for assessing independent contractor status should be the same under the FLSA, FMLA, and MSPA. *See* IBT (commenting that IBT would ''strongly support'' a uniform test if the test at issue were ''accurate, comprehensive, and faithful to law''); Justice for Migrant Women (asserting that NPRM's proposed analysis would be contrary to the FLSA, FMLA, and MSPA because all three statutes share the same understanding of the term ''employ''). However, the Department received a small number of comments suggesting that a uniform approach among all three statutes is not required. *See* Coalition of State Officials (asserting that a ''one-size-fits-all-statutes'' rule is unnecessary); Farmworker Justice (''Because the FLSA and the [MSPA] use the same definitions of 'employ,' the case law under each statute can be applicable, but [MSPA] decisions are not always applicable to FLSA cases.'') (citing *Layton* v. *DHL Exp. (USA), Inc.,* 686 F.3d 1172, 1177 (11th Cir. 2012)). Coalition of State Officials asserted that ''unique structures and provisions'' of the FMLA and MSPA require ''reasoned consideration'' before proceeding with a uniform approach. With respect to the FMLA, the Coalition asserted that the Department must consider the requirements set forth at 29 U.S.C. 2611(2)(A)–(B) for an employee to be eligible for FMLA-protected leave as well as the Department's joint employment regulation at 29 CFR 825.106. With respect to MSPA, the Coalition contended that the applicability of the FLSA's definition of ''employ'' to MSPA is ''only for the purposes of implementing the FLSA'' and subject to ''limits that the proposed rule fails to address.''

Relatedly, some commenters asserted that the Department did not adequately explain its reasons for amending the FMLA and MSPA regulations now when it declined to do so in 2024 and 2021. *See* Coalition of State Officials; National Women's Law Center; NWJP. Some of these commenters relied on the Department's prior conclusion that it did not see a ''compelling need'' to revise the MSPA regulations, *see* 86 FR 1177, to suggest that the Department must have a ''compelling need'' now. *See* Coalition of State Officials; NWJP.

Having considered commenter feedback, the Department disagrees that its regulations can or should continue to feature different independent contractor

[185] *See* 29 U.S.C. 1861. The Supreme Court has advised that legislative rules which carry the ''force and effect of law'' are those which: (1) ''affect[ ] individual rights and obligations''; (2) are ''rooted in a grant of [legislative] power by the Congress''; and (3) are ''promulgat[ed] . . . [in] conform[ity] with any procedural requirements imposed by Congress.'' *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302–03 (1979) (internal quotation marks omitted). Similarly, the Department's FMLA regulation is a legislative rule issued pursuant to express rulemaking authority. *See* 29 U.S.C. 2654.

[186] *See supra* sections I.C. and I.E. The Department did not address the FMLA in the 2021 or 2024 Rules.

[187] 86 FR 1177; *see also* 89 FR 1664 (explaining in the 2024 Rule that the Department was ''not revising the MSPA regulation *at this time*'') (emphasis added).

[188] These commenter arguments are addressed later in section IV.J. of this notice.

analyses under the FLSA, FMLA, and MSPA, as Congress plainly intended for the FMLA and MSPA to follow the FLSA in determining whether there is an employment relationship. *See* 29 U.S.C. 2611(3) (providing that ''employ'' and ''employee'' have the ''same meanings given such terms'' in the FLSA); 29 U.S.C. 1802(5) (providing that ''employ'' has ''the meaning given such term'' under the FLSA); *see also Antenor* v. *D & S Farms,* 88 F.3d 925, 929 (11th Cir. 1996) (''Both [FLSA and MSPA] utilize the same definition of 'employ,' so if the growers employed the farmworkers under one statute, they necessarily employed them under the other.''); *Layton,* 686 F.3d at 1177 (in FLSA joint-employer case, declining to apply MSPA case law because, while MSPA defines the employment relationship by reference to the FLSA, the reverse does not necessarily hold true—the FLSA employment relationship is not ''invariably defined'' by reference to MSPA). Commenters' suggestions that uniformity is not required only confirm that there is ambiguity over what analysis should apply to the FMLA and MSPA. The Department resolves that ambiguity now.

Regarding the ''unique structures and provisions'' of the FMLA and MSPA, Coalition of State Officials did not explain what bearing they should have on the question of what analysis to apply when determining employee or independent contractor status. The Department recognizes that an individual's eligibility for the rights and protections of the FMLA depends upon not only whether the individual is employed by a business but also whether the business employs a threshold number of employees near the individual's worksite, among other considerations. *See* 29 U.S.C. 2611(2)(A)–(B). The FMLA is clear that the FLSA's definitions of ''employ'' and ''employee'' apply for purposes of determining both whether the individual is employed by the business and whether the business has the requisite number of employees, *see* 29 U.S.C. 2611(3), and the Department's FMLA regulations have consistently reflected that fact, *see* 60 FR 2185–86; 29 CFR 825.102 (''Employee''). The applicability of the FLSA's definition of employ to MSPA is somewhat more limited because some of MSPA's requirements apply regardless of whether there is an employment relationship. *See, e.g.,* 29 U.S.C. 1823(a) (imposing requirements for the safety and health of housing on ''each person who owns or controls a facility or real property which is used as housing for migrant agricultural workers''). Nothing in this rulemaking alters the application of such requirements.

The Department acknowledges that it must have ''good reasons'' for amending its prior regulations. *See Food & Drug Admin.* v. *Wages & White Lion Investments, L.L.C.,* 604 U.S. 542, 570 (2025) (quoting *F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009)). But the Department need not ''provide a more detailed justification than what would suffice for a new policy created on a blank slate.'' *Id.* Therefore, the fact that the Department stated in 2021 that it did not find a ''compelling need'' to revise the MSPA regulations, *see* 86 FR 1177, does not mean that it must articulate a ''compelling need'' now. In light of clear congressional intent to have the same scope of employment apply to the FLSA, FMLA, and MSPA, and for all the reasons the Department has explained for amending the FLSA regulations, the Department finds good reasons to amend the FMLA and MSPA regulations.

In sum, this rulemaking is motivated partially by the fact that the analysis for distinguishing between employees and independent contractors should be the same under the FMLA and MSPA as it is under the FLSA. Workers and businesses alike will benefit from the simplicity and certainty of having a single uniform standard for assessing employee or independent contractor status under all three laws.

IV. Final Regulatory Provisions

For all the reasons discussed above, the Department is rescinding the 2024 Rule's regulatory guidance on employee or independent contractor status and, separately, readopting at 29 CFR part 795 the 2021 Rule's regulatory guidance, with modifications and enhancements that are explained in the sections below. In the Department's view, this rule's rescission of the 2024 Rule is independent and severable from the regulations adopted in its place, which includes:

- an introductory provision in § 795.100 explaining the purpose of part 795 (with a minor modification to the version of this provision that was adopted in the 2021 Rule);
- a provision in § 795.105(a) explaining that independent contractors are not employees under the FLSA;
- a provision in § 795.105(b) discussing the ''economic reality'' test for distinguishing FLSA employees from independent contractors, including that the ultimate inquiry of economic dependence turns on whether an individual is in business for him- or herself (independent contractor) or is economically dependent on an employer for work (employee), with additional context on the meaning of economic dependence that was not in the 2021 Rule;
- provisions in § 795.105(c) and (d) describing factors examined as part of the economic reality test, including two ''core'' or primary factors—the nature and degree of the individual's control over the work and the individual's opportunity for profit or loss—which, as has been the case in many judicial decisions, here too typically carry greater weight in the analysis,[189] as well as three other factors that may serve as additional guideposts in the analysis; [190]
- a provision in § 795.110 advising that the parties' actual practice is more relevant than what may be contractually or theoretically possible;
- a provision with 14 fact-specific examples in § 795.115, including updates to three of the six examples that originally appeared in the 2021 Rule and eight new examples; [191] and
- a severability provision in § 795.120.

Additionally, this rule revises the regulations addressing employee or independent contractor status under MSPA and the FMLA so that the analysis in part 795 applies when determining employee or independent contractor status under those statutes too. In particular, this rule revises 29 CFR 500.20(h)(4) in the MSPA regulations to replace the analysis there with a cross-reference to the analysis in 29 CFR part 795, and revises the definition of ''Employee'' in 29 CFR 825.102 and the language in 29 CFR 825.105(a) to incorporate into the FMLA regulations the analysis for determining employee or independent contractor classification in 29 CFR part 795.

This rule does not amend the existing versions of 29 CFR 780.330(b) and 788.16(a), which the 2024 Rule updated to include cross-references to the guidance at 29 CFR part 795.[192]

As noted above and for the reasons provided herein, the Department believes that the analysis adopted in this rule represents the best

[189] Each of these factors includes a modification from what the NPRM proposed (and what was in the 2021 Rule) resulting from the Department's consideration of the comments received. *See infra* sections IV.F.1.–2.

[190] The Department has made one minor non-substantive change to the regulatory text in § 795.105(d)(2)(iii) as compared to the 2021 Rule, as explained below.

[191] In response to commenter feedback, the final rule includes three pairs of contrasting illustrative examples that were not proposed in the NPRM.

[192] *See* 89 FR 1725 (explaining changes to 29 CFR 780.330(b) and 788.16(a)).

construction of the FLSA—and by extension the FMLA and MSPA—with respect to whether an individual is an independent contractor or an employee. The Department's response to commenter feedback on the specific features of this rule is provided below.

A. Introductory Statement (§ 795.100)

The Department proposed an introductory statement, § 795.100, at the beginning of the FLSA regulatory provisions. The proposed introductory statement advised that: part 795 contains the Department's ''general interpretations of the text governing individuals' classification as employees or independent contractors under the [FLSA]''; the WHD Administrator will use the interpretations ''to guide the performance of his or her duties under the [FLSA]'' and intends them ''to be used by employers, employees, and courts to understand employers' obligations and employees' rights under the [FLSA]''; ''prior administrative rulings, interpretations, practices, or enforcement policies relating to classification as an employee or independent contractor under the [FLSA]'' are rescinded to the extent that they ''are inconsistent or in conflict with'' part 795; and employers may rely on the interpretations to satisfy the good faith reliance defense in the Portal-to-Portal Act (29 U.S.C. 259), notwithstanding that after any such act or omission in the course of such reliance, any such interpretation is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.[193]

The Department explained that the proposed introductory statement would provide clarity as to how WHD intends to use part 795 and how employers, businesses, workers, and courts should use part 795. The proposed introductory statement would also address how part 795 relates to prior interpretations and explain how employers can rely on part 795 for purposes of the good faith reliance defense in the Portal-to-Portal Act. The Department further explained that the proposed introductory statement would clearly and concisely summarize the purposes of part 795.[194]

The Department received very few comments addressing the introductory statement or related issues. Center for Workplace Compliance supported proposed § 795.100 and its explanation of the purpose and scope of part 795 and how ''the Department's interpretations may be relied upon consistent with the Portal-to-Portal Act.'' Trevar D. Kolodny, who identified himself as a Visiting Fellow at the Heritage Foundation commenting in his individual capacity, stated that the proposed introductory statement was a ''considerable improvement'' compared to the introductory statement in the 2024 Rule, and he particularly disputed the basis for citing *Skidmore* in the 2024 Rule's introductory statement (the proposed introductory statement in this rulemaking did not cite to *Skidmore* or any other case).

Relatedly, Flex Association urged the Department to confirm in this final rule ''that prior subregulatory guidance inconsistent with the rule is no longer operative''—particularly AI 2015–1 and ''pre-2008 versions of Fact Sheet #13.'' The Department agrees that, by the plain language of § 795.100, AI 2015–1 and the pre-2008 versions of Fact Sheet #13 are rescinded by this final rule (to the extent that they had not already been rescinded) as they are inconsistent or in conflict with part 795 as adopted herein. Flex Association suggested that FAB 2025–1 and Opinion Letter FLSA2025–2, on the other hand, will remain part of ''the Department's operative interpretive position.'' Unlike the analysis adopted herein, however, FAB 2025–1 and Opinion Letter FLSA2025–2 reflected six- and seven-factor analyses with no core factors. Accordingly, they are necessarily rescinded as they are inconsistent or in conflict with part 795 as adopted herein. That does not mean that the Wage and Hour Division's conclusion in Opinion Letter FLSA2025–2 that the service providers who used the ''virtual marketplace'' company described therein were independent contractors of that company under the FLSA would be different if the analysis in this final rule were applied. Nonetheless, § 795.100 plainly provides that prior guidance from the Division is rescinded to the extent that it is inconsistent or in conflict with part 795. The Division will endeavor to provide subregulatory guidance consistent with part 795 for the benefit of stakeholders and interested parties.

In this final rule, the Department is replacing the reference to the Department in first sentence of § 795.100 with a reference to the Wage and Hour Division since the interpretations discussed in this section are, to be precise, those of the Division. Otherwise, the Department finalizes § 795.100 as proposed.

B. Determining Employee and Independent Contractor Classification Under the FLSA (§ 795.105)

As explained in the following sections, the Department is readopting—with some modifications and augmentation—the analysis for determining employee or independent contractor classification under the FLSA that it published as § 795.105 of the 2021 Rule.

C. Independent Contractors Are Not Employees Under the Act (§ 795.105(a))

The Department proposed to readopt the regulatory text of § 795.105(a) from the 2021 Rule, which recognized a foundational legal truism—that independent contractors are not employees under the Act. This provision explains that an individual who renders services to a person (a putative or potential employer) as an independent contractor is not an employee of that person under the FLSA, which means that the minimum wage, overtime pay, and recordkeeping obligations for employers under sections 6, 7, and 11 of the FLSA do not apply with respect to services received from the independent contractor.[195] The 2024 Rule contained a similar provision.[196] Having received no substantive comments on this section, the Department is now finalizing as proposed this provision that it has included consistently across rulemakings.

D. Economic Dependence as the Ultimate Inquiry (§ 795.105(b))

The Department proposed to readopt, with a few modifications, the regulatory text of § 795.105(b) from the 2021 Rule. The proposed section explained, as the Supreme Court and courts of appeals have long held, that economic dependence is the ultimate inquiry—to which the underlying factors are directed—when determining an individual worker's status under the FLSA. The section referenced the relevant statutory provisions, explaining that an ''employee'' under the FLSA is an individual whom an employer suffers, permits, or otherwise employs to work. *See* 29 U.S.C. 203(e)(1), (g). It further explained that an employer suffers or permits an individual to work as an employee if, as a matter of economic reality, the individual is economically dependent on that employer for work, as distinguished from an independent contractor, who is in business for him- or herself.[197]

[193] 91 FR 9973.

[194] *Id.* at 9945.

[195] 91 FR 9946; 86 FR 1177–78.

[196] 29 CFR 795.105(a) (2024).

[197] 91 FR 9946.

In the NPRM, the Department noted that in the 2021 Rule, the Department explained that the ''touchstone'' of the economic reality test is ''economic dependence.'' 86 FR 1178. As the 2021 Rule further explained: '' 'Economic dependence is *not* conditioned reliance on an alleged employer for one's primary source of income, for the necessities of life.' '' *Id.* (quoting *Brock* v. *Mr. W Fireworks, Inc.,* 814 F.2d 1042, 1054 (5th Cir. 1987)). Rather, courts have framed the question as '' 'whether, as a matter of economic reality, the workers depend upon someone else's business for the opportunity to render service or are in business for themselves.' '' *Id.* (quoting *Saleem,* 854 F.3d at 139). Moreover, as explained in the NPRM, the Department observed in the 2021 Rule that some courts have relied on a worker's entrepreneurship with respect to one type of work to conclude that the worker was also in business for him- or herself in a second, unrelated type of work, but this ''approach is inconsistent with the Supreme Court's instruction that the economic reality analysis be limited to 'the claimed independent operation.' '' *Id.* (quoting *Silk,* 331 U.S. at 716). Thus, ''the relevant question in this context is whether the worker providing certain service to a potential employer is an entrepreneur 'in that line of business.' '' *Id.* (quoting *Mr. W Fireworks,* 814 F.2d at 1054). Otherwise, businesses would be required to make FLSA classification decisions based on facts outside of the working relationship at issue. *Id.*

The 2024 Rule contained a similar provision, explaining that economic dependence is the ultimate inquiry for determining whether a worker is an independent contractor or an employee and clarifying that economic dependence does not focus on the amount the worker earns or whether the worker has other sources of income.[198] The Department therefore proposed explanatory guidance that it has consistently provided across rulemakings that economic dependence for work rather than economic dependence for income is the proper inquiry. As the Third Circuit has explained, economic dependence ''does not concern whether the workers at issue depend on the money they earn for obtaining the necessities of life . . . . Rather, it examines whether the workers are dependent on a particular business or organization for their continued employment.'' *Donovan* v. *DialAmerica Mktg., Inc.,* 757 F.2d 1376, 1385 (3d Cir. 1985). As noted in the 2021 Rule, economic dependence does not mean that a worker who works for other employers, earns a very limited income from a particular employer, or is independently wealthy cannot nevertheless be economically dependent on any particular employer for purposes of the FLSA. *See* 86 FR 1173; *see also McLaughlin* v. *Seafood, Inc.,* 861 F.2d 450, 452 (5th Cir. 1988), *modified on reh'g,* 867 F.2d 875 (5th Cir. 1989) (reasoning that ''[l]aborers who work for two different employers on alternate days are no less economically dependent than laborers who work for a single employer''); *Halferty* v. *Pulse Drug Co.,* 821 F.2d 261, 267–68 (5th Cir. 1987) (rejecting the employer's argument that the worker's wages were too little to constitute dependence). As the Fifth Circuit has explained, ''it is not dependence in the sense that one could not survive without the income from the job that we examine, but dependence for continued employment.'' *Id.* at 268.

Consistent with the explanations above, and to provide further context on the meaning of economic dependence, the Department proposed to make two modifications to the regulatory text of § 795.105(b) as compared to the 2021 Rule. The purpose of the first modification was to clarify the nature and character of the economic dependence that an employee typically has on an employer for work, as distinct from the relationship that a business owner has to another business with which it works. The purpose of the second modification was to reinforce the Department's consistent guidance that economic dependence for work rather than economic dependence for income is the proper inquiry. Specifically, the Department proposed adding the following sentences to the end of the 2021 Rule's version of § 795.105(b): ''Though both employees and independent contractors are dependent on others in some sense, economic dependence in this context means the dependence that a typical employee has on an employer for work, as opposed to an individual who has more of the nature and character of a business owner who has a separate business. Economic dependence does not focus on the amount of income the worker earns, or whether the worker has other sources of income.'' [199]

Commenters in favor of and opposed to the proposal overall generally agreed with the additional explanatory language that the Department proposed. *See, e.g.,* Flex Association (''Flex endorses the Proposed Rule's focus on an individual's dependence for *work* rather than for *income*''); IBT (agreeing that ''a proposed rule should correctly distinguish dependence-for-work from dependence-for-income,'' elaborating that the focus should be ''on whether the workers are dependent on a particular business or organization for their continued employment''); Littler WPI (commenting that the new language ''captures the core of the economic-reality test''); Society for Human Resource Management (SHRM) (expressing support for the modified definition, which ''aligns with SHRM's position that [the] analysis must focus on the specific worker-business relationship rather than individual financial circumstances''); Uber (''The Rule correctly points out that economic dependence is not synonymous with income. Economic dependence does not turn on whether a worker gets most or all of her revenue from a single source. Instead, it turns on whether the worker relies on a single source for continued work.''). U.S. Chamber of Commerce supported the first proposed clarifying sentence but opined that ''the presence of multiple income sources does matter'' because ''one of the most desired and characteristic aspects of independent contracting is the availability of multiple sources of income.'' U.S. Chamber of Commerce thus requested that the Department amend the second sentence or clarify that ''the opportunity to work for other businesses, and to seek other revenue streams, still weigh in favor of independent contractor status.''

FSI supported the Department's proposal but commented that the Department should ensure that its broader articulation of economic dependence ''does not inadvertently reintroduce the 2024 Rule's flawed premise that entrepreneurial drive and business acumen are indispensable characteristics of independent contractors.'' International Franchise Association (IFA) supported the inclusion of the sentence explaining that ''economic dependence in this context means the dependence that a typical employee has on an employer for work, as opposed to an individual who has more of the nature and character of a business owner who has a separate business,'' but it did not agree that ''economic dependence'' is the ultimate inquiry according to Supreme Court precedent but rather the ''economic realities'' and whether the workers are in business for themselves. IFA also asked the Department to state that ''the economic reality of the typical franchisor and franchisee relationship reflects an independent contractor relationship where the franchisee is not economically dependent upon the

[198] 29 CFR 795.105(b) (2024).

[199] 91 FR 9946.

franchisor for purposes of the FLSA.'' Similarly, Instacart supported the statement that ''economic dependence does not turn on income level'' but requested that the Department add a sentence stating that ''[a]n individual's engagement in work on a part-time, intermittent, or supplemental basis, including in combination with other employment or income sources, does not, by itself, indicate economic dependence on a potential employer.''

In response to U.S. Chamber of Commerce's comment about the need to clarify that the opportunity to work for other businesses and seek income from multiple sources still weighs in favor of independent contractor status, the Department confirms that the control factor in § 795.105(d)(1)(i) addresses this in regulatory text by stating that ''the ability to work for others, which might include the potential employer's competitors, weighs towards the individual being an independent contractor.'' With regard to the concern raised by FSI, the Department does not agree that it is reiterating any language from the 2024 Rule that the commenter found objectionable. Regarding IBT's concern that the proposed language in this section might replace the analysis of the worker's relationship with a particular business, the Department emphasizes that the language in this section describes overarching concepts and is not a substitute for applying the economic reality factors to the working relationship at issue. With respect to IFA's concerns, the Department believes that IFA may have misconstrued the term ''economic dependence'' in § 795.105(b) in this section, as it is part of the consideration of whether ''as a matter of economic reality, the individual is economically dependent on that employer for work,'' and is therefore an employee, or whether ''the individual is, as a matter of economic reality, in business for him- or herself,'' and is therefore an independent contractor. *Id.* Further, the Department declines to make any absolute or categorical statement about the economic reality of any work relationship such as the statement IFA asked the Department to make about franchisees; as IFA accurately states in its comment, the ''economic realities'' always need to be considered. Finally, the Department does not agree with Instacart that it would be helpful to add the clarifying language that Instacart proposed stating that a combination of intermittent work with various income sources ''does not, by itself, indicate economic dependence on a potential employer.'' As the Department makes clear throughout this rule, no one factor or fact alone is determinative of economic dependence or employment classification.

The Department is finalizing this section as proposed.

E. Determining Economic Dependence and Identifying Core Factors (§ 795.105(c))

In the Department's proposal, the readoption of § 795.105(c) represented the most critical change from the 2024 Rule's multifactor analysis in which no factor carries any particular weight to the 2021 Rule's multifactor test that highlights two primary, or core, factors: control and opportunity for profit or loss. Specifically, the Department proposed to readopt the regulatory text of § 795.105(c) from the 2021 Rule, which explains that the control and opportunity for profit or loss factors are more probative in determining whether an individual is an employee or independent contractor under the FLSA.[200] As in the 2021 Rule, the Department proposed that these two primary factors typically carry greater weight in the analysis than any other factor. Thus, these two factors should be considered first, and if both point toward the same classification (either employee or independent contractor), there is a substantial likelihood that is the accurate classification for the individual. The Department also proposed that the three additional factors described in § 795.105(d)(2)—skill, permanence, and whether the work is part of an integrated unit of production—provide additional direction for the analysis, but are less probative (and, in some cases, may not be probative at all). As a result, these factors would be very unlikely, either individually or collectively, to outweigh the combined probative value of the two core or primary factors when together they point toward the same classification. As in the 2021 Rule, the Department proposed that this provision also explains that all these ''economic reality'' factors are not exhaustive, and that no single factor is dispositive.

As the Department explained in the NPRM, this provision was proposed to improve the certainty and predictability of the multifactor economic reality test by focusing it, much in the way that many courts have effectively done, on two principal elements, which the Department refers to as the ''core'' factors. Absent clear, generally applicable guidance about how to balance the broad and overlapping factors and facts encompassed in the multifactor economic reality test, there is an excessive amount of uncertainty as to ''which aspects of 'economic reality' matter, and why.'' *Lauritzen,* 835 F.2d at 1539 (Easterbrook, J., concurring). As the Department explained in its proposal and when proposing the 2021 Rule, although the Department and courts historically analyzed ''the totality of the circumstances making up the economic reality of the relationship to determine a worker's classification'' without ''identifying which types of facts or factors are the most important,'' the significance of facts may sometimes be unclear or factors may point in opposite directions under this approach, exacerbating uncertainty in application of the analysis.[201] However, even within the multifactor, totality of the circumstances test, courts have tended to focus on the two principal factors as the primary, central indicators of whether an individual is an employee or independent contractor. The Department, taking its cue from the courts, sought in the 2021 Rule to provide greater clarity and focus by identifying the two factors it believed were most salient in determining relevant economic dependence, explaining that the two primary factors ''drive at the heart of what is meant by being in business for oneself: Such a person typically controls the work performed in his or her business and enjoys a meaningful opportunity for profit or risk of loss through personal initiative or investment.'' [202] Even though no one test can perfectly harmonize the variations of factors, language, and emphasis among the tests of the Supreme Court and circuit courts of appeals, the Department has attempted to distill the central commonality in these approaches to a single framework that workers and employers alike may accurately apply and on which they may confidently rely.

As explained in the NPRM and the 2021 Rule, highlighting the combined probative value of the two primary factors in the manner set forth in the regulatory text proposed in § 795.105(c) is supported by case law. The Supreme Court has never required a factor-by-factor analysis. And in the seminal Supreme Court cases applying the economic reality test under the FLSA, the Court listed multiple relevant considerations but ultimately resolved the classification question by focusing on whether the worker exercised control and had a genuine opportunity for profit or loss based on initiative or

[200] 91 FR 9947–50; 86 FR 1246 (§ 795.105(c)).

[201] 91 FR 9947; *see also* 85 FR 60606–07, 60620.

[202] 86 FR 1196.

investment—factors that go to the heart of whether an individual is truly in business for him- or herself.[203] The NPRM further explained that, as part of the 2021 rulemaking, the Department reviewed the results of federal appellate decisions since 1975 applying the economic reality test under the FLSA, noting ''a remarkably consistent trend'' where ''the classification favored by the control factor aligned with the worker's ultimate classification in all except a handful where the opportunity factor pointed in the opposite direction. And the classification favored by the opportunity factor aligned with the ultimate classification in every case.'' [204] These two findings imply that whenever the control and opportunity factors both pointed to the same classification—whether employee or independent contractor—that was the court's conclusion regarding the worker's ultimate classification. In other words, ''courts of appeals have effectively been affording the control and opportunity factors greater weight, even if they did not always explicitly acknowledge doing so.'' [205]

The Department acknowledged in the NPRM that proposing to return to the 2021 Rule's core factor analysis represented a change with respect to the interpretation of the economic reality analysis as compared to the 2024 Rule.[206] However, the Department believed such a change was warranted for significant and valid legal and policy reasons—primarily that providing a more focused analysis distilled from judicial precedent would offer greater certainty for employers, employees, and those who wish to engage with or as independent contractors. Additionally, the Department reviewed the concerns identified in the 2024 Rule about the 2021 Rule's approach and considers them misplaced,[207] as discussed further below.

The Department sought comments from the public regarding their experiences using the economic reality analyses provided in the 2021 and 2024 Rules, and why one might be preferable to another. The Department also welcomed comments about any other effective and reliable circuit court analyses, or other appropriate analyses for determining employee or independent contractor status. Additionally, the Department solicited input on whether further streamlining of the two-core-factor analysis would provide even greater clarity and focus on the question whether an individual is an employee or an independent contractor under the FLSA. To that end, the NPRM presented for commenters' consideration an alternative analysis to the two-core-factor approach, in which the control factor would be considered first and, if it points to employee status, the analysis would end there and the worker would be an employee. Under this analysis, the opportunity for profit or loss and other factors would be considered only if the control factor is inconclusive or points to independent contractor status.[208] The comments received, and the Department's responses, are discussed below.

1. Comments and Responses Regarding the Alternative ''Control First'' Streamlined Analysis

A wide range of commenters opposed the proposed alternative of a further streamlined ''control first'' analysis. Commenters representing businesses and workers alike stated that it is inconsistent with longstanding case law providing that no single factor is dispositive under the economic reality test. *See, e.g.,* Coalition to Promote Independent Entrepreneurs; Coalition of State Officials; National Retail Federation; National Partnership for Women & Families et al.; UBC; U.S. Chamber. Many commenters stated that the proposed alternative resembles a common law control test and is therefore inconsistent with the economic reality test applied under the FLSA and with the Department's rejection of the common law test. *See, e.g.,* Coalition of State Officials; CWI; Flex Association; Nichols Kaster; SHRM. Commenters from the business community characterized it as imbalanced and stated that it would tilt the scales in favor of employee status. *See, e.g.,* American Bakers Association; Coalition to Promote Independent Entrepreneurs; Flex Association; Littler WPI; National Retail Federation; U.S. Chamber.

Three commenters expressed support for this proposed alternative. CHRO Association and ShiftKey applauded what they viewed as the enhanced predictability and efficiency of this alternative. Landmark Legal Foundation argued that this alternative is grounded in Supreme Court precedent establishing that the FLSA's employment definitions were intended to capture workers beyond the common law control test. By ''leading with control,'' this alternative ''would ensure that workers who are unambiguously subject to an employer's direction are covered without requiring further inquiry,'' while consideration of opportunity for profit or loss and other factors would preserve the ''broader reach of the 'suffer or permit' standard for cases where control alone is inconclusive.''

Upon consideration of these helpful comments, the Department declines to adopt this proposed alternative analysis. Although the control-first analysis proposed in the NPRM would differ from the common law control test, the Department recognizes that the proposed alternative engendered significant confusion on this point. As the Department has explained throughout this rulemaking and in prior years, it does not intend to adopt a common law control test and believes it is legally constrained from doing so. Consistent with this position, the Department declines to adopt an analysis that considers control as the potentially only factor. Having considered these comments and as discussed below, the Department believes that approach of two principal, central factors strikes the right balance in providing a clear and predictable framework while still considering the other economic reality factors and the circumstances of the whole activity.

2. Comments and Responses Regarding the Proposed ''Two Core Factor'' Analysis

Commenters from the business community widely supported the Department's proposal to adopt the 2021 Rule's analysis for determining employee or independent contractor status under the FLSA by focusing on the two primary factors of control and opportunity for profit or loss. *See, e.g.,* American Trucking Association; Americans for Prosperity Foundation; CWI; DoorDash; Flex Association; Independent Work Coalition; Littler WPI; National Association of Convenience Stores et al.; Small Business & Entrepreneurship Council; SHRM; U.S. Chamber. A number of these commenters agreed that these two factors are practically the most probative of economic dependence. American Trucking Association; Americans for Prosperity Foundation; Littler WPI; U.S. Chamber. Additionally, commenters who work as freelancers applauded the Department for highlighting the two core factors as ''the defining elements of being an independent contractor,'' explaining that ''[i]t feels like common sense to us that if we're deciding when, where and what we do, and if we can do more or

[203] *See Silk,* 331 U.S. at 716–19; *Rutherford Food,* 331 U.S. at 730–31; *Whitaker House,* 366 U.S. at 32.

[204] 91 FR 9947 & n.140 (citing 86 FR 1196–97).

[205] 91 FR 9948 (citing 86 FR 1198).

[206] 91 FR 9948.

[207] *Id.* at 9948–49.

[208] *See* 91 FR 9949–50.

less of it however we please, then we are our own bosses.'' Kim Kavin et al.

Commenters that supported the analysis with two primary central factors also generally praised it for providing greater predictability and more consistent outcomes. *See, e.g.,* Americans for Prosperity Foundation; CWI; CPAC Foundation Center for Regulatory Freedom; FSI; Flex Association; Independent Work Coalition; National Retail Federation; Scopelitis; U.S. Chamber. For example, Flex Association commented that the ''Proposed Rule's principal strength is its predictability.'' *See also* CPAC Foundation Center for Regulatory Freedom (''The prior framework's reliance on an unweighted, multi-factor balancing test created substantial ambiguity by failing to specify how competing considerations should be evaluated . . . . [This] can produce divergent outcomes[.]''). FSI explained that ''[a]lthough the core factors are not where the test ends, those factors anchor the analysis. Businesses and workers know what is very likely to be most important and can structure their arrangements accordingly.'' Similarly, CWI commented that ''[w]hile the Proposed Rule may not present absolute certainty, which is rarely attainable through rulemaking, it provides far clearer guidance than the 2024 Rule did.'' Pacific Legal Foundation urged the Department to provide even more certainty by creating a rebuttable presumption that ''[w]hen control and opportunity for profit or loss both indicate independent contractor status, the worker *is* an independent contractor, absent extraordinary circumstances that the Department or private plaintiff must affirmatively establish.'' *See* American Society of Travel Advisors (similar). Other commenters suggested that if the two primary factors favor independent contractor status, ''that should be the end of the analysis.'' Americans for Prosperity Foundation; *see* Connie Kirkpatrick (similar).

Several commenters maintained that an economic reality analysis focused on the two core factors aligned well with case law construing the FLSA. *See, e.g.,* CWI; DoorDash; FSI; Flex Association; Independent Work Coalition; National Retail Federation; U.S. Chamber. In particular, FSI conducted its own analysis of the 49 post-1975 circuit court cases cited in the preamble to the Department's proposed employee or independent contractor rule in 2022 and concluded that the two-core-factor ''framework is fully consistent with Supreme Court precedent and accurately encapsulates how circuit courts have applied the various factors in practice.'' FSI attached a table showing that ''[i]n the overwhelming majority of those cases (44/49, or 90%),'' the two core factors ''both pointed in the same direction as the classification ultimately reached by the circuit court.'' Further, in a small number of cases, ''(5/49, or 10%), one of the two core factors was either uncertain or pointed in the opposite direction.'' Because ''in *no case* did both factors point the other way'' from the court's ultimate decision, they noted that this bore out the reasoning underlying the Department's 2026 proposal and the 2021 Rule.

Several commenters also agreed with the Department's proposal that the additional factors should not have the same weight as the two primary factors. Americans for Prosperity Foundation; National Retail Federation; U.S. Chamber. National Retail Federation, for example, commented that ''[w]hile these factors provide additional insight into the nature of the relationship between the worker and potential employer, their value should mainly arise when the core factors point in opposite directions.'' U.S. Chamber of Commerce supported the proposed framework but also requested the Department to ''direct that evaluations of the core (and additional factors) with respect to any worker relationship must, in fact, analyze the particular worker's relationship with the business,'' rather than being determined by ''another worker's relationship with a business,'' and also ''fine tune its framework to eliminate any confusion or ambiguity over whether the two core factors have equal weight in the analysis.'' To the extent there is any confusion or difference of opinion on these two issues, the Department makes clear that evaluating the factors necessarily involves analyzing the worker's relationship with the business. However, as U.S. Chamber of Commerce noted, ''[a]ll relevant evidence must be explored,'' which may involve consideration of other workers at the worksite as well.[209] Further, the Department clarifies that the two core factors generally carry the same weight in the overall analysis; nothing in the operative language in § 795.105(c) suggests that one core factor is more or less important than the other. Of course, in a particular case, a core factor that strongly indicates a particular classification outcome (in either direction) will have more relevance than a core factor with conflicting facts where the indicated outcome is ambiguous or a closer call. As the Department explained in 2021, ''a factor's probative value as a general matter [is not the same as] its specific weight in a particular case,'' which depends on ''how strongly specific facts within the factor, on balance, favor[ ] a particular classification.'' [210]

Some commenters opposed the Department's proposal to adopt this analysis from the 2021 Rule, for a variety of reasons. These commenters often contended that designating two central factors was inconsistent with Supreme Court precedent that did not give particular weight or priority to any particular economic reality factor. *See, e.g.,* AFL–CIO (citing *Silk,* 331 U.S. at 716, for the proposition that ''the Court explained that degrees of control, opportunities for profit or loss, investment, permanency, and skill are all 'important for decision,' but '[n]o one is controlling nor is the list complete' '' and *Rutherford Food,* 331 U.S. at 730 for the proposition that ''the determination of the relationship does not depend on such isolated factors but rather upon the circumstances of the whole activity''); Allegheny County et al.; IBT; NELP; New York City Comptroller; Nichols Kaster; NWJP; Southern Poverty Law Center. AFL–CIO criticized the Department's proposal for ''encouraging employers to structure relationships around a select set of favored factors while minimizing others'' and ''substituting a manipulable framework for the statute's command that courts look to the full economic reality of the relationship.'' IBT argued that ''[b]y declaring certain factors 'core' and others merely supplemental, the Department is making a policy choice that is not supported by statute or precedent, and that will predictably harm the workers the FLSA was designed to protect[.]'' *See* Allegheny County et al. (same). NWJP further critiqued the Department's case law analysis, asserting that the Department did not provide evidence to support its ''subjective reading of court opinions'' as ''giving some factors more weight while saying no factor is dispositive and all facts must be considered.'' And Coalition of State Officials asserted that ''[c]reating greater alignment with precedent is not an accurate description of the basis of this rule, since the proposed test departs from decades of Supreme Court and circuit court precedent.'' Additionally, IBT

[209] *See, e.g., Rutherford Food,* 331 U.S. at 729 (''Where the work done, in its essence, follows the usual path of an employee, putting on an 'independent contractor' label does not take the worker from the protection of the Act.'').

[210] 86 FR 1199; *see also id.* at 1202 (''[T]he Department declines to assign an invariable relative weight between the two core factors.'').

emphasized that the ''demotion of permanence, skill, and integrality also directly contradicts binding case law reaffirmed in every circuit decision and every Supreme Court case since 1947.''

As noted in section III.A., commenters who opposed the Department's proposal asserted that the two-core-factor test would generate more confusion and less predictable outcomes—contrary to the Department's goal in this rulemaking and the views of many commenters that supported the proposal—because the analysis differs from prior judicial precedent and Departmental interpretation. *See e.g.* Coalition of State Officials; Getman, Sweeney & Dunn; National Women's Law Center; NWJP; REAL Women in Trucking; SMART & SMACNA; Texas RioGrande Legal Aid. For example, NWJP opined that ''[g]iven the weight of 80-plus years of case law in the Supreme Court and across the circuits,'' and 75 years of Departmental interpretation, courts and litigants' understanding would be ''muddied'' by the Department's adoption of a new analysis. This commenter added that ''the new rule will also lead to more confusion'' due to ''changes in what the factors include as well as how to apply the two core factors.'' Getman, Sweeney & Dunn also urged the Department not to adopt the proposed analysis, which it characterized as not ''consistent with long standing court precedents,'' and thus ''very likely [to] create a split between agency enforcement and judicial application of the FLSA. Such a divergence between the agency and judicial tests would make it exceedingly difficult for employers to understand how to apply the standard, and for workers to know and understand their rights.''

Some commenters who opposed the Department's proposal also viewed the focus on the two central factors of control and opportunity for profit or loss as being too similar to the common law control test, which the Supreme Court rejected for purposes of the FLSA. *See, e.g.,* AFL–CIO; Coalition of State Officials; NELP; Nichols Kaster. Several further believed that it would lead to more misclassification of employees as independent contractors, largely because they viewed the elevation of control and opportunity for profit or loss as core factors and the designation of the other factors as having less probative value as a narrowing of the considerations in the ''totality of the circumstances'' test. AFL–CIO; Allegheny County et al.; Coalition of State Officials; Congressional Labor Caucus; IBT; National Women's Law Center; U.S. Representatives Scott and Omar-U.S. House of Representatives Committee on Education and Workforce, Subcommittee on Workforce Protections. For example, Representatives Scott and Omar, ranking members respectively on the House Committee on Education and Workforce and the Subcommittee on Workforce Protections, contended that ''[b]y narrowing the test to determine employee status, the Proposed Rule takes a less holistic view . . . providing less opportunity to properly assess the totality of circumstances'' which could result in improper reclassification of workers from employee to independent contractor or employers ''hir[ing] workers as independent contractors where they would otherwise be classified as employees, misclassifying these workers.'' Similarly, Coalition of State Officials argued that the Department's proposal would ''improperly narrow the inquiry into a worker's status, leading to misclassification of employees as independent contractors.'' *See also* Congressional Labor Caucus (''Overly narrow interpretations of this relationship expose workers to greater risk of misclassification[.]'').

AFL–CIO in particular expressed concern that the two core factors are ''uniquely susceptible to manipulation'' because employers could ''rely on contractual disclaimers of control, even where control is exercised in practice,'' ''manufacture illusory 'entrepreneurial opportunity' through theoretical or employer-created mechanisms,'' and ''recharacterize work that is plainly central to the business as somehow ancillary.'' As an example, it posited that the framework in the Department's proposal would allow ''a delivery company [to] classify its drivers as independent contractors by contractually disclaiming control, while simultaneously dictating routes through an app, setting non-negotiable prices, imposing performance metrics, and retaining the right to deactivate workers who do not meet those standards. The company could further point to the driver's ability to accept or reject assignments or work for multiple platforms as evidence of 'entrepreneurial opportunity,' even though the worker has no meaningful ability to negotiate rates, build an independent customer base, or operate a truly independent business.''

Some commenters asserted that diminishing the relative importance of non-core factors would be especially prejudicial to agricultural workers. For example, Farmworker Justice asserted that the NPRM ''improperly diminishes the potential weight of th[e skill] factor to the detriment of farmworkers, whose labor is largely unskilled'' and that ''[e]levating two core factors and diminishing this one, would likely lead to misclassifying agricultural workers in positions that often require unskilled labor, as independent contractors.'' Similarly, CLASP asserted that ''[d]e-emphasizing [the ''skill required'' and ''integral part'' factors in favor of core factors] . . . would make it more difficult to determine the status of farmworkers and incentivize farm operators to adopt more exploitative working arrangements like sharecropping or share-farming.''

Finally, the ranking members of the House Education and Workforce Committee and Subcommittee on Workforce Protections contended that the Department's proposed analysis exceeded the Department's statutory authority: ''Congress has not delegated rulemaking authority to the DOL with respect to the scope of the employment relationship under the FLSA, and by extension, the FMLA and the MSPA. The Department only has interpretive rule or guidance authority on this issue, but such interpretations cannot conflict with the text of or intent behind the FLSA, as this proposal does.'' *See also* Allegheny County et al. (''Because the proposed rule conflicts with the text of the FLSA as well as with Supreme Court and circuit court authority interpreting the statute, it constitutes an improper exercise of the Department's rulemaking authority.''); AFSCME (''The Department . . . lacks authority to recast the economic-realities inquiry by elevating two factors above the totality of the circumstances.''). Representatives Scott and Omar added that the 2024 Rule's application of the FLSA's ''suffer or permit'' standard properly ''made clear the importance of the broad, multifactor test in determining employee status under the FLSA.''

After considering the comments received, the Department is finalizing § 795.105(c) as proposed. The Department agrees that it is important and useful to adopt a practical economic realities analysis distilled from federal case law that both workers and businesses may readily, accurately, properly, and reliably apply to classify employees and independent contractors. Rather than set forth a myriad of factors and considerations without direction regarding their application, the Department considers the standard it finalizes best suited to facilitate accurate classification at the outset of relationships, not after years of costly litigation. This provides more certainty and predictability for employers, employees, and independent contractors. The standard is consistent

with the way courts have decided employee or independent contractor cases under the FLSA for decades. As a result, all persons can gain efficiencies in their interactions, and there will likely be a reduced need for litigation in cases where the rule is properly applied, reducing the number of instances in which a court must ultimately reach a conclusion years later about the proper classification of one or more individuals. And though the Department understands why commenters such as the Pacific Legal Foundation seek even more certainty through a rebuttable presumption if the two primary factors point in the same direction, the Department believes a rebuttable presumption improperly injects burdens of proof into an analysis where all factors are properly considered, even though some factors are generally considered to be more probative than others.

The Department disagrees with commenters contending that the Department's proposal is contrary to case law stating that no single factor in the economic reality test is determinative and that the totality of the circumstances must be considered in a holistic rather than mechanical fashion. The core factor analysis finalized by the Department centers on two primary factors—that is, first to be considered and first in importance in most cases—and does not run afoul of this precedent. Specifically, this final rule in § 795.105(c) states—*consistent* with judicial precedent—that no one factor is determinative, nor are the enumerated factors exhaustive. To be clear, by identifying two factors that encompass the considerations that are generally most relevant to determining economic dependence, the Department is certainly not implying that either one of these two core factors alone would be determinative. To the contrary, as the Department has repeatedly explained, these two factors in combination and pointing to the same classification (employee or independent contractor) are rarely going to be outweighed by the probative value of the other economic reality factors. This is not because the Department declares it so, but rather because decades of federal courts applying the tests from which the Department derived this rule demonstrate that such is the practical reality. Indeed, the Department continues to be unaware of any federal appellate case in which the court's ultimate conclusion as to an individual's classification under the FLSA—whether employee or independent contractor—was not in alignment with the court's analysis that the control and opportunity for profit or loss factors both favored that classification. Moreover, the Department has not found any commenter that has identified such a case.[211] Submissions by commenters appear to confirm the point. For example, an analysis submitted by FSI supports the Department's decision to highlight control and opportunity for profit or loss as core factors, as its independent review of almost 50 appellate cases also concluded that ''in no case did both factors point the other way'' from the court's ultimate decision.

The more important point remains. For decades, the outcomes of federal appellate court decisions have overwhelmingly (if not unanimously) aligned with the Department's approach, indicating the saliency of examining the two central factors first. Put another way, according to the courts, the Department's test—properly applied—will produce accurate results. And this further bolsters the reasoning underlying the Department's proposal and negates the view that such a focus is inconsistent with the relevant FLSA case law. The point of disagreement between these commenters and the Department is at bottom a difference between two accurate observations of the governing FLSA case law. The Department's approach recognizes that, notwithstanding courts' general articulations of the test, the two primary factors—when pointing in the same direction—are in effect, synonymous with the classification outcome. On the other side, the commenters in opposition correctly observe that courts have not specifically and explicitly elevated any factors over the others, as the Department's approach does in this rule.[212] Within this space, it is appropriate for the Department to set forth an analysis distilled from the case law in the effort to promote a more practical and efficient way to determine employee or independent contractor status.

The two principal factors are also more probative because the rule relocates to them the most probative aspects of certain other factors. To reduce overlap and confusion, exclusivity, which has traditionally been considered under both permanence and control, is more appropriately analyzed under control, as explained in greater detail in section IV.F.1. of this preamble. Similarly, initiative, which is often considered under skill, is more appropriately analyzed under opportunity for profit or loss.[213] This reorganization necessarily increases the probative value of the two core factors because they now incorporate considerations that other formulations distribute among the permanence and skill factors. Correspondingly, the remaining aspects of permanence and skill are generally less probative once exclusivity and initiative are considered elsewhere. The rule therefore does not omit or diminish relevant evidence. It does the opposite by placing the most probative considerations within the factors to which they most directly relate while avoiding duplicative consideration of the same facts.

Further, the two principal factor analysis provided in § 795.105(c) does not run afoul of judicial admonitions to avoid a mechanical application of the economic reality test because the regulatory text recognizes that these two factors ''typically'' (but not necessarily) carry more weight. The regulatory text also makes clear that alignment of the primary factors creates a ''substantial likelihood,'' not a conclusive

[211] Texas RioGrande Legal Aid asserted that the four FLSA cases identified in the MSPA legislative history as informing the worker classification inquiry for purposes of MSPA ''displayed one or both of the indicators of independent contractor status'' for the core factors even though the court's ultimate conclusion was that the workers were employees. The Department has reviewed those cases (*Rutherford Food, Driscoll, Mednick,* and *Usery*) and does not agree that any of those decisions include a mismatch where the court's findings on the two core factors were outweighed by the combined probative value of other factors. The Department is aware of a recent district court decision (now on appeal to the Eleventh Circuit) in which the court concluded that the worker was an independent contractor after finding that the control factor favored employee status, the opportunity factor ''slightly'' favored employee status, the investment factor did not weigh in favor of either status, and the special skill, permanence, and integral part factors favored independent contractor status (permanence favored it ''slightly''). *Piedra* v. *Faneuil Ent., Inc.,* No. 25–60953–CIV–SMITH, 2025 WL 4060062 (S.D. Fla. Dec. 19, 2025), *appeal pending,* No. 26–10063 (11th Cir.). Even if the Eleventh Circuit affirms the district court, such an outcome would not be inconsistent with the analysis adopted in this rule, which expressly provides that non-core factors can ''outweigh the combined probative value of the two core factors.'' In any event, one divergent federal appellate case would not render the entire analysis unworthy of being used.

[212] Although the Department had not explicitly elevated any factors over others in its subregulatory guidance prior to the 2021 Rule, this approach does not break 75 years of consistent Departmental interpretation, as some commenters contended. As noted above in section II.B.2.a., the Department has at times highlighted certain factors. For example, in WHD Op. Ltr. FLSA–314 at 1 (Dec. 21, 1982), the Department said, ''we considered the key factors to be: (1) the control maintained by the jobber; (2) the amount of investment by the agents, and (3) the agents' opportunities for profit or loss.'' And in WHD Op. Ltr. FLSA–164 (Jan. 18, 1990), the Department discussed only four factors (control, opportunity for profit or loss, investment, and skill).

[213] *See infra* section IV.F.2.

presumption, of the indicated classification. Decades of federal appellate decisions support the Department's construction, confirming that courts of appeals have not reached a classification contrary to that indicated when control and opportunity for profit or loss both clearly pointed in the same direction. Although a contrary result remains possible—and the rule requires consideration of the remaining factors—the consistency of appellate outcomes over decades is itself probative and warrants bringing to the attention of regulated parties. Recognizing that consistent decision pattern does not make the analysis mechanical.

Moreover, the core factors will not always align or point clearly toward either classification. As the Department explained in the NPRM and the 2021 Rule, there may be situations in which ''a core factor does not weigh very strongly toward a particular classification because considerations within that factor point in different directions,'' or where a ''core factor may even be at equipoise, in which case it would not weigh at all in favor of a particular classification.'' [214] For example, in *Carrell* v. *Sunland Constr., Inc.,* the two central factors did not clearly point toward the same classification because the court found some of the facts germane to control and opportunity for profit or loss indicated employee status and some indicated independent contractor status.[215] In that case, the court relied more heavily on other factors to conclude that the welders at issue were ''as a matter of economic reality, in business for themselves.'' [216] The court noted that many of the welders spent little time working for Sunland and they ''worked from job to job and from company to company''; the welders were also highly skilled and had invested significantly in the equipment that they supplied to perform their work.[217] Thus, analyzing the non-core factors including skill and permanence provided a more complete picture that allowed the court to reach its conclusion regarding the welders' classification. As this case illustrates, identifying two factors as core factors does not mean that the analysis is or should be applied mechanically or simplistically, but rather makes clear that it must be administered just as carefully, as there are often a variety of relevant facts and concepts to consider within each individual factor before determining whether the factor points toward a particular classification.

As the Department explained in the 2021 Rule and reiterates here, the ''other economic reality factors—skill, permanence, and integration—are also relevant as to whether an individual is in business for him- or herself,'' [218] and ''each factor should be analyzed.'' [219] In cases where the two core factors clearly weigh in favor of a particular classification, there would be less need to rely on the other factors, though they should still be considered to determine if they would either individually or collectively outweigh the combined probative value of the two core factors.[220] For example, in *McFeeley,* 825 F.3d at 244, after determining that the control, opportunity for profit or loss, and investment factors favored employee status, the court stated that ''[t]he final three factors are more peripheral to the dispute here and will be discussed only briefly: the degree of skill required for the work; the permanence of the working relationship; and the degree to which the services rendered are an integral part of the putative employer's business.''

In response to comments that warned about a confusing legal landscape were the Department to adopt the two-core-factor approach, which has never been formally or explicitly adopted by a federal court, the Department reiterates that the landscape is already confusing and fraught with uncertainty that was only exacerbated by the 2024 Rule. As a great number of commenters explained (as discussed above), simply describing the factors without providing any additional guidance as to how they should be weighed or which are more likely to be salient to a court and to align with the court's outcome—like the 2024 Rule did—leaves stakeholders uncertain as to how to proceed. Additionally, during the time period following the district court's decision ruling that the 2021 Rule had taken effect (between March 2022 and March 2024), there was no surge of litigation based on lack of clarity regarding that rule's analysis, contrary to the assertions made by some commenters (discussed earlier in section III.A). Therefore, the Department believes these concerns are overstated, speculative, and are not a basis for declining to adopt the two-core-factor analysis from the 2021 Rule.

In response to comments contending that elevating control as one of the two central factors brings the analysis closer to the common law control test that courts have rejected when interpreting employee or independent contractor status under the FLSA, the Department believes that a multifactor analysis that recognizes a different core factor (opportunity for profit or loss), requires the consideration of three other factors, and allows for the consideration of additional factors (provided that such factors are germane to economic dependence) is readily distinguishable from a control test. As discussed further below, the opportunity for profit or loss factor that the Department is again proposing to adopt in § 795.105(d)(1)(ii) encompasses an individual's opportunity to earn profits, or incur losses, based on his or her initiative or management of investments, and as such, includes a number of critical considerations in evaluating economic dependence that go beyond the nature and degree of control over work. As a result, the Department believes that giving greater probative value to both the control and opportunity for profit or loss factors (especially given the considerations that comprise that factor) is not akin to adopting the common law control test, which specifically designates control as the overarching consideration. And importantly, the ''ultimate inquiry'' of the analysis proposed by the Department would remain the individual's economic dependence (§ 795.105(b)), which is different from the common law's inquiry into control.[221]

In response to comments that raised concerns about increased misclassification of employees as independent contractors due to the proposal's ''narrowing'' of the facts that should be considered when determining employee or independent contractor status, the Department believes that focusing on core factors that are typically more probative does not eliminate or narrow the relevant considerations. Notably, the analysis does not stop at the two primary factors, but rather identifies three other economic reality factors and also provides for the possible consideration

[214] 91 FR 9949; 86 FR 1199.

[215] 998 F.2d 330, 332–34 (5th Cir. 1993) (regarding control, Sunland dictated the welders' schedule and assigned them to specific work crews, but it ''had no control over the methods or details of the welding work''; regarding opportunity for profit or loss, Sunland paid the welders an hourly rate that was rarely negotiable and their compensation was based on the hourly rate and the number of hours worked as dictated by Sunland, but welders supplied their own equipment averaging $15,000 per welder and their profits ''depended on their ability to control their own costs'' and they worked for numerous companies each year).

[216] *Id.* at 334.

[217] *Id.*

[218] 86 FR 1196.

[219] *Id.* at 1201.

[220] *See* 91 FR 9949.

[221] *See Cmty. for Creative Non-Violence* v. *Reid,* 490 U.S. 730, 751 (1989); *see also* section VI.G.1, *infra* (discussing the common law control test as a regulatory alternative that the Department is not adopting in this rulemaking).

of additional factors in § 795.105(c) and (d) that may be relevant in certain cases. Although the other factors are generally likely to be less probative, and in some cases, may not be probative at all, the analysis still requires the remaining factors to be considered when determining economic dependence. Again, as the Department has stated previously, the ''other economic reality factors—skill, permanence, and integration—are also relevant as to whether an individual is in business for him- or herself,'' 86 FR 1196, and ''each factor should be analyzed,'' *id.* at 1201. Thus, ''[a]ssigning one factor less weight than another does not restrict the circumstances being considered because the very act of determining relative weight requires considering both factors.'' *Id.* The Department thus believes that all relevant facts can and will be considered, as detailed below in the discussions of each factor.

Under the Act, actual practice trumps written descriptions when they conflict. Far from being uniquely susceptible to manipulation because employers could ''rely on contractual disclaimers of control, even where control is exercised in practice'' and ''manufacture illusory 'entrepreneurial opportunity' through theoretical or employer-created mechanisms,'' the ''primacy of actual practice'' provision in § 795.110 (discussed in more detail below) makes unutilized contractual disclaimers of control, hypothetical potentialities, and theoretical opportunities less relevant than actual practices and events. Despite some comments, nothing in the rule, which is devoted to ascertaining the economic *reality* of a relationship, provides for the theoretical to govern the actual. In other words, just because control and opportunity for profit or loss are designated as core factors, that does not mean that an employer has the ability to manufacture facts that would favor independent contractor status for these factors. Nor would contrived, ''illusory,'' or vague assertions of ''entrepreneurial opportunity'' prevail over contrary actual practice under the rule.

Commenters' concern on this point is curious; notably, the 2024 Rule did not include regulatory text emphasizing the primacy of actual practice.[222] In this respect, the analysis adopted in this rule could be more effective in curbing the kind of abuse described by AFL–CIO. For example, in the scenario AFL–CIO posited where a delivery company could classify its drivers as independent contractors by contractually disclaiming control, while simultaneously dictating routes through an application, setting non-negotiable prices, imposing performance metrics, and retaining the right to deactivate workers who do not meet those standards, the Department would (and any court, worker, or business applying the rule should likewise) look at the control that the company was actually exercising. Similarly, if the company pointed to opportunities that are illusory or otherwise effectively meaningless, the Department would rely on what actually happens. The rule does not countenance determinations regarding any factor in the analysis that are based on illusory options. As a result, the Department does not agree that the two-core-factor approach is inherently more susceptible to manipulation that would achieve a result that does not reflect the economic reality of the working relationship. To further illustrate some of these points, and as discussed further below, the Department is adding an illustrative example pertaining to platform work in § 795.115(b)(2) and (b)(3).

The Department appreciates commenter concerns that purportedly diminishing certain factors could particularly prejudice farmworkers, but believes they are misplaced because case law shows that the control and opportunity factors almost always indicate that farmworkers are employees.[223] *See, e.g., Castillo* v. *Givens,* 704 F.2d 181, 189–92 (5th Cir. 1983); *Lauritzen,* 835 F.2d at 1536; *see also id.* at 1544 (Easterbrook, J., concurring) (''The purposes Congress identified in § 2 [of the FLSA] . . . strongly suggest that the FLSA applies to migrant farm workers.''); *but see Brandel,* 736 F.2d at 1116–20 (affirming trial court's finding that pickle harvesters were independent contractors). The Department's analysis in this rule should yield no different result as to farmworkers' status as employees than courts reached in such cases as *Lauritzen, Castillo,* and *Perez* v. *Howes,* 7 F. Supp. 3d 715 (W.D. Mich. 2014), *aff'd,* 790 F.3d 681 (6th Cir. 2015), where the control and opportunity for profit or loss factors aligned with the workers' status as employees.

Finally, in response to the members of Congress and other similar commenters who asserted that this rule exceeds the Department's statutory authority because Congress has not delegated rulemaking authority to the Department with respect to the scope of employment relationships under the FLSA, and by extension, the FMLA, and MSPA, and therefore the Department can only issue an interpretive rule or guidance that does not conflict with the text of or intent behind the FLSA. The Department's response is twofold.

First, the Department disagrees that this rule conflicts with the text of the Act. To start, that text itself cannot definitively resolve the employee-or-independent-contractor question, especially in the myriad of working relationships across the economy. As discussed at length in this preamble, the rule is consistent with the factors used by courts to determine employee or independent contractor status based on their interpretation of the text and purpose of the FLSA and is likewise consistent with the effective weight that courts have placed on those factors when making such determinations.

Second, the Department has authority to interpret the FLSA as the Division possesses authority to administer and enforce it, just as it did in 2021 and 2024. *See* 29 U.S.C. 204; *Herman* v. *Fabri-Centers of Am., Inc.,* 308 F.3d 580, 592–93 & n.8 (6th Cir. 2002) (noting that ''[t]he Wage and Hour Division of the Department of Labor was created to administer the Act'' while agreeing with the Department's interpretation of one of the FLSA's provisions); *Dufrene* v. *Browning-Ferris, Inc.,* 207 F.3d 264, 267 (5th Cir. 2000) (''By granting the Secretary of Labor the power to administer the FLSA, Congress implicitly granted him the power to interpret.''); *Condo* v. *Sysco Corp.,* 1 F.3d 599, 603 (7th Cir. 1993) (same). Congress has also expressly delegated rulemaking authority to the Secretary under the MSPA and FMLA. 29 U.S.C. 1861(a), 2654. Thus, this rule is within the Department's authority to promulgate.

For all these reasons, the Department is finalizing § 795.105(c) as proposed, with the exception of a minor non-substantive edit (changing ''whether or not'' to ''whether'').

F. Economic Reality Factors—Core Factors (§ 795.105(d)(1))

This Section F discusses the comments specific to each of the primary, or core, factors.

[222] *See* 89 FR 1718–22 (rejecting commenter requests for retention of the 2021 Rule's provision emphasizing the primacy of actual practice).

[223] This observation does not apply to workers engaged as farm labor contractors by agricultural employers or agricultural associations, who may be independent contractors (and thus properly farm labor contractors under MSPA, 29 U.S.C. 1802(7)) or misclassified employees. To provide additional guidance on this category of workers, the Department has added a pair of illustrative examples to this final rule (§ 795.115(b)(4) and (b)(5)) applying the control factor in the context of farm labor contractors (as discussed below in section IV.J.).

1. The Nature and Degree of Control Over the Work (§ 795.105(d)(1)(i))

The Department proposed to readopt the regulatory text of § 795.105(d)(1)(i) from the 2021 Rule, which discussed the first economic reality core factor—the nature and degree of control over work.[224] This provision explains that the control factor weighs toward the individual being an independent contractor where the individual, rather than the potential employer, exercises substantial control over key aspects of the performance of the work such as scheduling, selection of projects, and the ability to work for others (which may include the potential employer's competitors). By contrast, the control factor would weigh in favor of the individual being an employee where the potential employer, rather than the individual, exercises substantial control over key aspects of the performance of the work, such as by controlling the individual's schedule or workload, or by directly or indirectly requiring the individual to work exclusively for the potential employer.

Additionally, the Department proposed to readopt guidance from the 2021 Rule advising that when a potential employer places certain compliance requirements on an individual, it ''does not constitute control that makes the individual more or less likely to be an employee under the Act.'' [225] This includes ''[r]equiring the individual to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships).'' [226] For example, as illustrated in the example in § 795.115(b)(1) (which the Department is finalizing as proposed, as explained below), where a logistics company contracts with an individual owner-operator of a tractor-trailer to provide transportation services and the logistics company requires the owner-operator to comply with federally-mandated transportation safety rules requiring drug and alcohol testing, and requires the owner-operator to meet certain contractually agreed-upon delivery deadlines, this does not constitute control that would make it more or less likely that the owner-operator is an employee under the FLSA. Another example would be requiring all workers to complete anti-harassment training. Such training is intended to make the workplace safer, benefits everyone in the workplace, and is not control that makes an individual worker more or less likely to be an employee under the FLSA.

Many commenters expressed support for the Department's proposed formulation of the nature and degree of control as a primary factor in the analysis of whether a worker is economically dependent on a business for work. *See, e.g.,* CWI; DoorDash; FSI; Flex Association; National Retail Federation; Uber; U.S. Chamber. However, the vast majority of commenters that generally supported the Department's proposal requested further refinements, industry-specific language, examples, and additional regulatory text. *See, e.g.,* Associated Builders and Contractors; CWI; Flex Association; Independent Work Coalition; Instacart; Littler WPI; National Retail Federation; Scopelitis; ShiftKey; Uber; U.S. Chamber. Other commenters opposed the proposed formulation of the control factor for a variety of reasons. *See, e.g.,* AFL–CIO; Coalition of State Officials; IBT; NELP; New York City Comptroller; Nichols Kaster; NWJP; Richard Reibstein; Texas RioGrande Legal Aid. As in the 2024 rulemaking, the aspect of the control factor that generated the largest number of comments—in support, with requests to modify, and in opposition—is the provision stating that ''[r]equiring the individual to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships) does not constitute control that makes the individual more or less likely to be an employee under the Act.'' Many commenters also had specific suggestions regarding the impact of Super Intelligence (SI) and other technology on control concepts. *See, e.g.,* Instacart; U.S. Chamber. The comments and the Department's responses are addressed below in more detail.

a. Comments Generally in Support With Requests To Modify

The Department cannot describe in detail in this preamble every commenter request to modify the control factor by adding language to the regulatory text, modifying the examples that were proposed, or adding new examples, as they are too voluminous. The Department has endeavored, however, to provide an overview focusing on the same types and categories of modifications requested by commenters.

CWI and U.S. Chamber of Commerce urged the Department to include specific examples of evidence of control by the worker over the work, including the worker's ability to make decisions regarding how the work is performed without prior approval, control over the supplies, tools, and equipment used (or not used) in performing the work, control over time flexibility that exists regarding the work, and decision-making regarding how much of the work the worker will perform and how much to contract out to others. U.S. Chamber of Commerce also recommended the Department to include examples of evidence that is ''*not* indicative of a business's control over the work of the worker,'' including providing orientation or information sessions about business practices, products, services, customers or operating systems, providing training required by law, exerting control in contract or in fact regarding the final result to be accomplished by the worker, providing customer specifications/details and feedback relating to the work (including requesting confirmation from the worker that the customer feedback has been addressed), providing time constraints for completion, providing ''pass-through customer requirements'' and contract-performance oversight, controlling where the work is to be performed, enforcing contractual obligations, providing emergency or cleaning supplies or other safety equipment in the event of an emergency, providing customers with estimates of completion time for services requested, providing business identification or a logo on uniforms or vehicles, providing suggestions, recommendations, guidance, or tips relating to the services the worker provides, incorporating quality standards, professional certification requirements, audit processes, and safety protocols into independent contractor agreements, and paying the worker by the hour where it is customary to do so. U.S. Chamber of Commerce also suggested that the Department add language affirmatively stating that ''businesses are encouraged to maintain robust compliance oversight without fear that doing so will be construed as employee control.''

Instacart also proposed a long list of suggested additions to the regulatory text, including, for example, requesting the Department to clarify that under § 795.105(d)(1)(i) the following do not constitute control that indicates an employment relationship: (a) the use of automated systems to match, prioritize,

[224] 91 FR 9950–52; 86 FR 1246–47 (§ 795.105(d)(1)(i)).

[225] 86 FR 1247 (§ 795.105(d)(1)(i)).

[226] *Id.*

or present work opportunities based on objective criteria such as location, availability, or customer demand where the individual retains discretion to accept or decline such opportunities; (b) ratings systems and performance-based incentives; (c) incentives that encourage ''mutually beneficial behavior,'' including peak-period bonuses, promotional offers, and surge pricing; (d) the confirmation of whether contractual obligations have been met, including in an application-based setting through automated status updates or other data recorded through the application; (e) the voluntary non-exercise of discretion by a worker, including the choice not to exercise contractual rights to work for competitors, to set individualized rates, or to negotiate terms; and (f) the presence of operational practices adopted by a business in response to applicable legal or regulatory frameworks, including food-safety handling requirements, transportation and vehicle-safety regulations, consumer-protection standards, background-check obligations, and public-health mandates.

Preliminarily, the Department notes that many of the items for which these commenters requested additional examples and clarification already fall within the provision stating that requiring an individual to comply with legal obligations or to meet contractual deadlines, quality-control standards, or other similar terms typical of contractual relationships between businesses does not constitute control or—even assuming some deem these elements control—the type or nature of control that makes the individual more or less likely to be an employee. As discussed in more detail in the section addressing comments received regarding that provision, the Department declines to add numerous additional examples. The Department's overall intent in this rulemaking is to provide an analysis that takes a balanced approach and does not favor either employee or independent contractor outcomes. Therefore, the Department declines to make these many changes requested to the control factor that would imbalance the factor in favor of independent contractor status by detailing the many ways in which workers control work but businesses do not, including delving into increasingly detailed examples of requirements that extend beyond the rule's balanced requirements. The Department certainly agrees that businesses should maintain robust compliance oversight in general and ensure they and their contractors are abiding by the law, and that such general requirements are not indicative of employer-employee controls. However, it also recognizes that at some point extensive and detailed prescriptions and restrictions may indicate such control, as discussed further in section IV.F.1.d.

CWI and U.S. Chamber of Commerce further requested the Department to clarify that a lack of supervision is probative of independent contractor status under the control factor, in contrast to the 2024 Rule, which stated that ''[a] lack of supervision is not alone indicative of independent contractor status, such as when the employer's business or the nature of the work make direct supervision unnecessary.'' Additionally, Flex Association urged the Department to clarify that ''routine supervision or monitoring of the status of work is not control indicative of employee status,'' commenting that monitoring is common in the commercial market and that obtaining information about the status of work is distinct from controlling the work. The Department declines to provide in this rule that both a lack of supervision and routine supervision favor independent contractor status. Not only is this not borne out by logic, it is inconsistent with case law. Several federal appellate cases have held that a lack of supervision does not negate employee status, and that routine supervision may indicate employee status.[227] That being said, the Department recognizes, as did these commenters, that there are situations in which a lack of supervision does indicate independent contractor status,[228] and that routine monitoring is often done for operational purposes and is targeted toward the particular goods or services at issue rather than the manner and means by which a worker performs work. An employment relationship would not be indicated in such circumstances. The regulatory text does not speak to supervision, and so does not prohibit either factual scenario or classification outcome. In this space, this rule's analysis is best constructed to allow for proper consideration of these elements given the diversity of the work arrangements in which they apply.

Associated Builders and Contractors, Independent Work Coalition, Littler WPI, and Scopelitis addressed the concept of exclusivity within control, urging the Department to make clear that where a worker has the ability to work for others but chooses not to, this does not make it less likely that the worker is an independent contractor. Rather, they argued, the question is whether the business restricts the individual's ability to work elsewhere, which would indicate an employment relationship. Scopelitis also requested that the Department remove the word ''indirectly'' from the provision that states ''this factor weighs in favor of the individual being an employee under the Act to the extent the potential employer . . . exercises substantial control over key aspects of the performance of the work, such as by . . . directly or indirectly requiring the individual to work exclusively for the potential employer'' because federal motor carrier leasing regulations make it difficult to work for others and the commenter was concerned that this might be construed as ''indirectly'' prohibiting a lessee from working for others. This commenter also requested the Department to make clear that the focus in this factor is on actual control, not theoretical or contractual rights of the employer to control.

In the Department's view, the proposed regulatory text in the NPRM and that is being finalized appropriately addresses these issues. With respect to exclusivity, the regulatory text states that the ability to work for others weighs toward the individual being an independent contractor—this is not conditioned on whether the worker chooses not to do so, provided that the worker is not, as a practical matter, prevented from exercising that choice. This is because it is the ability to *choose,* not *how* the choice is exercised, that indicates an independent contractor. An individual who exercises that independence to work a packed schedule with a wide variety of other entities is no more or less an independent contractor than another who carefully selects fewer contracts for

[227] *See, e.g., Superior Care,* 840 F.2d at 1060 (''An employer does not need to look over his workers' shoulders every day in order to exercise control.''); *DialAmerica,* 757 F.2d at 1383–84 (concluding that homeworkers were employees even though they were subject to little direct supervision); *Driscoll,* 603 F.2d at 756 (farmworkers could be employees of a strawberry farming company even where the employer exercised little direct supervision over them); *compare Scantland,* 721 F.3d at 1314 (finding ''meaningful supervision and monitoring'' in part because the employer required cable installers to log in and out of a service on their cell phones to record when they arrived on a job, when they completed a job, and what their estimated time of arrival was for their next job).

[228] *See, e.g., Nieman* v. *Nat'l Claims Adjusters, Inc.,* 775 F. App'x 622, 624–25 (11th Cir. 2019) (insurance claims investigator was properly classified as an independent contractor, in part, because the investigator worked largely without supervision when setting up appointments, and deciding where to work and how and when to complete his assignments); *Chao* v. *Mid-Atlantic Installation Servs., Inc.,* 16 F. App'x 104, 106–08 (4th Cir. 2001) (agreeing with the district court's analysis that the ability to complete jobs in any order, conduct personal affairs, and work independently is evidence that leans toward identifying a worker as an independent contractor).

larger or more lucrative contracts. Additionally, the regulatory text states that ''directly or indirectly requiring the individual to work exclusively for the potential employer'' weighs in favor of employee status, which is what commenters suggested. Where there are particular legal rules such as the federal motor carrier regulations, an action taken to ensure compliance with those rules would not be viewed as control that makes the worker more or less likely to be an employee under § 795.105(d)(1)(i). Therefore, the Department does not believe that it is necessary to provide the further clarification on these points requested by commenters.

Finally, several commenters requested the Department to include statements that certain activities in the commenters' respective industries would not constitute control. *See, e.g.,* Associated Builders and Contractors (requesting clarification or an example showing that ''a construction industry general contractor's management of subcontractors to ensure timely completion of a project, meet sequenced deadlines and generally ensure safe and efficient performance is not'' evidence of control), National Retail Federation (requesting statements that limitations on work schedules based on business operations and ''ownership of goods or inventory by a potential employer, standing alone, does not constitute control.''), ShiftKey (requesting clarification that ''credential verification, background screening, reliability scoring, and account deactivation for repeated shift abandonment'' do not constitute control). Categorical regulatory pronouncements regarding specific practices in particular industries are not generally appropriate in this rule of general applicability. For that reason, the Department is retaining the general control concepts that were proposed rather than providing a multitude of industry-specific examples. The Department encourages members of the public who have questions or seek clarification about specific scenarios to request from the Wage and Hour Division an opinion letter or other guidance appropriate for answering particular questions regarding applicability.

b. Comments Generally in Opposition

In addition to two specific areas discussed below where significant comments were received regarding certain aspects of the control factor, several commenters raised general concerns in opposition. One such concern was that the Department's proposal was contrary to judicial precedent because it improperly focused on the worker's control over the work, rather than the employer's control over the worker. *See, e.g.,* Coalition of State Officials; Nichols Kaster; Texas RioGrande Legal Aid. Texas RioGrande Legal Aid, for example, argued that ''as the courts have recognized for 70 years, the proper question is the degree to which the *employer* exercises control over the worker,'' which necessarily involves consideration of how much control the employer needs to exercise, for example, in situations involving homeworkers and farmworkers, where courts have recognized that ''it is the nature of the farming business that the farmer has to depend on his workers—the farmer cannot be in the fields supervising at all times.'' This objection was raised during the 2021 rulemaking as well. And as the Department explained at the time regarding the same regulatory text in § 795.105(d)(1)(i), the rule's treatment of both the individual worker's control and the potential employer's control is consistent with the approach taken by courts, which also generally consider both the worker's control and the potential employer's control.[229] The Department affirms its view that, in light of the way in which courts have approached the question, both the nature and degree of control over the work by the worker and by the potential employer is properly considered to determine whether control indicates employee or independent contractor status.

Another concern raised by NELP and NWJP is that the Department's proposed control factor does not reference reserved control or the right to control, thereby in their view improperly making the proposed economic reality analysis narrower than the common law ''right to control'' test even though the FLSA's ''suffer or permit'' standard has been deemed to be broader than the common law. *See also* Coalition of State Officials (''The 2024 rule aligned with . . . precedent by emphasizing that the relevant consideration is 'the employer's control, including reserved control, over the performance of the work and the economic aspects of the working relationship.' ''). More generally, NELP contended that the NPRM's focus on only three types of control—ability to set work schedule, ability to select projects, and ability to work for others—is inconsistent with case law ''in which workers were found to be employees even when they had the ability to set their own schedule, choose their assignments, or work for others.'' NELP also argued that these considerations were too narrow and failed to take into account other indicators such as the ''ability to set or meaningfully negotiate'' pay. Richard Reibstein also took issue with the types of control referenced in this provision, contending that a more useful approach would be to identify whether a potential employer controls ''*how* the work is done or retains the right to do so.''

The Department notes that it has addressed the issue of reserved rights, such as the right to control, in § 795.110. That section acknowledges that reserved rights may be relevant, depending on the individual facts and circumstances, but that the parties' actual practice will be more relevant. Thus, although reserved rights to control are not explicitly mentioned in the regulatory text for the control factor that the Department proposed, as they were in the 2024 Rule, reserved rights are discussed separately and may certainly apply (see additional discussion in § 795.110). Additionally, as the Department explained in the NPRM and the 2021 Rule, the three examples of control identified in the regulatory text that may indicate employee or independent contractor status (setting schedules, selecting projects, and working exclusively for the employer or working for others) are illustrative and not intended to be exhaustive, nor were these types of control listed in an attempt to narrow or limit the control factor analysis. To the contrary, any type of control over work by the individual worker or the potential employer must be considered, including whether pay and other aspects of the work arrangement are dictated by the hiring party (indicating employment) or, in the alternative, if such terms are negotiated or dictated by the individual (indicating independent contractor status).[230] Further, considerations within these areas may be nuanced. For example, even where an employer does

[229] 86 FR 1180 (citing, *e.g., Razak* v. *Uber Techs., Inc.,* 951 F.3d 137, 142 (3d Cir. 2020); *Hobbs,* 946 F.3d at 829; *Saleem,* 854 F.3d at 144–45; *Karlson,* 860 F.3d at 1096); *see also id.* (discussing *Silk,* 331 U.S. at 716, which described the economic reality test's control factor as ''degrees of control,'' which does not indicate a focus on either the individual worker or the potential employer).

[230] 91 FR 9950–51; 86 FR 1180–82; *compare, e.g., Superior Care,* 840 F.2d at 1060 (considering the fact that ''[the defendant company] unilaterally dictated'' the nurses' hourly wage as evidence of employer-like control); *and Med. Staffing of Am.,* 147 F.4th at 387 (same) *with, e.g., Eberline* v. *Media Net, LLC,* 636 F. App'x 225, 227 (5th Cir. 2016) (jury had sufficient evidence to conclude that a worker exerted control over meaningful aspects of his business in part due to ''testimony that installers could negotiate prices for custom work directly with the customer and keep that money without consequence'').

not enforce an explicit bar on working for others, the employer may impose working conditions that make doing so impracticable, which is evidence of control. The regulatory text is purposefully broad to encompass various types of control that the individual worker and the potential employer may exercise over the working relationship and avoid incentivizing gamesmanship predicated on excessive specificity. Moreover, the Department agrees that the task of identifying who controls the manner and means by which the work is performed is a critical component of the control analysis, and the regulatory text reflects the importance of these elements, and it is also well suited to the task.

Finally, Texas RioGrande Legal Aid disputed the probative value of the ability to work for others, particularly competitors. It noted that a ''part-time worker employed during mornings at McDonalds does not become any less of an employee because he or she works a second job at the counter of a Wendy's restaurant in the afternoon. Individuals may work for more than one employer without losing their status as employees under the FLSA.'' The Department does not disagree, but the rule would not compel a different result. More important, however, courts often take into account whether workers have the ability to work for others or are prohibited from or impeded in doing so.[231] Like other elements of the analysis designed to ascertain economic reality, this aspect of the control factor may or may not be probative in any particular case.

c. Comments Regarding SI, Electronic Monitoring, and Other Technology

In proposing to adopt the 2021 Rule's formulation of the control factor, the NPRM's description of the control factor did not include language from the 2024 Rule stating that ''facts relevant to the potential employer's control over the worker include whether the potential employer uses technological means to supervise the performance of the work (such as by means of a device or electronically).'' [232] The NPRM did not disagree with this guidance from the 2024 Rule, but expressed a preference for ''the more straightforward and focused explanation of the control factor in the 2021 Rule,'' explaining that ''[i]t is simply not possible for the Department to describe all of the potentially-relevant considerations for the control factor, as the 2024 Rule may have attempted to do.'' [233]

Many commenters addressed how Super Intelligence (SI), electronic monitoring systems, and other technology should be considered under the control factor.[234] *See, e.g.,* AFL–CIO; Coalition of State Officials; CWI; Flex Association; Instacart; IBT; NELP; The Scaffold Initiative; Uber; U.S. Chamber. Several commenters who opposed the NPRM criticized it for omitting guidance on ''technological'' or ''algorithmic'' control. *See, e.g.,* AFL–CIO; Allegheny County et al.; Coalition of State Officials; IBT; New York City Comptroller Mark Levine. Conversely, many commenters praised the NPRM for not stating that a business's reliance on common technologies or algorithms is indicative of employer-like control, which they asserted was the case under the 2024 Rule, though such commenters requested further clarification on this point. *See* Flex Association; TechNet; Uber; U.S. Chamber. The Scaffold Initiative, an organization ''dedicated to [SI] literacy and workforce development for sole proprietors, freelancers, and independent workers in underserved communities,'' advocated for a neutral approach by explaining how the use of SI could be considered as both a tool for worker-controlled entrepreneurship or as a tool for ''granular, real-time control . . . that no human supervisor could match.''

Flex Association and Uber supported the omission of the 2024 Rule's language on technological supervision in the Department's proposal, with Uber characterizing the language as a ''special disfavor for technology'' and Flex asserting that ''routine supervision or monitoring of the status of work'' does not become control ''simply because it is mediated by technology.'' Both Flex and Uber noted that almost all work in 2026 is mediated through some form of technology (email, phone, text, webchat channels, calendaring software, etc.). Flex observed that this was no different than when the FLSA was enacted in 1938, though there were different types of technology then such as a telegraph. Flex stated that ''[f]or purposes of employee/contractor classification, the FLSA has never differentiated between workers who use technology and those who do not, and special rules for technology-enabled work make no more sense today than they did when the FLSA was enacted.'' Uber noted that ''[t]echnology isn't what makes these actions control; it is the actions themselves, which limit the employee's autonomy and make the employee dependent for continued work.''

Flex Association and other commenters such as Instacart and Uber requested the Department to expressly state that various business practices commonly used by digital platform companies are not indicative of control, such as: implementing surge pricing; sending deadline notifications or customer specifications to workers; collecting ''ride-level'' data related to the location and timing of every ride; collecting and using customer service ratings; suspending the accounts of workers with excessive cancellation rates; using GPS location technology to match drivers and riders; providing bonuses and other incentives for certain types of work, and maintaining ''platform-integrity'' policies. Flex Association argued that such practices are not indicative of control or employee status because they are ''not comparable to a supervisor overseeing and directing a worker's performance.''

Additionally, several of the same commenters requested the Department to state that supplying individuals with SI tools, providing training and guidelines on the use of such tools, or using SI tools to monitor the quality of a product or service does not constitute control indicative of an employment relationship. *See* CWI; Instacart; SHRM; U.S. Chamber; *but see* The Scaffold Initiative (requesting the Department to advise that ''[a] worker who chooses to use [SI] tools is exercising independence'' but ''[a] worker who is

[231] *Compare, e.g., Acosta* v. *Paragon Contractors Corp.,* 884 F.3d 1225, 1235 (10th Cir. 2018) (finding control factor favored independent contractor status in part because worker could and did work for other employers); *Saleem,* 854 F.3d at 141–43 (drivers' ability to work for business rivals and transport personal clients showed less control by and economic dependence on the employer); *and Herman* v. *Express Sixty-Minutes Delivery Serv.,* 161 F. 3d 299, 303 (5th Cir. 1998) (control factor ''point[ed] toward independent contractor status'' in part because the ''Independent Contractor Agreement'' did not contain a covenant-not-to-compete and drivers could work for other courier delivery providers) *with, e.g., Brant* v. *Schneider Nat'l, Inc.,* 43 F.4th 656, 669–70 (7th Cir. 2022) (despite having the contractual ability to haul freight for other carriers, a driver alleged that the company maintained a ''system for approving and monitoring trips made for other carriers'' that was ''so complex and onerous that Drivers could not, as a practical matter, carry loads for anyone other than'' the company, which the court determined weighed in favor of employee status); *Off Duty Police,* 915 F.3d at 1060–61 (non-compete clause preventing workers from working for employer's customers for two years after leaving employment was among evidence supporting finding that control factor indicated employee status); *Keller,* 781 F.3d at 813–14 (although worker was not prohibited from working for other companies, ''a reasonable jury could find that the way that [the employer] scheduled [the worker's] installation appointments made it impossible for [the worker] to provide installation services for other companies'').

[232] 29 CFR 795.110(b)(4) (2024).

[233] 91 FR 9951.

[234] In this rule, the Department uses the terms ''SI'' and ''Super Intelligence'' instead of ''AI'' and ''Artificial Intelligence,'' as required by section 2 of Executive Order 14434 of September 29, 2026. See 91 FR 63129.

required to use [SI] tools configured and controlled by the hiring entity is subject to control''). Such commenters often proposed lengthy regulatory text that they wanted the Department to add to the control factor on these points. *See* Instacart; U.S. Chamber. While these commenters suggested that the Department expressly state that business use of SI would not indicate control, they asked the Department to state that a worker's ability to use SI would indicate a worker's control over the work. U.S. Chamber.

Several commenters also urged the Department to clarify that technological, electronic, or algorithmic monitoring that is used to ensure legal compliance, workplace safety, customer requirements, and consumer protection is not indicative of control. *See, e.g.,* CWI; Flex Association; Instacart; U.S. Chamber. ShiftKey, which describes itself as operating a ''digital marketplace platform'' in the healthcare industry, similarly requested the Department to state that ''platform-integrity measures'' such as credential verification and background screening do not constitute control. It claimed that in the healthcare field, these measures protect patients and healthcare facilities, comply with applicable state and federal licensing requirements, and ''ensure the integrity of the marketplace'' rather than supervise the performance of work.

By contrast, commenters who opposed the NPRM criticized the proposed control factor because it did not address how control is often exercised through algorithmic management, digital monitoring, and platform rules. *See* AFL–CIO; Allegheny County et al.; Coalition of State Officials; IBT; NELP; New York City Comptroller Mark Levine. For example, AFL–CIO contended that ''[i]ncreasingly, control is not exercised through direct supervision or traditional managerial oversight, but through algorithmic management systems that determine how, when, and under what conditions work is performed. In many sectors, particularly app-based and logistics industries, companies use digital platforms to assign tasks, set prices, monitor performance in real time, impose discipline, and terminate workers through automated systems.'' NELP described its recent report documenting ''the rise of 'Bossware' technology, tools used to monitor, manage, and evaluate workers, including productivity trackers, webcam monitoring, wearable devices, and algorithms and apps used for wage-setting.'' [235] IBT contended that due to such technology, ''[w]orkers may appear to 'choose' their hours or accept or reject assignments while in reality pay rates are unilaterally set, assignments are determined through algorithms, deactivation is one-sided, and real-time surveillance monitors productivity.''

Relatedly, dozens of individual commenters—including numerous DoorDash and Instacart workers who often voiced support for the NPRM and their independent contractor status as a general matter—requested the Department to address technological practices they believed to be coercive or unfair, including the use of acceptance-rating metrics, time-limited windows to review job offers, the withholding of material information (such as total pay, order size, delivery location, etc.) prior to the acceptance of a job offer, and punishment for events outside their control, such as traffic delays or delays attributable to third party merchants. *See, e.g.,* Anonymous 0059 (''Practices such as acceptance-rate tiers, hidden pay until after acceptance, and algorithmic penalties for declining orders undermine genuine independence.''); Delivery Platform Driver 1 (''[A]lgorithmic management tools, such as 'Acceptance Rates,' constitute a significant degree of employer control . . . . When platforms use an Acceptance Rate metric to prioritize orders or gate access to higher-paying work, they're effectively penalizing me for making rational business decisions to decline unprofitable contracts.''); Delivery Platform Driver 2 (''The app calls this 'independent work,' but the work is heavily controlled by the system. The algorithm controls access to orders, timing pressure, ratings, and contract violations. A driver may technically be free to log in or log out, but once logged in, the system dictates the pace and punishes delay without properly accounting for real-world conditions''); Delivery Platform Driver 3 (driver who supported the NPRM but asserted that ''[p]latforms should not be allowed to exercise 'employe[r]-like' control through hidden algorithms or deactivation threats while denying us basic business protections'').

The Department appreciates the breadth of input provided on this issue, particularly because SI and similar technology has evolved—and continues to evolve—rapidly and extensively since the Department began general rulemaking on employee or independent contractor classification under the Act in 2020, and technology certainly has continually changed since the FLSA was enacted in 1938. The Department has considered the comments received and agrees with Flex Association and Uber that there have always been forms of technology through which work is mediated, and the key questions are not whether or which form of technology is used with which workers but what the effect or result is. For example, whether a supervisor historically used a phone to call an employee to monitor the status of the work but now would use an SI tool to monitor the status of the work does not change the fact that the inquiry is always about the economic reality of a work relationship. As Uber commented, ''[t]echnology isn't what makes these actions control; it is the actions themselves, which limit the employee's autonomy and make the employee dependent for continued work.''

The Department thus responds to commenters like The Scaffold Initiative that criticized the Department's proposal for not providing guidance on how to distinguish between a worker who uses SI in their work to exercise independence and a worker who is subject to algorithmic control by explaining that the same concepts that have guided the analysis since the 1940s continue to apply today: what is the economic reality of the situation, and is the worker economically dependent on the potential employer for work? That overarching inquiry does not change when the technological tools change. While it is certainly always helpful to have an understanding of the technology being used in any particular case to better understand the economic realities, the Department does not believe that the technologies themselves change how specific factors in the economic reality test are applied, contrary to the views of many commenters.

As this discussion illustrates, the Department reiterates that all facts relevant to control should be considered. Where technological tools are performing the kinds of activities that human supervisors historically handled in terms of, for example, setting schedules, assigning work, reviewing work, and providing rewards for good work and discipline or termination for bad work, those activities are just as relevant to the analysis as they would be if a human supervisor carried them out.

[235] Irene Tung, Paul Sonn, Maya Pinto, Sally Dworak-Fisher & Josh Boxerman, *When 'Bossware' Manages Workers: A Policy Agenda to Stop Digital Surveillance and Automated-Decision-System Abuses,* National Employment Law Project, July 15, 2025, at 11, *www.nelp.org/app/uploads/2025/07/When-Bossware-Manages-Workers-Policy-Agenda-July-2025.pdf.*

Nevertheless, to be responsive to commenter feedback requesting that the Department provide more guidance regarding technology and control, the Department has added a pair of examples in the final rule (§ 795.115(b)(2) & (b)(3)) to provide additional clarity on the kinds of technological practices that are indicative of employer-like control or indicative of independent contractor status. In these examples, an individual earns money by making food deliveries to customers from restaurants and grocery stores through an application operated by a digital platform company. In one example (adopted in § 795.115(b)(2)), the company pressures drivers to accept job offers by giving them seconds to accept delivery opportunities with limited information about the pay, size, or timeframe for the delivery, penalizes drivers who fail to accept a certain percentage of delivery orders by demoting their status in a tiered ''rewards'' program such that they lose access to preferred delivery orders, and makes it practically impossible to ''multi-app'' and still complete the minimum number of deliveries or avoid negative consequences for declining work. In this example, the control factor weighs toward employee status because the company is exercising substantial control over key aspects of the performance of the work, including the individual's ability to select her own projects, manage the workload, and work for others. *See Scantland,* 721 F.3d at 1313, 1316–17 (finding control indicative of employee status where the workers at issue ''could not bid for jobs or negotiate the prices for jobs'' and ''could not reject a route or a work order . . . without threat of termination or being refused work in the following days'').

By contrast, in the second example (adopted in § 795.115(b)(3)), the digital platform company allows drivers to decline delivery opportunities without consequence and ''multi-app'' with competing businesses, although the company will terminate a driver's account if they cancel too many accepted deliveries. The company's application dynamically adjusts its pricing, shares pay information with drivers before they accept work, and remotely monitors driver locations while the application is engaged to efficiently match drivers to delivery opportunities. In this example, the control factor weighs toward independent contractor status because the individual is exercising substantial control over key aspects of the work. *See Gray* v. *Killick Grp., LLC,* 113 F.4th 543, 550 (5th Cir. 2024) (finding independent contractor status in part because the worker ''possessed the freedom to accept or reject projects without retaliation''). That the company monitors the location of drivers while the application is engaged, dynamically adjusts prices in response to supply and demand, and terminates the account of drivers with excessive cancellation rates are not indicative of an employment relationship under these facts. Using technology to facilitate business operations does not indicate control over the driver; in fact in this example it also serves as an aid for the driver to make informed decisions about delivery opportunities. Further, termination of a driver's account due to excessive cancellation of accepted deliveries is a quality control measure to ensure food safety and edibility, and timeliness requirements are typical of contractual relationships between businesses, so such termination does not constitute control that makes the individual more or less likely to be an employee. Both examples demonstrate how the use of technology such as a digital platform and application may be relevant in determining whether the control factor weighs in favor of employee or independent contractor status.

The Department declines to provide any additional regulatory text, including commenter requests for the Department to state that various business practices commonly used by digital platform companies are not indicative of control, and that business use of SI would not indicate control but that a worker's ability to use SI would indicate a worker's control over the work. The Department does not believe this would be consistent with the balanced approach in this rule that does not favor either employee or independent contractor outcomes, as all these requests appear to lean in favor of an independent contractor outcome. Finally, with respect to the commenter requests about the use of technology to comply with legal obligations, such practices would appear to fall within the provision stating that requiring an individual to comply with legal obligations does not constitute control that makes the worker more or less likely to be an employee, as discussed below.

d. Comments Regarding Compliance With Legal Obligations, Safety Standards, Contractual Deadlines or Quality Control Standards

As noted above, the Department proposed to adopt the 2021 Rule's language in the control factor, § 795.105(d)(1)(i), stating that ''[r]equiring the individual to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships) does not constitute control that makes the individual more or less likely to be an employee under the Act.'' The Department noted that this was a change from the 2024 Rule, which stated that ''[a]ctions taken by the potential employer for the sole purpose of complying with a specific'' law are not indicative of control, whereas ''[a]ctions taken by the potential employer that go beyond compliance with a specific'' law and ''instead serve the potential employer's own compliance methods, safety, quality control, or contractual or customer service standards may be indicative of control.'' [236]

As in previous FLSA independent contractor rulemakings, this provision was addressed in a large proportion of the comments regarding the control factor. Business advocacy groups and management-side law firms were supportive of the proposal to adopt this language, frequently noting that it benefited society overall to promote greater legal and safety compliance rather than disincentivize compliance measures out of concern that they would indicate an employment relationship. *See, e.g.,* American Securities Association; American Trucking Association; CHRO Association; CWI; FSI; Independent Work Coalition; IFA; Littler WPI; Lyft; National Association of Home Builders; National Retail Federation; Scopelitis; SHRM; Uber. Several worker advocacy groups and affiliated commenters opposed this language, contending that it was contrary to case law, that it was so vague and broad that it could encompass any type of control a business might exert over an individual. *See, e.g.,* AFL–CIO; NELP; Nichols Kaster; NWJP.

For example, Nichols Kaster argued that it was contrary to judicial precedent for the Department to take this position, citing, *inter alia, Keller,* 781 F.3d at 814–15, for the proposition that ''a jury could find the level of control exercised supported employee status where the control was exercised to ensure technicians complied with defendant's client's specifications,'' and *Schultz* v. *Mistletoe Express Serv., Inc.,* 434 F.2d 1267, 1271 (10th Cir. 1970) (''The arguments that an independent

[236] 29 CFR 795.110(b)(4) (2024).

contractor relationship is shown by . . . the need to comply with regulations of federal and state agencies do not persuade us.''). Similarly, AFL–CIO contended that the case law is ''settled'' and ''squarely forecloses the Department's approach.'' Commenters opposed to this provision frequently cited *Scantland* for the proposition that ''[t]he economic reality inquiry requires us to examine the nature and degree of the alleged employer's control, not why the alleged employer exercised such control. Business needs cannot immunize employers from the FLSA's requirements. If the nature of a business requires a company to exert control over workers to the extent that [the putative employer] has allegedly done, then that company must hire employees, not independent contractors.'' 721 F.3d at 1316. Although the Department notes the cases cited by these commenters, it does not agree with these commenters' conclusion about the state of the case law. As the Department explained in the 2021 and 2024 rulemakings and the NPRM, in the Department's view, the case law is not settled nor uniform on this aspect of the control factor.[237] Indeed, the Department's proposed provision is supported by case law that the commenters did not address or distinguish, rather than being foreclosed, as AFL–CIO asserted.[238] Moreover, the relevant section of *Keller* states that ''a jury could therefore find that Miri controlled Keller's job performance through its initial training and hiring practices,'' 781 F.3d at 814, which the Department views as weak support at best for the proposition that exercising control to ensure that technicians complied with defendant's client's specifications supports employee status.

NWJP argued that this provision ''expands'' the proposition that ''employer control necessary to comply with legal standards may not indicate an employment relationship'' so broadly that it could arguably be ''applied to any type of control a business might wish to exert over an individual and will make it almost impossible to demonstrate control.'' NWJP also asserted that the NPRM incorrectly implied that ''having deadlines and quality control standards are common in business but not in employment contracts'' because ''many if not most employers require their employees to meet deadlines and produce quality work.'' The Department disagrees that this provision can be read so broadly that it would be almost impossible to find control indicative of employment and also disagrees that it is equally common for at-will employees to have employment contracts specifying deadlines and quality standards as it is for contracts between businesses.

By contrast, there was broad support for this provision among the business community, which often commented that the Department's position was supported by judicial precedent. *See, e.g.,* American Securities Association, FSI. Supporters of the Department's proposal frequently urged the Department to go farther by adding multiple refinements to the regulatory text and examples (often to address industry-specific contexts), as well as stronger assurances that businesses' efforts to ensure compliance with legal and contractual obligations would not constitute control indicative of an employment relationship. *See, e.g.,* Associated Builders and Contractors, American Securities Association, CWI, Flex Association, IFA, Littler WPI, National Retail Federation, Uber, U.S. Chamber. However, the Department believes that the language proposed in the NPRM is sufficient and declines to add industry-specific regulatory text or examples, as this is intended to be a balanced rule of general applicability.

Independent Work Coalition stated that ''[a]s written, the proposed rule does not draw any explicit distinction between federal, state, and local legal obligations'' and it recommended that the Department clarify whether this provision extends to ''actions taken in response to state and local laws, regulations, ordinances, and mandates.'' The Department affirms that its view of the regulatory language ''legal obligations'' would encompass state and local laws, regulations, ordinances, and mandates as long as they are specific and identifiable (see discussion below).

Several commenters that supported the Department's proposal asked for a refinement to remove the word ''specific'' from the proposed regulatory text (''[r]equiring the individual to comply with specific legal obligations''). *See* Independent Work Coalition; National Home Delivery Association; Scopelitis. For example, Independent Work Coalition contended that ''legal and regulatory requirements often are structured in a manner that demands businesses to exercise judgment in determining how to implement them,'' and when businesses exercise such judgment in good faith, this ''should not itself be treated as probative of control.'' Further, this commenter felt that removing the word ''specific'' would ''better reflect the realities that businesses face when structuring their operations alongside varying legal and regulatory schemes across jurisdictions while bearing in mind broadly accepted responsibilities to advance the health and safety of the public and their customers.''

Scopelitis explained that trucking is a highly regulated industry, and that the Federal Motor Carrier Safety Regulations (FMCSRs) are ''highly prescriptive in some instances'' but ''set broad standards affording discretion on the part of the carrier'' in other instances. Scopelitis argued that ''[r]equiring drivers to adopt or participate in measures to improve or facilitate compliance with applicable safety laws or reduce crashes is inevitably in furtherance of a motor carrier's general obligation under the FMCSRs, but may be viewed as not complying with a *specific* legal obligation. Elimination of the adjective 'specific' would keep the term from being accorded unintentional weight and is consistent with court decisions.'' On the other hand, OOIDA supported ''the Department's proposal that compliance with a *specific* legal obligation should not be considered as a factor related to control, especially when there is a regulation that states this factor is not determinative of an employee or independent contractor relationship,'' explaining ''we believe limiting any exemption of the 'control' factor to 'specific' obligations would help improve clarity and remove ambiguity.''

In the 2021 Rule, some of the same commenters had requested that the Department remove the word ''specific'' from this provision.[239] At that time, the Department declined to do so.[240] The Department concluded that ''retaining the word 'specific' is consistent with the Department's position that, although requiring workers to comply with legal obligations could be some manner of control, such requirements reflect the applicable legal regime more than the potential employer's control[.]'' [241] The Department again declines to remove the word ''specific'' in the final rule based on the same reasoning. Additionally, this provision regarding compliance with legal obligations generated a significant number of comments when the NPRM for the 2024 Rule proposed that ''control

[237] 86 FR 1183; 87 FR 62247–48; 89 FR 1693–94; 91 FR 9952.

[238] For example, some courts have viewed employer requirements on workers to comply with applicable legal obligations or meet quality control standards as not indicative of control. *See Parrish,* 917 F.3d at 382; *Iontchev,* 685 F. App'x at 550; *Mid-Atl. Installation,* 16 F. App'x at 106.

[239] 86 FR 1183–84.

[240] *Id.*

[241] *Id.*

implemented . . . to comply with legal obligations, safety standards, or contractual or customer service standards may be indicative'' of employee status,[242] leading the Department to clarify its interpretation in the final 2024 Rule by advising that ''actions taken by the potential employer for the sole purpose of complying with a specific, applicable Federal, State, Tribal, or local law or regulation are not indicative of control'' whereas ''[a]ctions taken by the potential employer that *go beyond* compliance with a specific, applicable Federal, State, Tribal, or local law or regulation and instead serve the potential employer's own compliance methods, safety, quality control, or contractual or customer service standards may be indicative of control.'' [243] The Department has thus consistently viewed compliance with specific legal obligations to be not indicative of control, and chooses to continue that approach.

Another issue that came up frequently in comments on this aspect of the control factor is whether the Department intended to include *voluntary* safety and health standards. For example, National Association of Home Builders commented that ''because 'standards' in the context of health and safety usually refers to regulatory requirements, the proposed reference to 'health and safety standards' is ambiguous as to whether it encompasses a putative employer's requirement that a worker comply with workplace safety practices and protocols developed and voluntarily enforced by the employer.'' This commenter suggested an alternative formulation where ''practices'' would be substituted for ''standards.'' National Home Delivery Association and Scopelitis urged the Department to ''ensure there is no ambiguity that *voluntary* safety measures in furtherance of general legal obligations or customer requirements are not employer-like control.''

Demonstrating stakeholder confusion, SHRM read the proposal to address only ''mandatory legal compliance'' rather than ''voluntary safety training that exceeds the legal minimum,'' and Chamber of Progress viewed the proposal as ''creat[ing] the wrong incentive by discouraging companies from going beyond legal minimums,'' whereas Lyft commended the NPRM for ''mak[ing] clear that the voluntary safety measures companies take, including requiring a worker to satisfy health and safety standards to protect workers and the public above the legal floor,'' would not be evidence of an employment relationship.

OOIDA urged the Department to amend or clarify the NPRM to ''ensure that carriers cannot micromanage owner-operators through 'safety' requirements,'' noting that ''[a]llowing a carrier to claim any requirement implemented for safety would authorize them to exert significant control over an individual while effectively exempting themselves from the control factor.'' *See also* Bowen Family Transport LLC (''As an independent contractor . . . I believe it should be illegal to put a device controlled by [SI] that can slam on the [brakes] on an interstate''); Samantha Taylor (independent contractor objecting to the required use of ''cameras and a governor [ ] (speed limiter)'' in her truck).

The Department is hereby clarifying that this provision encompasses health and safety standards that are not legally required. The Department believes the plain language of this provision—''[r]equiring the individual to comply with specific legal obligations, satisfy health and safety standards''—demonstrates that the ''legal obligations'' phrase is separate from the ''health and safety standards'' phrase, such that it is properly read to not limit ''health and safety standards.'' Employers could thus implement voluntary (*i.e.,* not required legally) health and safety standards without those standards making the worker more or less likely to be an employee. However, the term ''standards'' connotes an accepted workplace standard, not any requirement that arguably fits under the broad labels ''health'' or ''safety.'' Contrary to certain comments, this rule clarifies that specific basic standards that are broadly accepted in workplaces across the country are not somehow indicative of the type of control between an employer and employee. Therefore, the Department would view rules requiring satisfaction of such standards with an eye toward whether they actually pertain to health and safety, as opposed to being pretext for the type of control exercised over workers to meet the business' own needs.

The breadth of comments and views on this aspect of the control factor has prompted the Department to provide additional clarification on how it should be understood and applied. Merely labeling requirements ''health and safety,'' for example, does not automatically mean they could not possibly indicate employer-type controls regardless of their nature, content, or extent. The inquiry turns on the substance and practical operation of the requirement, not the characterization of its purpose. A measure that genuinely establishes a health or safety standard typical of a business-to-business relationship would not indicate employee status. But detailed instructions governing how, when, or where the worker must perform the work may constitute employer-like control even if described as promoting health or safety. Otherwise, a potential employer could evade the control analysis simply by attaching a safety rationale to directives that, in practice, substantially govern the performance of the work. The Department has decided to add explanatory text to this provision in the control factor in order to strike the proper balance and sufficiently describe when such compliance measures will not make a worker more or less likely to be an employee. The newly-added explanatory text is the following: ''The nature of a particular requirement turns on its substance and practical operation, not the characterization of its purpose. For example, detailed instructions governing how, when, or where the worker must perform the work may indicate control typical of an employment relationship even if described as promoting health or safety or maintaining quality control standards.''

Other than the additional text described above (as well as a minor non-substantive edit changing ''and/or'' to ''or''), the Department is finalizing the control factor as proposed.

2. The Individual's Opportunity for Profit or Loss (§ 795.105(d)(1)(ii))

The Department proposed regulatory text in § 795.105(d)(1)(ii) describing the second core factor—an individual worker's opportunity for profit or loss. The proposed factor indicated independent contractor status if the individual worker ''has an opportunity to earn profits or incur losses based on his or her exercise of initiative (such as managerial skill or business acumen or judgment) or management of his or her investment in or capital expenditure on, for example, helpers or equipment or material to further his or her work.'' The proposed factor explained that, ''[w]hile the effects of the individual's exercise of initiative and management of investment are both considered under this factor, the individual does not need to have an opportunity for profit or loss based on both for this factor to weigh towards the individual being an independent contractor.'' The proposed factor indicated employee status if the worker ''is unable to affect his or her earnings or is only able to do so by

[242] 87 FR 62275 (proposed § 795.110(b)(4)).

[243] 89 FR 1694 (emphasis added).

working more hours or faster.'' [244] The example in proposed § 795.115(b)(3) illustrated this point in the context of a construction worker who was ''paid a fixed hourly rate'' by a company that determined ''how many and which tasks she performs.'' [245]

As proposed, the factor advised that both the individual worker's exercise of initiative and management of investment should be considered even though the factor could indicate independent contractor status based on only one. The NPRM explained that, ''[p]roviding that the worker must have an opportunity for profit or loss based on both initiative and investment for this factor to indicate independent contractor status would overemphasize initiative and investment and detract from this factor's ultimate focus on the worker's opportunity, as it is that opportunity which is a core or primary indicator of a worker's status . . . .'' [246] The NPRM elaborated on the ''capital'' nature of the investment, explaining that, consistent with the economic dependence inquiry, an investment must indicate an independent business by the worker, as opposed to merely being required by the potential employer, for it to indicate an opportunity for profit or loss.[247]

Like the 2021 Rule, but unlike the 2024 Rule, the NPRM considered the worker's investment within the opportunity for profit or loss factor—not as a standalone factor. The NPRM explained that considering investment as part of opportunity for profit or loss is ''consistent with the Supreme Court's decision in *Silk*.'' [248] The NPRM further explained that the Second and D.C. Circuits consider opportunity for profit or loss and investment as one factor, as they are often conceptually or factually related.[249] The NPRM recognized that ''a majority of circuit courts articulate opportunity for profit or loss and investment as separate factors,'' but also discussed how some of those courts have described the opportunity and investments factors as interrelated or relating logically to one other.[250] Thus, the Department viewed its proposal to consider the worker's investment as part of the opportunity for profit or loss factor as representing ''a legal framework comprised of commonality between the Supreme Court and federal appellate courts that may be applied by workers and businesses accurately and reliably.'' [251] The NPRM stated that ''[u]nderstanding the relationship between opportunity for profit or loss and investment and considering them together would make the analysis clearer to apply and avoid duplication.'' [252]

The NPRM added that considering investment as part of opportunity for profit or loss would also prevent an investment by the individual that is unrelated to, and outside of, the business from becoming the focus of the analysis.[253] As explained in the 2021 Rule, the economic reality factors are limited to the worker's ''claimed independent operation'' (*i.e.,* the work that is claimed to be done as an independent contractor).[254] The example in proposed § 795.115(b)(3) illustrated this point in the context of a worker who ''works full time performing home renovation and repair services for a residential construction company'' and also ''earns substantial profits'' from a food truck that she operates on weekends.[255] The example explained that the food truck ''is a separate business from her work in the construction industry, and therefore is not relevant to the question of whether she is an employee of the construction company or in business for herself in the construction industry.'' [256]

Also like the 2021 Rule, but unlike the 2024 Rule, the proposed opportunity for profit or loss factor considered the individual worker's investment only—not the relative investments of both the worker and the potential employer. The NPRM explained that comparing the relative investments does not illuminate the worker's economic dependence or independence (the ultimate inquiry) and instead merely compares their respective sizes and resources.[257] The potential employer almost always is larger and has greater resources than the worker, and the relative comparison thus sheds little, if any, light on the worker's economic dependence or independence and is not probative.[258]

The 2024 Rule did not compare ''the dollar values of investments or the sizes of the worker and the potential employer'' and instead focused on comparing the investments ''to determine whether the worker is making similar types of investments as the potential employer (even if on a smaller scale) to suggest that the worker is operating independently.'' [259] The NPRM explained, however, that the 2024 Rule's version of comparing investments did not make the consideration of relative investments probative and unnecessarily introduced the potential employer's size and resources into the analysis.[260] The NPRM further explained that considering the worker's investment only ''is more consistent with the Supreme Court's articulation of the economic reality test,'' which ''has never compared a worker's investment to that of the potential employer.'' [261] The Department acknowledged in the NPRM that its proposed approach is different from how some (but not all) circuit courts have since considered investment, but explained that ''application of the Supreme Court's analysis takes precedence.'' [262] The example in proposed § 795.115(b)(2) illustrated how only the individual worker's investment should be considered.[263]

The NPRM also explained that ''it is well-settled that an individual worker's initiative should be considered as part of opportunity for profit or loss,'' elaborating that a worker's initiative, such as managerial skill or business acumen or judgment, is an appropriate measure of a worker's opportunity to earn profits or incur losses.[264] The 2024 Rule similarly described this factor as considering ''whether the worker has opportunities for profit or loss based on managerial skill (including initiative or business acumen or judgment) that affect the worker's economic success or failure in performing the work.'' [265] Consistent with the 2021 Rule, the Department proposed to consider the individual's initiative only as part of the opportunity for profit or loss factor and not as part of the skill or permanence factors, explaining that this approach ''would avoid duplication and overlapping considerations among factors and ensure that the key concept of entrepreneurial initiative is considered in a core factor.'' [266]

[244] 91 FR 9974.

[245] *Id.* at 9974–75.

[246] *Id.* at 9952.

[247] *Id.* (citing 86 FR 1187).

[248] *Id.* (citing *Silk,* 331 U.S. at 718–19); *see also* 86 FR 1174 and 1186.

[249] *Id.* at 9952–53 (citing cases).

[250] *Id.* at 9953 (citing cases).

[251] *Id.*

[252] *Id.*

[253] *Id.* (citing *Parrish,* 917 F.3d at 384).

[254] *Silk,* 331 U.S. at 716; *see also* 86 FR 1178.

[255] 91 FR 9974–75.

[256] *Id.*

[257] *Id.* at 9953 (citing 86 FR 1188).

[258] *Id.*

[259] 29 CFR 795.110(b)(2) (2024).

[260] 91 FR 9953.

[261] *Id.; see also Silk,* 331 U.S. at 719 (recognizing that the truck drivers' ownership of their vehicles supported independent contractor status even though the coal companies that engaged them undoubtedly had far greater overall capital investments).

[262] 91 FR 9953.

[263] *Id.* at 9974.

[264] *Id.* at 9953 (citing 86 FR 1189 (collecting cases)).

[265] 29 CFR 795.110(b)(1) (2024).

[266] 91 FR 9953.

The Department received many comments addressing the proposed opportunity for profit or loss factor. Numerous commenters addressed the inclusion of investments within the opportunity factor and its consideration of the individual worker's investment only instead of considering the relative investments of both the worker and the potential employer. The Department addresses these two issues first, then addresses other issues raised by commenters, before finally discussing two new examples in the regulatory text that the Department adds in response to comments.

a. Comments Regarding Considering Investment Within the Opportunity for Profit or Loss Factor

Numerous commenters opposed the NPRM's consideration of investment within the opportunity for profit or loss factor. For example, Coalition of State Officials asserted that the NPRM did ''not justify its decision to diverge from . . . case law, or address the confusion that would result from that divergence, except to offer, without support, that its approach would provide 'greater explanation and clarity' '' (quoting NPRM). NWJP stated that opportunity for profit or loss and investment ''are not necessarily related and by combining them into one factor, the Department's proposed rule only confuses the analysis'' and ''also unfairly tips it towards independent contractor status.'' Nichols Kaster commented that ''relegation of this critical piece of the economic reality test to a subpart of another factor . . . is unfounded and will make it easier for businesses to deny workers the protection of the FLSA.'' *See also, e.g.,* NELP (''Although the two factors are linked, they are hardly duplicative and separately serve as useful indicia of an entity's status under the FLSA, as the Supreme Court's tests note.''); SEIU (describing it as ''a notable departure from the existing standard'').

Numerous other commenters supported the NPRM's consideration of investment within the opportunity for profit or loss factor. For example, FSI commented that ''[i]nvestment is properly considered as part of the 'opportunity for profit or loss' '' factor and that this would ''eliminate redundancy and double counting.'' American Association of Advertising Agencies asserted that, ''[b]y integrating investment into the broader profit-and-loss inquiry, the Department properly recognizes that [representative expenditures by a freelancer] are entrepreneurial tools used by creative professionals to increase their marketability, enhance their project efficiency, and ultimately drive their own business profits.'' Flex Association ''support[ed] eliminating 'investment' as a stand-alone factor,'' saying that ''[i]nvestment is an entrepreneurial activity: perhaps the most fundamental choice an entrepreneur makes is where to allocate and invest her capital. Whether she is buying equipment, taking out ads, or taking skills training to enhance her human capital, she is engaged in the core business activity of allocating [scarce] resources. Investments are therefore properly considered under the 'opportunity' factor.'' *See also, e.g.,* National Retail Federation (describing the 2024 Rule as ''misguided in attempting to make investment its own factor'' because ''[a]ny investments naturally impact a contractor's ability for profit or loss,'' and ''investments are so interrelated with profits and losses that analyzing them separately would be duplicative''); Littler WPI (stating that including investment in the opportunity factor ''is a welcome change that will bring clarity and reduce overlap,'' and adding that ''[w]ise decisions about investments are perhaps the clearest path to increasing profits or suffering losses'').

Having considered the comments on this issue, the Department adopts its proposal to consider investment as part of the opportunity for profit or loss factor. As an initial matter, whether opportunity and investment are articulated as separate factors, the worker's investment is a longstanding consideration, is particularly probative of a worker's status, and should be considered in all cases, and the Department's inclusion of investment within the opportunity factor reflects this important reality. However, mechanically articulating the worker's investment as a separate factor in the analysis because that is how a majority of courts *recite* the factors overlooks how courts actually *consider and apply* investment when determining a worker's status.

In *Silk,* for example, the Supreme Court articulated opportunity and investment separately but analyzed them together. In particular, the Court found that coal unloaders were employees because they had ''no opportunity to gain or lose except from the work of their hands and [ ] simple tools,'' while truck drivers who invested in their own vehicles had ''opportunity for profit from sound management'' of that investment by, for instance, hauling for different customers.[267] The Court thus framed the analysis as whether workers are more like unloaders whose profits were based solely on ''the work of their hands and [ ] simple tools'' or the drivers whose profits depended on their initiative and investments.[268]

The Second Circuit considers ''the workers' opportunity for profit or loss and their investment in the business'' as one factor,[269] explaining that ''[e]conomic investment, by definition, creates the opportunity for loss, but investors take such a risk with an eye to profit.'' [270] Thus, as the Court explained decades ago and as the Second Circuit noted much more recently in *Saleem,* investment frequently is a pathway to opportunity for profit or loss. The D.C. Circuit has adopted the Second Circuit's consideration of opportunity for profit or loss and investment as one factor.[271] Additionally, although the Fourth Circuit articulates the factors separately, it has acknowledged that the two concepts ''relate logically to one other.'' [272] The Seventh Circuit similarly articulates them separately but has explained that investment ''is interrelated to'' opportunity for profit or loss.[273]

In addition to the supportive case law of the Supreme Court, the Second and D.C. Circuits, and others, considering investment within the opportunity for profit or loss factor simplifies the application of the analysis by deduplicating elements separated under the 2024 Rule. Considering investment within opportunity avoids unnecessary and duplicative analysis of the same facts under two factors, thereby facilitating its proper application by both businesses and workers. *See, e.g., Mid-Atl. Installation,* 16 F. App'x at 106–07 (finding that the worker's capital investments in tools, equipment, and a truck indicated independent contractor status under both the opportunity and investment factors). Considering investment within the opportunity factor rather than in isolation also prevents an investment by the worker that is unrelated to, and outside of, the business from becoming part of the analysis. *See, e.g., Parrish,* 917 F.3d at 384 (giving weight to consultant's investment in, and losses relating to, a goat farm that was unrelated to his consulting work for an oil drilling

[267] *Silk,* 331 U.S. at 717–19.

[268] *Id.* at 717–18.

[269] *Saleem,* 854 F.3d at 139 n.19 (citing *Silk,* 331 U.S. at 716 and *Superior Care,* 840 F.2d at 1058–59); *Franze* v. *Bimbo Bakeries USA, Inc.,* 826 F. App'x 74, 76 (2d Cir. 2020).

[270] *Saleem,* 854 F.3d at 144 n.29.

[271] *Morrison* v. *Int'l Programs Consortium, Inc.,* 253 F.3d 5, 11 (D.C. Cir. 2001) (citing *Superior Care,* 840 F.2d at 1058–59).

[272] *McFeeley,* 825 F.3d at 243.

[273] *Lauritzen,* 835 F.2d at 1537.

company that was the issue in the case). As explained above, the economic reality factors are limited to the individual's ''claimed independent operation,'' and anchoring investment in opportunity helps to ensure that the analysis does not drift away from that focus.[274]

In sum, the Department finds the Second Circuit's approach to opportunity for profit or loss and investment to be particularly persuasive and best aligned with the Department's goal in this rulemaking of sharpening the employee/independent contractor analysis, including by avoiding duplication among the factors.

b. Comments Regarding Considering the Individual Worker's Investments Only Instead of Relative Investments

Some commenters opposed the NPRM's consideration of the individual worker's investments only instead of comparing the worker's investments to the potential employer's investments. For example, Nichols Kaster asserted that the NPRM, ''to the clear detriment of workers, assigns no relevance to how the workers' investment compares to the size of the putative employer's investments,'' adding that ''[t]his focus solely on workers' investment, without an analysis of how it compares to the putative employer's investment, is contrary to established law'' and ''unfounded'' and ''will make it easier for businesses to deny workers the protection of the FLSA.'' Farmworker Justice commented that the NPRM fails to ''consider that a worker's relatively small investment is unlikely to sway an operation to a point of profitability'' and that ''[i]t is impossible to understand whether a worker's investment was relevant to profit or loss without understanding its overall impact, which requires an analysis of the potential employer's contribution.'' NWJP argued that this aspect of the NPRM ''contradicts existing case law,'' ''does not offer any guidance for how one should evaluate investment related facts in absence of [comparing the worker's investments to that of the potential employer],'' and ''only confuses.'' This commenter added that the 2024 Rule ''adequately addresses the Department's named concern that when comparing amount of money invested the business will frequently have more money on the table by instructing one to compare the types of investment as well.'' SEIU stated that ''[t]his is a notable departure from the [2024 Rule], which . . . compares the employer's investments to the worker's.''

Numerous other commenters supported the NPRM's consideration of the individual worker's investments only instead of comparing the worker's investments to those of the potential employer. For example, Independent Bakers Association asserted that ''[t]he relevant question is whether the *worker* has a significant investment in his or her business,'' ''[t]he other party's investment amount is beside the point,'' ''[a]nd comparing investments could result in a contractor's status changing simply based on the size of the party with which they contract, surely an illogical outcome.'' Landmark Legal Foundation commented that the Supreme Court in *Silk* ''focused exclusively on the worker's own investments'' and that the ''2024 Rule departed from that approach'' by adopting a ''comparative framework [that] has no support in Supreme Court precedent.'' This commenter added that the 2024 Rule's comparative framework ''produces a structurally biased result'' because ''[i]n most cases an independent contractor's investments will be smaller than a corporate client's total business investment,'' and ''the comparison will systematically show employee status regardless of whether the worker is genuinely in business for herself.'' CWI agreed, saying that the 2024 Rule's comparative investment approach ''was inherently skewed against finding an opportunity for profit or loss'' because a ''sole proprietor's investment will almost always appear small in comparison with a corporate client's total capitalization,'' adding that the NPRM's approach ''is consistent with the Supreme Court's ruling in *Silk,* where the Court found that the truck drivers held independent contractor status despite the coal companies' far greater total capitalization.'' Uber stated that a worker's investments ''should be considered on their own terms—not in comparison to investments by some other party,'' adding that ''[w]hen the worker invests in things that will support her own business, it is irrelevant whether someone else also invests a larger sum;'' otherwise, ''no small business could contract with a larger one.'' Littler WPI argued that comparing investments ''provides no useful insight as to whether that worker is in fact in business for him- or herself'' and has little relevance to the economic reality test. Other supportive commenters included American Association of Advertising Agencies, American Council of Life Insurers, Associated Builders and Contractors, Coalition to Promote Independent Entrepreneurs, FSI, Private Care Association, Scopelitis, ShiftKey, Transportation Intermediaries Association, and WAFLA.

Having considered the comments on this issue, the Department adopts its proposal to consider the worker's investments only instead of comparing the worker's investments to the potential employer's investments. Throughout this rule, the Department is seeking to articulate the factors in a way that connects them to the ultimate inquiry of economic dependence and actually delineates clearly between employee and independent contractor status (if a factor points always or usually in one direction, it has little to offer). Everyone agrees that the nature and scope of the worker's investments (or the lack thereof) is probative of the worker's economic dependence. And as it did in the 2021 Rule,[275] the Department believes that comparing the worker's investments to the investments of the potential employer saps the probative value from the consideration of investments. Instead of shedding light on the worker's economic situation and capacity to operate as an independent business, comparing the worker's investments to those of the potential employer merely compares their respective sizes and resources. In almost all cases, the potential employer is larger than and has greater resources than the individual worker (which would constantly indicate one status over the other). Yet, if that individual worker has made a meaningful investment in, or capital expenditure on, helpers or equipment or material to further his or her work, then that consideration indicates a degree of economic independence that should not be overridden by the size of the potential employer. For this reason, the approach of the 2024 Rule, to the extent it was perceived to compare solely the size of the worker's investments to the size of the potential employer's investments, could have created absurd results. For example, this factor might indicate employee status for a worker who has made such meaningful investments if engaging with a massive corporation and independent contractor status if engaging with a small business. This is because the comparative value of

[274] The example in § 795.115(b)(7) illustrates this point in the context of an individual who ''works full time performing home renovation and repair services for a residential construction company.'' The individual also ''earns substantial profits'' from a food truck that she operates on weekends. However, her investment in the food truck ''is a separate business from her work in the construction industry, and therefore is not relevant to the question of whether she is an employee of the construction company or in business for herself in the construction industry.''

[275] 86 FR 1188.

investment is far less probative of economic independence than the nature and extent of the worker's investment in his or her business. Considering the worker's investments without comparing them to those of the potential employer thus ensures that this consideration remains tied to the ultimate inquiry of the economic dependence and can indicate employee or independent contractor status as appropriate depending on the facts.

The Department's position is consistent with the Supreme Court's articulation of the economic reality test, which has never compared a worker's investments to those of the potential employer. In *Silk,* for example, the Court recognized that the truck drivers' ownership of their vehicles supported independent contractor status even though the coal company that engaged them undoubtedly had far greater overall capital investments.[276] And the Court recognized that the unloaders' lack of meaningful investment (they ''provided only picks and shovels'') supported employee status without regard to the coal company's investment.[277] In other words, the Court found the realities of the respective workers' investments to be probative—not the coal company's investments.

Of course, the Supreme Court's analysis takes precedence over decisions of the circuit courts. Nonetheless, some circuits do consider the worker's investments without comparing them to the potential employer's investments in its business. For example, the Seventh Circuit found that the investments factor indicated that a truck driver was an employee without considering the trucking company's investments in its business.[278] The Second Circuit found that the fact that the workers ''invested heavily in their driving businesses'' indicated that they were independent contractors without comparing their investments to those of the potential employer, adding that, under the economic reality test, whether the worker has '''large capital expenditures'—as opposed to 'negligible items, or labor itself'—are highly relevant to determining whether an individual is an employee or an independent contractor.'' [279] The Eleventh Circuit has likewise focused on the nature of the worker's investments without comparing them to the potential employer's investments.[280]

The Department recognizes that a number of circuits compare the worker's investments to those of the potential employer.[281] The Department notes, however, that, among these circuits, how the Fifth and Eighth Circuits have applied the comparative investments approach to the facts of cases reveals that the approach has little probative value. In *Cornerstone Am.,* for example, the Fifth Circuit stated that it was of course ''clear that [the insurance company's] investment—including maintaining corporate offices, printing brochures and contracts, providing accounting services, and developing and underwriting insurance products—outweighs the personal investment of any one Sales Leader.'' [282] The court, however, never explained how this fact was probative of the Sales Leaders' economic dependence, and when summing up the entirety of the facts and analyzing whether the workers were economically dependent on the insurance company as a matter of economic reality, the court did not even mention the insurance company's larger investment.[283] And in *Parrish,* the Fifth Circuit compared the relative investments, but noted that ''[o]bviously, [the oil drilling company] invested more money at a drill site compared to each plaintiff's investments'' and accorded the factor little weight in light of the other evidence.[284] In *Karlson,* the Eighth Circuit found that comparing the worker's investment with the potential employer's total operating expenses had little relevance because ''[l]arge corporations can hire independent contractors, and small businesses can hire employees.'' [285]

Additionally, the Department notes that this final rule preserves a totality-of-the-circumstances inquiry, which is particularly important when analyzing opportunity for profit and loss. The enumerated factors focus the analysis on the facts within that totality that ordinarily matter and why. But additional facts or considerations may nevertheless be relevant (and, therefore, should be considered) if they indicate whether the worker is in business for himself or herself or is economically dependent on the potential employer for work. A comparison of the parties' relative investments is one such unenumerated consideration and may be examined when it meaningfully illuminates that inquiry in a particular case. For the reasons explained above, however, the Department believes that such a comparison will ordinarily have little or no value because it measures the parties' relative scale rather than the worker's economic independence. Incorporating that comparison as an enumerated component of the investment consideration would therefore dilute, rather than enhance, the opportunity factor's probative force. This rule accordingly does not foreclose comparison of relative investments in uncommon circumstances in which it may be genuinely informative, but it declines to make that generally unhelpful comparison part of the enumerated investment analysis.

The 2024 Rule considered the worker's and the potential employer's relative investments but acknowledged that strict comparisons of the investments were not helpful.[286] The 2024 Rule thus took an approach that did not simply compare ''the dollar values of investments or the sizes of the worker and the potential employer'' and instead focused ''on comparing the investments to determine whether the worker is making similar types of investments as the potential employer (even if on a smaller scale) to suggest that the worker is operating independently, which would indicate independent contractor status.'' [287] This approach, however, still injects the potential employer's investments into the analysis without any basis for why the potential employer's investments are probative of the economic dependence

[276] 331 U.S. at 719.

[277] *Id.* at 716–17.

[278] *Brant,* 43 F.4th at 670–71.

[279] *Saleem,* 854 F.3d at 144 (quoting *Snell,* 875 F.2d at 810); *see also Franze,* 826 F. App'x at 77–78 (purchasing delivery routes ''without any financial assistance from Bimbo'' constitutes a substantial financial outlay that weighs in favor of independent contractor status).

[280] *Scantland,* 721 F.3d at 1317–18; *see also Nieman,* 775 F. App'x at 625.

[281] *See, e.g., Off Duty Police,* 915 F.3d at 1056 (explaining that ''[t]his factor requires comparison of the worker's total investment to the 'company's total investment, including office rental space, advertising, software, phone systems, or insurance' '') (quoting *Keller,* 781 F.3d at 810); *Verma,* 937 F.3d at 231 (summarizing how courts have viewed this factor in cases examining the employment status of exotic dancers: ''all concluded that 'a dancer's investment is minor when compared to the club's investment' '') (quoting the district court's decision); *Paragon,* 884 F.3d at 1236 (''To analyze this factor, we compare the investments of the worker and the alleged employer.''); *McFeeley,* 825 F.3d at 243 (comparing the potential employers' payment of rent, bills, insurance, and advertising expenses to the workers' ''limited'' investment in their work); *Driscoll,* 603 F.2d at 755 (strawberry growers' investment in light equipment, including hoes, shovels, and picking carts was ''minimal in comparison'' with employer's total investment in land and heavy machinery).

[282] 545 F.3d at 344.

[283] *Id.* at 346.

[284] 917 F.3d at 383.

[285] 860 F.3d at 1096.

[286] 89 FR 1684 (''[T]he Department understands the concerns raised by many commenters with merely comparing the size of and dollar expenditures by the worker to those of the employer, especially for workers who are sole proprietors.'').

[287] 29 CFR 795.110(b)(2) (2024).

or independence of the individual worker at issue. In sum, comparing the relative investments in any manner does not illuminate the worker's economic dependence or independence. By contrast, as explained herein, analyzing the extent to which the individual worker has an opportunity for profit or loss because of his or her investment in, or capital expenditure on, helpers or equipment or material to further his or her work is probative of the worker's economic dependence or independence.

Relatedly, several commenters raised issues regarding how the opportunity factor would apply to workers with small investments. For example, Farmworker Justice stated that ''a worker's relatively small investment is unlikely to sway an operation to a point of profitability,'' and ''[f]armworkers make de minimis, if any, 'capital contributions' to their employers' businesses.'' Although other facts would have to be considered too, the Department agrees that such farmworkers do not seem to have an investment indicating that they have an opportunity for profit or loss. Philadelphia Legal Assistance similarly commented that ''[s]mall spending on transportation or tools does not reflect business independence and is unlikely to meaningfully affect whether the business makes money.'' The Department does not disagree and reiterates that, although other facts would need to be considered too, small spending on transportation or tools does not seem to be an investment indicating an opportunity for profit or loss. Indeed, as explained in the 2021 Rule,[288] the investment must be capital in nature and consistent with the worker being in business for him or herself for the investment to indicate an opportunity for profit or loss. UBC took issue with the example in proposed § 795.115(b)(2), saying that ''[t]his example will be interpreted as supporting independent contractor status for construction workers dispatched to a job site through an app if they have tools—and all building trades workers will have tools.'' This example, however, does not mention tools and explains that the facts presented indicate independent contractor status under the opportunity for profit or loss factor because the worker ''is able to meaningfully increase his earnings by exercising initiative and business acumen and by investing in his own equipment,'' notwithstanding that the potential employer has made a substantially larger investment in its own business operations.[289]

American Society of Travel Advisors suggested that ''the regulations expressly recognize that workers in many service industries may make only a minimal investment in equipment or materials and in such situations this consideration, by itself, should not be taken to weigh in favor of employee status.'' The Department declines to do so. A minimal investment in equipment or tools, by itself, does typically indicate employee status. Adopting this suggestion would be contrary to the Department's general approach to articulating the factors in this final rule, unlike how the 2024 Rule articulated certain factors, in a way that is neutral toward employee or independent contractor status. More generally, a worker who makes a minimal investment in equipment or tools may have an opportunity for profit or loss indicating independent contractor status if the worker may earn profits or incur losses based on his or her exercise of initiative (such as managerial skill or business acumen or judgment).[290] And as the Department explained in the 2021 Rule,[291] the absence of a substantial capital investment may be less probative in more knowledge-based occupations and industries, and for example, freelance journalists, graphic designers, or consultants may be entrepreneurs with little more than a personal computer and smartphone. As Judge Easterbrook has explained, ''possess[ing] little or no physical capital . . . is true of many workers we would call independent contractors. Think of lawyers, many of whom do not even own books. The bar sells human capital rather than physical capital, but this does not imply that lawyers are 'employees' of their clients under the FLSA.'' [292]

Finally, National Association of Home Builders expressed concern that ''the proposed description of th[e opportunity] factor may unnecessarily limit consideration of entrepreneurial investments that are not capital in nature'' and suggested that the Department ''consider alternative or additional regulatory text that allows for the consideration of entrepreneurial investments that are not capital in nature.'' The regulatory text in § 795.105(d)(1)(ii) identifies the worker's ''investment in *or* capital expenditure on, for example, helpers or equipment or material to further his or her work'' (emphasis added). Although the Department believes that capital expenditures and entrepreneurial investments are similar, the regulatory text does not limit consideration to capital expenditures, and entrepreneurial investments that affect a worker's opportunity to earn profits or incur losses are considered too.

c. Other Comments Regarding the Opportunity for Profit or Loss Factor

The Department received numerous additional comments regarding the opportunity for profit or loss factor.

For example, several commenters stated that the Department drafted the proposed opportunity factor to favor findings of independent contractor status. AFSCME commented that this factor ''favors independent contractor status on the whole when either opportunity or investment favor independent contractor status, while both aspects must point to employee status in order for it to favor employee status as a whole,'' thus it ''is structured to give the advantage to independent contractor status rather than consideration of all the relevant facts for each of these two aspects of the test.'' Nichols Kaster stated that the proposed opportunity factor ''indicates independent contractor status if there are facts that support *either* worker initiative or investment (even if either a

[288] 86 FR 1186.

[289] In this final rule, the Department is adopting the example proposed in § 795.115(b)(2) (now renumbered as § 795.115(b)(6)) except that it is changing ''app'' to ''application'' and, as Trevar D. Kolodny pointed out in his comment, ''meaningful'' to ''meaningfully'' to correct a typographical error.

[290] *Meyer* v. *United States Tennis Ass'n,* 607 F. App'x 121, 123 (2d Cir. 2015) (concluding that workers who invested little were independent contractors primarily because of their control over the work and their initiative).

[291] 86 FR 1187.

[292] *Lauritzen,* 835 F.2d at 1540–41; *see also Faludi* v. *U.S. Shale Sols., L.L.C.,* 950 F.3d 269, 275–76 (5th Cir. 2020). Independent Work Coalition suggested that the Department ''add an example involving a knowledge-economy worker, such as a freelance marketing consultant, financial services professional, or technology specialist who sets their own rates, markets services to multiple clients, selects which engagements to accept, and invests in tools or professional development to expand their capabilities'' because ''[s]uch an example would illustrate that the factor encompasses a broad range of entrepreneurial activity and is not limited to workers who make large physical or capital investments.'' The U.S. Hispanic Business Council similarly suggested that the Department ''include an additional example involving a knowledge-economy worker, such as a freelance marketing consultant, financial services professional, or technology specialist, to reflect that this factor applies broadly and is not limited to workers making large capital investments.'' The Department believes that its discussion above addresses these commenters' suggestion and that an additional example is therefore unnecessary. The Department further believes that its discussion above addresses the point in the comment by News/Media Alliance that it is ''vital'' that ''the Department focus holistically on a worker's use of skill, acumen and judgment in securing opportunities to generate a profit or risk a loss, and does not measure this in terms of capital expenditures.''

lack of initiative or lack of investment suggests that the worker is an employee).'' OOIDA commented that, ''[i]f the Department intends to say there doesn't need to be skill exercised when making an investment for this factor to weigh toward independent contractor, then we believe it may indicate independent contractor status where it isn't warranted.'' On the other hand, National Retail Federation asserted that ''initiative alone—without any corresponding investment—can be sufficient to satisfy this factor,'' especially considering that, ''in today's economy, there is less of a barrier to entry to starting and operating a business thanks to technology and other developments that streamline business operations and lower overhead costs.''

As an initial matter, both the individual worker's exercise of initiative and management of investment should be considered in all cases under the opportunity for profit or loss factor even if the factor may indicate independent contractor classification based on only one. The worker's exercise of initiative and management of investment are longstanding considerations and particularly probative of a worker's status. The Department's inclusion of them within the opportunity factor reflects that. However, the ultimate focus of this factor is the worker's opportunity for profit or loss, which the Department believes is a core or primary indicator of a worker's status as explained above. While exercising initiative *and* managing investments would certainly be stronger evidence that a worker has the opportunity for profit and loss, providing that the worker *must* both exercise initiative and manage investments for this factor to indicate independent contractor status would detract from this factor's ultimate focus on the worker's opportunity and would impose an unwarranted mechanical element or checklist on how this factor is applied. Thus, although initiative and investment are both paths to arrive there, a worker must have, as a matter of economic reality, an opportunity for profit or loss to indicate independent contractor status.

Ultimately, the focus of this factor is whether the worker has a meaningful opportunity for profit or loss characteristic of an independent business. Such an opportunity may arise from the worker's exercise of initiative, management of investment, or both; the worker need not demonstrate it through both considerations. Initiative and investment should each be considered where relevant, but they are neither applied mechanically nor tallied against each other. Evidence relating to either consideration does not automatically determine the factor's direction without regard to contrary evidence regarding the other. Rather, evidence concerning initiative and investment must be evaluated together to determine whether the worker possesses a genuine entrepreneurial opportunity to affect profits or losses. Thus, one consideration may be sufficient for the factor to indicate independent contractor status when it meaningfully establishes such an opportunity, but weak evidence under one consideration may be outweighed by stronger contrary evidence under the other. Weak evidence under one consideration favoring independent contractor status, for example, could be outweighed by strong evidence under the other consideration favoring employee status, and vice versa. Undoubtedly the particular facts of each case will produce rules along the scale between independent contractor and employee status. This certainly includes cases in which the evidence, considered as a whole, points equally in opposite directions or does not point meaningfully in either direction. In these and other indeterminate circumstances, the factor may be neutral. To make clear that initiative and investment should be considered as a whole under this factor and to avoid any confusion when applying this factor, the Department has added: (1) ''or both'' to the end of the first sentence in the regulatory text; and (2) a sentence in the regulatory text explaining that evidence under one consideration pointing to either independent contractor or employee status could be outweighed by more persuasive evidence under the other consideration pointing in a different direction.

AFL–CIO asserted that the proposed factor ''conflates true entrepreneurial independence with ordinary variations in wages or output that exist in many employment relationships,'' and added that ''[w]orkers who can increase earnings by working longer hours, accepting more assignments, or marginally adjusting how they perform tasks are not thereby operating independent businesses.'' Similarly, IBT stated that merely working more or faster is more like piecework than an enterprise requiring entrepreneurial judgment. The Department does not disagree and believes that such concerns are already addressed by the regulatory text for this factor, which states that this factor indicates employee status if the worker ''is unable to affect his or her earnings or is only able to do so by working more hours or faster.'' Indeed, Farmworker Justice, although it opposed the proposed analysis generally, acknowledged that the NPRM did ''appropriately explain that, for those workers with a fixed hourly rate, where the employer determines the tasks to perform, the worker does not have a meaningful opportunity for profit or loss.''

Among commenters that generally supported the proposed analysis, Americans for Prosperity Foundation suggested that the factor's final sentence (explaining that it indicates employee status if the worker ''is unable to affect his or her earnings or is only able to do so by working more hours or faster'') be removed, saying that it ''is overbroad and could be construed to extend to circumstances where individuals use their initiative, skills, and judgment to perform more efficiently and thus earn greater profit or invest in their own . . . tools to allow them to achieve this result.'' On the other hand, Center for Workplace Compliance asserted that distinguishing ''between entrepreneurial opportunity driven by managerial skill, initiative, and business decisions'' and ''changes in earnings that depend primarily on working more hours or working faster . . . aligns directly with the economic dependence inquiry and helps distinguish workers who are in business for themselves from those who depend on another entity for work.'' Similarly, CWI endorsed the proposal's articulation of this point as compared to the 2024 Rule but requested clarification that accepting additional engagements ''through one's own independent business operations reflects the exercise of entrepreneurial *initiative* relevant to the opportunity-for-profit-or-loss Core Factor.''

The Department declines to remove the final sentence of this factor's regulatory text. To the extent that a worker who is paid a fixed hourly rate or a fixed rate per piece is only able to affect his or her earnings ''by working more hours or faster,'' the Department believes that this fact indicates that the worker is an employee. This is well-settled in the case law.[293] And the

[293] *See, e.g., Rutherford Food,* 331 U.S. at 730 (''While profits to the boners depended upon the efficiency of their work, it was more like piecework than an enterprise that actually depended for success upon the initiative, judgment or foresight of the typical independent contractor.''); *Rosenwasser,* 323 U.S. at 361–63 (rejecting argument that workers paid by the piece cannot be covered employees under the FLSA); *Off Duty Police,* 915 F.3d at 1059 (explaining that the fact that workers ''earned a set hourly wage regardless of the skill they exercised'' indicated employee status); *Schultz* v. *Capital Int'l Sec., Inc.,* 466 F.3d 298, 308 (4th Cir. 2006) (explaining that opportunity factor indicated employee status because the employer ''paid the agents a set rate for each shift worked'' and

Department agrees that this sentence is consistent with its discussion of economic dependence in this final rule (§ 795.105(b)) as a worker who can affect his or her earnings only by working more or faster is dependent on the employer for those more hours or pieces (*i.e.,* the work) rather than having the nature and character of a business owner who has a separate business.[294] The Department acknowledges though that working more hours or completing more pieces for an employer is different than accepting additional engagements from an employer through the worker's own independent business operations, in which case the opportunity factor could indicate independent contractor status provided there is exercise of initiative or management of investment.

Relatedly, Texas RioGrande Legal Aid commented that, ''[u]nder the proposed regulation, factors as unremarkable as a worker's opportunity for earning tips based on their customer service skill or bonuses based on their managerial or sales skill somehow weigh in favor of independent contractor status.'' As an initial matter, the NPRM did not mention tips or bonuses, and certainly did not state that receiving such compensation, standing alone, indicates independent contractor status. The relevant inquiry is whether the worker's ability to earn tips and bonuses reflects an opportunity for profit or loss arising from the worker's own initiative, managerial judgment, or investment, rather than an earning opportunity created and controlled by the potential employer.

For example, a musical performer who decides when and where to perform, obtains engagements at different venues, manages those different performance opportunities, maintains her own equipment, and earns tips based on the success of each performance may have an opportunity for profit or loss reflecting operation of an independent business. The relevant evidence would not be the receipt of tips, but the performer's ability to obtain and manage engagements and affect earnings through independent initiative and investments. By contrast, a musician who, as a matter of actual practice, is required to perform exclusively for one venue, works according to opportunities and conditions determined by that venue, uses equipment provided by that venue, and can increase earnings only through tips received while performing the assigned work would more likely be an employee. The mere possibility of earning tips would not convert that employment relationship into an independent business.

The same principle applies to bonuses. Bonuses may arise in either employment or independent contractor relationships, and the existence of a bonus is not itself significant. What matters is whether the worker can affect profits or losses through independent business decisions or instead receives additional compensation under terms and opportunities controlled by the potential employer.

Texas RioGrande Legal Aid further commented that the proposed opportunity factor ''chang[es] the focus from whether the *business* dictates the worker's ability for profit and loss to whether the *worker* has an opportunity for profit and loss.'' However, although the proposed opportunity factor is different in ways than the 2024 Rule's opportunity factor, they are both focused on the worker's opportunity. Indeed, the 2024 Rule's opportunity factor ''considers whether the worker has opportunities for profit or loss based on managerial skill (including initiative or business acumen or judgment) that affect the worker's economic success or failure in performing the work.'' [295] In fact, the 2024 Rule's opportunity factor references the worker 10 times and does not mention the potential employer's business once.[296] Although actions by the potential employer may be relevant, the proposed opportunity factor properly focuses on the worker's opportunities.

Texas RioGrande Legal Aid also commented that, ''contrary to the proposed rule, a worker's ability to hire helpers does not in and of itself indicate the existence of the sort of freestanding business organization that is likely to be an independent contractor under the FLSA.'' The proposal did not say that, however, and there are factors in addition to the opportunity factor and considerations within the opportunity factor in addition to whether the worker invests in helpers to further his or her work. In any event, *Silk* [297], circuit courts of appeals,[298] and the Department [299] have considered whether the worker invests in hiring helpers to be relevant.

Richard Reibstein commented that the proposed opportunity for profit or loss factor ''focuses on opportunity for profit and fails to give any attention to or description of the types of losses that bear on the independent contractor status of the worker.'' He also gave several examples of how, in his view, a worker ''can be subject to loss.'' The Department does not intend for this factor to give more attention to profits than losses. In particular, this factor's focus on the worker's management of investments implicates possible losses just as much as possible profits. As the Second Circuit explained in *Saleem*, ''[e]conomic investment, by definition, creates the opportunity for loss, but investors take such a risk with an eye to profit.'' [300] Profits and losses necessarily go together, and to be clear, this factor considers the worker's opportunity for both.

Several commenters addressed workers who use for their work materials and equipment that they already own for personal use. CWI stated that the ''conversion of personal property into a business use (thereby decreasing business expenses, while facilitating profits) [is not] reflective of anything other than an exercise of entrepreneurial initiative'' and requested the Department to specify that ''the use of a vehicle for business purposes, even when it has some other personal use, is entrepreneurial in nature.'' National Retail Federation commented that ''[m]any bona fide independent contractors use materials or equipment for their businesses that they already own for personal use, limiting their need for additional

''dictated the number of shifts available and the hours worked,'' and they could not ''finish a shift more efficiently or quickly in order to perform additional paid work''); *Snell,* 875 F.2d at 809 (explaining that ''toiling for money on a piecework basis is more like wages than an opportunity for 'profit'").

[294] The example at § 795.115(b)(7) illustrates this point in the context of a construction worker who ''is paid a fixed hourly rate'' for a company that ''determines how many and which tasks she performs.'' The example explains that the worker ''does not have a meaningful opportunity for profit or loss based on her exercise of initiative or investment, indicating employee status,'' because she ''is unable to profit, *i.e.,* increase her earnings, by exercising initiative or managing investments because she is paid a fixed hourly rate and the company determines the assignment of work.''

[295] 29 CFR 795.110(b)(1) (2024).

[296] *Id.*

[297] 331 U.S. at 719 (concluding that workers were independent contractors, in part, because ''[t]hey hire their own helpers'').

[298] *See, e.g., Brant,* 43 F.4th at 667–68 (although the worker had only a ''theoretical ability'' to hire helpers, explaining as a general matter that ''[w]hen a worker hires helpers to assist in a job, that fact weighs against employee status''); *Saleem,* 854 F.3d at 143 (fact that workers permitted others to drive for them indicated independent contractor status); *Scantland,* 721 F.3d at 1311–12 (stating that ''employment of helpers'' is relevant); *Driscoll,* 603 F.2d at 754 (same).

[299] *See, e.g.,* WHD Opinion Letter FLSA2025–2 at 5 (describing the ''amount of the worker's investment in facilities, equipment, or helpers'' as relevant); 86 FR 1676 (describing in an example the fact that the worker ''decides when and whether to hire helpers to assist with the work'' as one consideration among others leading to the conclusion that the opportunity factor indicated independent contractor status for that worker).

[300] 854 F.3d at 144 n.29.

investments for their businesses.'' U.S. Chamber of Commerce asserted that ''individuals often purchase cell phones for personal use and later choose to monetize them through gig work,'' disputed the ''notion that certain items must be rigidly categorized as either 'personal' or a business 'investment,' '' and requested the Department to clarify that ''the use of pre-owned equipment deployed for business purposes may cause the opportunity for profit or loss factor to weigh in favor of independent contractor status.'' Having considered these comments, the Department agrees that, when applying the opportunity for profit or loss factor, there should be no barrier to considering a worker's use in his or her work of already-owned materials or equipment that have personal uses too. To the extent that such use affects a worker's opportunity to earn profits or incur losses, it is a probative fact under this factor.

IBT expressed concern that employers would be able to create an opportunity for profit or loss indicating independent contractor status by requiring truck drivers to ''purchase equipment, bear fuel and maintenance costs, or absorb rate fluctuations,'' adding that the ''fact that these drivers bear the full cost of vehicle wear, fuel, and insurance creates the appearance of business risk.'' The Department disagrees; requiring an employee to bear certain costs does not mean that the opportunity for profit or loss factor indicates independent contractor status. As the Department explained in the NPRM and consistent with the economic dependence inquiry, an investment must indicate an independent business by the worker, as opposed to merely being required by the potential employer, for it to indicate an opportunity for profit or loss.[301] Thus, whether an employee who is required to bear certain costs has an opportunity for profit or loss involves an inquiry into the nature of the possible investment and his or her ability to manage it. For example, a company that hires independent contractors to haul freight may obviously require that drivers bring their own vehicles.[302] In contrast, a requirement to ''invest'' in specific, company-provided equipment would not be consistent with the worker being in business for him- or herself.[303]

Several commenters addressed the meaning of initiative under the opportunity for profit or loss factor. NELP criticized the factor for ''elevat[ing] the word 'initiative', a vague word that may encompass activities not indicative of self-employment,'' and stated that the 2024 Rule's articulation of this factor ''emphasizes the necessary and specific characteristic (managerial skill).'' The Department, however, fails to see any appreciable difference between this rule's focus on ''initiative (such as managerial skill or business acumen or judgment)'' and the 2024 Rule's focus on ''managerial skill (including initiative or business acumen or judgment).'' National Association of Home Builders expressed concern that the ''parenthetical elaboration on the worker's exercise of initiative, *i.e.* 'such as managerial skill or business acumen or judgement,' implies that the worker's exercise of initiative should not be considered if it lacks some level of sophistication, especially since the guidance fails to provide an example to the contrary and given that the proposed example of initiative for this factor identifies construction work with the absence of the type initiative that should be considered.'' However, whether the worker exercises initiative in a manner affecting his or her opportunity to earn profits or incur losses is more probative than any level of sophistication, and the fact that the worker who does not exercise initiative in the example in § 795.115(b)(7) worked in the construction industry does not mean that no worker in that industry exercises initiative indicating an opportunity for profit or loss—the examples are fact-specific.

Several commenters appreciated the inclusion of initiative within the opportunity for profit or loss factor. American Securities Association commented that, ''[b]y considering initiative primarily within the opportunity for profit or loss factor (a core factor) rather than dispersing consideration of initiative across multiple factors, the analysis becomes more focused and consistent with how courts have applied the economic reality test.'' Private Care Association and Coalition to Promote Independent Entrepreneurs commented that they support including the worker's initiative in the opportunity for profit or loss factor. Landmark Legal Foundation added that restoring ''initiative as a distinct and meaningful consideration, rather than a subordinate qualifier on the skill factor, better reflects the [Supreme] Court's actual analysis and reduces the artificial burden the 2024 Rule placed on establishing independent contractor status through th[e skill] factor.'' NABTU disagreed, stating that the Department's inclusion of initiative in the opportunity rather than the skill factor ''does precisely the opposite'' of what the Department intends, because ''it *creates* overlap by placing skill considerations under both the skill factor *and* the opportunity for profit or loss factor.'' However, the skill considerations are different and separate under each factor. Only the worker's managerial skill (*i.e.,* how the worker operates as an independent business, if at all) is considered under the opportunity factor, and (as explained more in the discussion of the skill factor below) only the worker's skills, if any, in actually performing the work are considered under the skill factor.

Lyft commented that a ''driver's ability to earn more by exercising initiative, investing in their business, choosing rides that suit the driver's preferences and managing their time and resources strategically are all considerations the control factor alone may not capture'' and requested the Department to state that ''these forms of initiative are evidence of the opportunity for profit and loss.'' Uber commented that, applying the opportunity factor, ''multi-apping'' by drivers ''shows more starkly than anything else that the worker is not beholden to any specific platform,'' ''has multiple possible workstreams available simultaneously,'' and ''is powerful evidence of independence.'' The Department agrees that these actions by drivers may indicate independent contractor status when applying the opportunity factor assuming that they affect the driver's opportunity to earn profits or incur losses. National Retail Federation stated that the Department should ''clarify that an opportunity for profit or loss may arise from the exercise of managerial skill in selecting, timing, and performing work or in controlling costs—not solely from the ability to set or negotiate prices.'' Although the NPRM did not state that an opportunity for profit or loss may arise solely from the ability to set or negotiate prices, the Department agrees with this statement.

National Retail Federation requested the Department to state that ''the 'opportunity' and 'ability' for profit or loss is what matters in the analysis, not the worker's actual levels of investment or initiative shown'' because a worker ''choosing not to engage in certain practices or take on certain risks that would further impact the level of their profit or loss shouldn't result in a finding that the individual is not an independent contractor, unless that worker is prevented from doing so by

[301] 91 FR 9952 (citing 86 FR 1187).

[302] *Silk,* 331 U.S at 719.

[303] *Cf. Scantland,* 721 F.3d at 1318 (concluding that technicians' ''expenditures [in equipment and materials] detract little from the[ir] economic dependence on Knight'' in part because ''many technicians purchased specialty tools from Knight directly via payroll withholdings'').

the potential employer.'' U.S. Chamber of Commerce similarly requested the Department to clarify that ''a worker's access to the *opportunity* to exercise entrepreneurial choices that could lead to profit or loss is what matters for that factor, rather than requiring the exercise of said opportunities.'' FSI requested the Department to ''clarify that a worker's *lack* of entrepreneurial drive and business acumen is not indicative of employee status.'' Scopelitis commented that ''the deliberate decision not to invest resources is as much a hallmark of an independent business decision as the decision to do so.'' FedEx commented that ''the best example of an entrepreneurial decision is the calculation whether to grow, shrink, or stay the same size as a business.''

Having considered these comments, the Department believes that the ultimate outcome of independent entrepreneurship (profit or loss) is separate from the actions indicative of entrepreneurship (initiative, investment, or both) that largely determine that outcome, and this factor makes clear that independent contractors typically ''exercise . . . initiative,'' ''manage[ ] . . . investment,'' or both. Thus, as explained in the 2021 Rule, a lack of profit or loss viewed in hindsight says little about a worker's economic independence; instead, the focus is the degree to which the worker actually exercised initiative or actually managed investments.[304] The provision in § 795.110 that ''the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible'' applies to all of the factors and applies regardless whether it suggests employee or independent contractor status. As further explained in the 2021 Rule, a worker's theoretical ability to, for example, exercise initiative is weaker evidence than the worker's actual practices.[305] On the other hand, a worker's conscious decision to not make a particular investment (especially when choosing among a range of investments) or to not take a particular action (especially when choosing among a range of options) may constitute an affirmative exercise of initiative to consider among others when evaluating opportunity for profit or loss. In sum, in the context of the opportunity factor, the focus is the individual worker's opportunity for profit or loss, as shown by meaningful investments or the exercise of personal initiative; actual profits or losses are less relevant.

Finally, some commenters who supported the proposal suggested numerous additional considerations or examples for inclusion in the Department's discussion of the opportunity for profit or loss factor in this final rule. For example, U.S. Chamber of Commerce suggested twelve ''examples of a worker's initiative or investment that may impact a worker's profit or loss'' and three ''examples of fact situations which are neutral in the analysis of whether the worker controls their profits and losses.'' For this (and each other factor), the Department's goal, however, is to provide a clear and generally-applicable standard that can point to independent contractor or employee status depending on the facts presented. The Department is of course addressing many of the specific considerations and examples raised by commenters to provide as fulsome guidance as possible, but identifying every possible consideration would undermine the Department's overall goal of providing a clear, workable, and generally-applicable standard.

For all these reasons, the Department is finalizing the regulatory text in § 795.105(d)(1)(ii) describing the opportunity for profit or loss factor with two additions as set forth above.

d. New Examples Regarding Drivers Who Lease Trucks From Motor Carriers

A number of commenters addressing the trucking industry requested more examples and guidance in applying the factors to truck drivers. The commenters generally recognized that truck drivers may be properly classified as employees or independent contractors depending on their circumstances and discussed drivers who are owner-operators and who lease trucks. For example, Real Women in Trucking expressed concern that ''any leasing arrangement between a driver and the company for which they drive would likely suggest independent contractor status.'' OOIDA, although it generally supported the proposed analysis, requested clarification that a lease-purchase agreement is not the type of investment that indicates independent contractor status. SBA Office of Advocacy reported that its roundtable participants from the trucking industry requested that the Department address fraud or abuse in lease-purchase programs. National Association of Small Trucking Companies discussed various business models for one-driver, one-truck operators and how they can grow into small motor carriers themselves. And Truckers Integral to Our Economy discussed the role that company-drivers and independent owner-operators play in the economy and requested clear guidance so that owner-operators can structure relationships to preserve their economic independence.

Having considered these comments, the Department generally believes that the fact that a driver owns a truck and exercises initiative in how to operate it seems to plainly indicate independent contractor status under the opportunity for profit or loss factor. How that factor applies to drivers who lease trucks seems more nuanced, and accordingly, the Department is adding to the final regulatory text (in § 795.115(b)(8) and (9)) two new examples illustrating how the factor can indicate employee or independent contractor status.

The first example (in § 795.115(b)(8)) involves a driver who leases a truck from and hauls freight for a motor carrier company. The company determines the rates that it pays the worker for each shipment, does not negotiate those rates, and assigns shipments to the worker without informing him of the rates before he must commit to the shipment. The worker's monthly lease payments to the company may theoretically allow him or her to purchase the vehicle one day, but the reality of the economic terms of the lease agreement most likely prevents the worker from ever reaching that point. Those facts would indicate employee status under the opportunity for profit or loss factor.

The second example (in § 795.115(b)(9)) likewise involves a driver who leases a truck from and hauls freight for a motor carrier company. Unlike the circumstances of the worker in the above example, the company offers the worker shipments at proposed rates, and the worker is able to negotiate those rates before committing to shipments. When possible, the worker seeks to negotiate a separate shipment for the return leg (*i.e.,* a ''backhaul'') to avoid driving an empty vehicle. The economic terms of the lease agreement actually provide an opportunity for the worker to own the vehicle in the future. Those facts would indicate independent contractor status under the opportunity for profit or loss factor.

The Department believes that these two new examples will provide sufficient clarification in response to a multitude of comments on this topic.

[304] 86 FR 1188.

[305] *Id.* (citing *Donovan* v. *Sureway Cleaners,* 656 F.2d 1368, 1371 (9th Cir. 1981) (''[T]he fact that Sureway's 'agents' possess, in theory, the power to set prices . . . and advertise to a limited extent on their own is overshadowed by the fact that in reality the 'agents' . . . charge the same prices, and rely in the main on Sureway for advertising.'')).

G. Economic Reality Factors—Other Factors (§ 795.105(d)(2))

This section discusses the comments addressing the three other factors proposed by the Department in addition to the two core factors. As discussed in § 795.105(c) above, these other factors are less probative than the core factors, and in some cases, they may not be probative at all. Nevertheless, they are still considered in every case for whatever value they bring to analyzing the character of an individual's economic dependence for work—namely, whether it is more in the nature and character of a business owner or a typical employee.

1. The Amount of Skill Required for the Work (§ 795.105(d)(2)(i))

The Department proposed regulatory text in § 795.105(d)(2)(i) describing the first other economic reality factor—the amount of skill required for the work. This proposed factor indicated independent contractor status ''to the extent the work at issue requires specialized training or skill that the potential employer does not provide,'' and it indicated employee status ''to the extent the work at issue requires no specialized training or skill and/or the individual is dependent upon the potential employer to equip him or her with any skills or training necessary to perform the job.'' [306] Consistent with the 2021 Rule, the Department explained that this factor would ''focus on training and skill because an individual 'who is in business for him- or herself typically brings his or her own skills to the job rather than relying on the client to provide training.' '' [307]

The proposed skill factor did not include the consideration of initiative (the proposed opportunity for profit or loss factor considered initiative). The Department explained that the Supreme Court articulated the factor as ''skill required'' in *Silk* and that, as set forth in the 2021 Rule, multiple courts of appeals articulate the factor as ''the degree of skill required to perform the work.'' [308] The Department further explained that ''sharpening this factor to consider only skill and not include initiative would clarify the overall analysis and reduce overlapping considerations among the factors given that the individual's exercise of initiative would be considered under the opportunity for profit or loss factor (a core factor).'' [309] The Department added that ''[t]his would be consistent with the proposed analysis' focus on economic dependence because the presence or absence of initiative is usually more probative of an individual's economic dependence or independence than the skill required for the work.'' [310]

The 2024 Rule similarly provided that this factor ''indicates employee status where the worker does not use specialized skills in performing the work or where the worker is dependent on training from the potential employer to perform the work.'' The 2024 Rule, however, provided that when the worker has specialized skills, this is not itself indicative of independent contractor status ''because both employees and independent contractors may be skilled workers.'' The 2024 Rule further provided that it ''is the worker's use of those specialized skills in connection with business-like initiative that indicates that the worker is an independent contractor.'' [311]

The NPRM explained that the 2024 Rule incorporated an additional consideration (compared to the 2021 Rule) when applying this factor by stating that the worker needs to use the specialized skills in connection with business-like initiative for this factor to indicate independent contractor status. The NPRM further explained that ''refocusing this factor on skill and training and excluding initiative (like the 2021 Rule) would be consistent with the Department's overall goal in this proposal to provide an analysis that is more amenable to accurate and reliable application by workers and businesses, namely one whereby relevant facts are considered under a particular factor rather than overlappingly considered under multiple factors.'' [312] The NPRM proposed that the worker's business-like initiative would instead be considered as part of the opportunity for profit or loss factor (a core factor), ''reflecting the 2021 Rule's explanation that the individual's initiative is usually more probative of the individual's economic dependence or independence than the skill required for the work.'' [313] The Department added that ''considering initiative as part of the opportunity for profit or loss factor is more consistent with the Supreme Court's application of the economic reality test,'' which ''treated the probative value of the worker's initiative as being tied to the success or profitability of the worker's claimed independent business.'' [314] The Department acknowledged that ''some (but not all) circuit courts'' have nonetheless articulated the skill factor as including initiative, but expressed belief that ''application of the Supreme Court's analysis takes precedence.'' [315]

The Department received numerous comments addressing the proposed skill factor.

For example, commenters addressed how the worker's initiative was not considered in this proposed factor and was instead considered in the opportunity for profit or loss factor. Landmark Legal Foundation commented that ''*Silk* treated initiative as a freestanding and direct indicator of independent contractor status, asking whether a worker's own judgment and energy drove the success of an independent business,'' but ''[t]he 2024 Rule departed from that framework by merging initiative into the skill factor and requiring an extra showing—that specialized skills be used with 'business-like initiative'—before they could weigh in favor of independent contractor status.'' National Retail Federation stated that the 2024 Rule ''created significant overlap and confusion'' by including considerations of initiative in the analysis for multiple factors and complimented the Department for ''address[ing] this error by removing them from the analysis for the *amount of skill required* factor and including [them] exclusively under the *opportunity for profit or loss* factor.'' This commenter added that ''[t]his approach will ensure the analysis is not duplicative or contradictory.'' FSI asserted that the proposal properly eliminated initiative from the skill factor. U.S. Chamber of Commerce supported ''refram[ing] the skill factor so that it does not tether skill to the exercise of 'business-like initiative'' and agreed that this would create a clearer analysis and avoid confusing overlap. And as mentioned in the discussion of the opportunity for profit or loss factor above, American Securities Association, Private Care Association, and Coalition to Promote Independent Entrepreneurs also supported including the worker's initiative in the opportunity for profit or loss factor—not the skill factor.

Other commenters opposed the Department's proposal to not consider the worker's initiative in the skill factor. For example, NABTU argued that the 2024 Rule's approach to this factor ''reflects the longstanding interpretation

[306] 91 FR 9974.

[307] *Id.* at 9954 (quoting 86 FR 1191).

[308] *Id.* (citing *Silk,* 331 U.S. at 716; 86 FR 1191).

[309] *Id.* (citing 86 FR 1191).

[310] *Id.*

[311] 29 CFR 795.110(b)(6) (2024).

[312] 91 FR 9954.

[313] *Id.*

[314] *Id.* (citing *Silk,* 331 U.S. at 716; *Rutherford Food,* 331 U.S. at 730).

[315] *Id.*

adopted by many federal courts and reduces the risk of misclassifying skilled and experienced employees as independent contractors,'' and disagreed that ''the Supreme Court's decisions in *Silk* and *Rutherford Food* require excluding business-like initiative from the skill factor,'' saying that ''[t]hose cases involved workers performing unskilled and low-skill tasks, so the Court had no occasion to consider whether a worker deploying specialized skills in connection with business-like initiative should be treated differently.'' This commenter also argued that the proposed approach would not avoid duplication as intended and actually ''*creates* overlap by placing skill considerations under both the skill factor *and* the opportunity for profit or loss factor'' because the example in proposed § 795.115(b)(5)(ii) states that ''[t]he fact that the individual used his specialized skills to secure the work would not be considered under this factor, although it could be indicative of initiative to consider under the opportunity for profit or loss factor.'' UBC commented that the skill factor should be ''redrafted to consider if the workers' skill incorporates whether the worker used their skill in a business-like initiative, as was done in the 2024 Rule.'' SMART and SMACNA cited cases in which courts have considered whether the workers used specialized skills in connection with initiative. Farmworker Justice added that ''[t]he inclusion of initiative in th[e skill] factor provides important context'' when applying the factor to farmworkers. And although it generally supported the proposal, American Society of Travel Advisors asserted that the skill factor ''should not weigh in favor of employee status where it can be shown that the worker exercises initiative which demonstrates he or she is not economically dependent on the engaging party'' and thus ''disagree[d] with the Department that the element of initiative should be either disregarded or considered separately from the skill factor.''

Having considered the comments, the Department adopts its proposal to not consider the worker's initiative as part of the ''skill required'' factor. As an initial matter, the Department recognizes the significant probative value of the worker's exercise of initiative when determining whether the worker is an employee or independent contractor, and accordingly, this rule provides that initiative is considered when applying the opportunity for profit or loss factor—a core factor which carries greater weight in the overall analysis. Thus, not considering initiative in the skill factor should not be a concern. Moreover, the Department believes that not considering initiative in the skill factor avoids overlapping or duplicative considerations among the factors. Finally, the Department's approach is supported by *Silk* and circuit case law. In *Silk,* the Supreme Court articulated this factor as the ''skill required in the claimed independent operation.'' [316] Numerous circuit courts take a similar approach.[317] The Department recognizes that other circuit courts consider initiative as part of the skill factor,[318] but doing so dilutes the consideration of skill, considers initiative in multiple parts of the test, and may improperly unbalance the factor toward employee status by requiring an additional showing when the work requires specialized skill for the factor to indicate independent contractor status.[319]

Relatedly, CWI recommended that the Department reject the skill factor ''as a stand-alone factor'' and incorporate the consideration of skill into the opportunity for profit or loss factor, commenting that ''because the amount of skill required relates to initiative and investment[,] that analysis of it belongs in the second Core Factor.'' Although this approach would further streamline the economic reality test, consolidating both investment and skill into the opportunity for profit or loss factor would make the resulting factor too unwieldy. In any event, the Supreme Court specifically identified ''skill required in the claimed independent operation'' as a consideration that is ''important for decision.'' *Silk,* 331 U.S. at 716. And the federal courts of appeals uniformly identify skill in some form as its own factor in the analysis. The Department therefore maintains skill as a separate factor, even if it may not be probative as a separate consideration in every case. *See Saleem,* 854 F.3d at 141, 144 (resolving classification question without analyzing drivers' skill). The National Retail Federation sought clarification ''if the term 'specialized' is intended to apply to skill as well as training'' in the skill required factor and added that the Department ''may want to consider eliminating the qualifier entirely, as it is vague and can be interpreted differently depending on the individual conducting the analysis.'' In response, the Department clarifies that ''specialized'' applies to both ''training'' and ''skill'' in its description of this factor and that ''specialized'' is consistent with this factor's focus on the skill required for the work.

Some commenters that generally opposed the NPRM's analysis raised concerns that the proposed skill factor would lead to incorrect independent contractor outcomes. For example, AFSCME commented that the factor ''plainly associates skill with independent contractor status in a way that completely ignores the economic realities of many professional and white-collar employees who by necessity or employer preference, can and do bring skills from outside the firm to do their work but are nonetheless economically dependent on their employer and do not use those skills in any independent way'' (internal quotation marks omitted). Farmworker Justice stated that the proposed skill required factor ''suggests that anyone with skills or experience in their field of work is likely an independent contractor'' and ''will unfairly act to classify workers who should be employees as independent contractors.'' UBC asserted that the proposed factor and the example in proposed § 795.115(b)(5) involving a roofer ''makes every skilled construction craft journeyperson an independent contractor.'' NWJP commented that the proposed factor does not contain ''language acknowledging that some skilled workers are employees,'' which ''will result in significant confusion about whether workers commonly understood to be employees might not be based on their experience and skill in completing their tasks as employees.'' This commenter added that ''[t]his impression is exacerbated'' by the example in proposed § 795.115(b)(5) ''which implies that an experienced roofer may be an independent contractor on that ground alone.'' SMART and SMACNA stated that ''while low-skilled work is a factor that can shield a worker from a finding of independent contractor status, a high amount of skill should not be a sword,'' and that ''[s]kills are not the monopoly

[316] 331 U.S. at 716. Contrary to NABTU's suggestion, the Court identified skill among other factors as generally ''important for decision'' and in no way indicated that those factors applied because of the facts of that case. *Id.*

[317] *See, e.g., Brant,* 43 F.4th at 671 (considering ''special skills required to perform the work''); *Paragon,* 884 F.3d at 1235, 1237 (articulating the factor as ''the degree of skill required to perform the work'' and focusing on ''the degree of skill that [the worker] needed for the job''); *Iontchev,* 685 F. App'x at 550 (finding that ''[t]he service rendered by the Drivers did not require a special skill''); *Snell,* 875 F.2d at 811 (analyzing whether specialized skills were required for the work).

[318] *See, e.g., Parrish,* 917 F.3d at 379 (considering ''the skill and initiative required in performing the job''); *Karlson,* 860 F.3d at 1093 (same); *Superior Care,* 840 F.2d at 1058–59 (considering ''the degree of skill and independent initiative required to perform the work'').

[319] *See supra* section III.A.–B.

of independent contractors.'' Smith Summerset & Associates described the examples in proposed § 795.115(b)(4) and (5) as ''specifically crafted to provide DOL-endorsed instructions on how to better assert independent contractor status for construction workers and by implication for workers in all industries.''

Conversely, some commenters that generally supported the proposal raised concerns that the proposed skill factor would lead to incorrect employee outcomes. For example, Americans for Prosperity Foundation asserted that ''there are many examples, such as those where the independent contractor works in the transportation sector (*e.g.,* delivery drivers), where little or no specialized training is necessary and yet the status of the worker as an independent contractor is not in doubt,'' and that ''while a worker with special skills is more likely to be an independent contractor, the converse is not true.'' This commenter added that the final rule ''should reflect that while specialized skill is not necessary to be an independent contractor, it tilts toward independent contractor status.'' CWI expressed concern that ''this factor will be inappropriately weighted against independent workers who may possess enormous initiative and business acumen that drive profitability and success in their independent work relationships, even though they do not have a traditionally recognized specialized skill,'' and provided an example of a courier ''who does not need a specialized skill to pick up a package and deliver it'' but has ''unique abilities to control their work in a way that maximizes their profits *as a result of their business acumen and other traits.*'' Richard Reibstein expressed concern that workers with less, little, or no skills may be deemed to be employees even though other considerations indicate that they are independent contractors, and he provided examples of a limousine or black car driver and an ''individual that has an odd-jobs business.'' Littler WPI argued that ''this factor requires the Department and the courts to single out some workers as 'unskilled'—a pejorative label—and potentially deny such 'unskilled' workers the opportunity and choice to start their own businesses or to work independently,'' adding that ''[i]ndividuals with all types of training and skills can be in business for themselves.'' U.S. Chamber of Commerce requested that the Department ''affirmatively state that the absence of a traditionally recognized 'specialized skill' does not preclude independent contractor status, particularly where the worker exercises meaningful initiative, business acumen, or multi-homing.'' This commenter also objected to the example in proposed § 795.115(b)(4) for ''codifying a broad principle that a worker who acquires skills on the job is therefore more likely to be an employee.''

Having considered the comments, the Department does not share commenters' concerns that the skill factor will incorrectly indicate either employee or independent contractor status when properly applied as part of this rule. These comments overlook that ''no single factor is dispositive'' (§ 795.105(c)), ''skill required'' is just one factor, and it is not a primary factor. Accordingly, contrary to the suggestions in some comments, the fact that the work requires specialized training or skill will not automatically result in a finding of independent contractor status, and the fact that the work does not require specialized training or skill will not automatically result in a finding of employee status. Although courts have traditionally considered ''skill'' as evidence of economic independence, skilled workers can be employees, and unskilled workers can be independent contractors. Put simply, skills are not the monopoly of independent contractors or employees. Indeed, to the extent that commenter feedback suggests that such outcomes are more common in the modern economy than in decades past,[320] such a trend supports the Department's decision to afford skill less weight as a non-core factor in the analysis. In any event, adopting commenter suggestions to revise the application of this factor to favor one status or the other would be inconsistent with the balance in this rule that avoids framing the analysis and factors in ways that favor either employee or independent contractor outcomes. More importantly, the Department believes that its description of this factor is consistent with the ultimate inquiry whether the worker is economically dependent on the potential employer for work or is in business for him- or herself. To the extent that the work requires specialized training or skill that the potential employer does not provide, the fact that the worker brings specialized training or skills to the work indicates a degree of independence. And to the extent that the work requires no specialized training or skill or the worker depends on the potential employer to provide any necessary skills or training, those facts indicate a lack of independence.

Thus, comments about the example in proposed § 795.115(b)(5) by UBC (it ''makes every skilled construction craft journeyperson an independent contractor'') and NWJP (it ''implies that an experienced roofer may be an independent contractor on that ground alone'') plainly misapprehend and misapply both the example and the overarching analysis. The example in proposed § 795.115(b)(5) involving a roofer simply illustrates a fact pattern under which the skill factor would indicate independent contractor status. No single factor is dispositive (§ 795.105(c)), and whether that roofer (or any construction worker) is an employee or independent contractor would be determined by applying all the factors, particularly the core factors.

Relatedly, NABTU urged the Department to withdraw the examples in proposed § 795.115(b)(4) and (5), saying that the examples ''will generate confusion among construction contractors and heighten the risk of independent contractor misclassification in the construction industry'' and ''will embolden contractors to misclassify construction workers who have invested time and effort in completing registered apprenticeship programs to master their trade, as well as seasoned workers who have developed their skills through years of informal on-the-job experience.'' This commenter added that ''only apprentices and new entrants—workers who have not yet had the opportunity to acquire the skills of their trade—would be insulated from the harmful implications of the roofer examples,'' and ''as soon as those workers gain experience and develop the very skills the industry depends on, they would become more vulnerable to being treated as independent contractors and denied the workplace rights and protections afforded to employees.'' SMART and SMACNA also advocated for the removal of these examples, saying that they ''do not take into account that, in the construction industry, on-the-job training obtained while enrolled in a registered apprenticeship program is a dominant model for skill acquisition,'' and that they ''would be most counterproductive and threaten to create the anomalous result that experienced workers would lose their 'employee' status once they developed the skills to perform the specialized work without mentorship.'' This commenter added that ''hard-earned specialized skills and source of training in the construction industry are not factors that count against a

[320] *See supra* section III.C.

construction worker's employee status,'' and ''[u]se of the source of training as a factor, particularly in industries requiring specialized skills that are acquired over many years, would potentially deprive apprentices and other newcomers to an industry of FLSA protection once they become proficient in their occupation.'' Smith Summerset & Associates similarly commented that these examples should be rewritten because they ''plainly imply that even a few years of on-job-experience may achieve a level of specialized skill requisite for independent contractor status,'' and ''plainly invite employers to take advantage of this proposal'' by characterizing prior on-the-job experience as specialized skill supporting independent contractor status. This commenter criticized these examples and the proposed skill required factor generally for ''confusingly combin[ing] the concept of training with the concept of skill'' and ''wrongly emphasiz[ing] training instead of skill'' when ''training is not equivalent to skill'' but is instead ''ancillary to skill.''

Having considered these comments, the Department is retaining the examples proposed in § 795.115(b)(4) and (5), has renumbered them as § 795.115(c)(1) and (2) in the final regulatory text, and deleted an extraneous word (''worker'') from the example in § 795.115(c)(1). In response to the concerns raised by these commenters, the Department reiterates its earlier response to other comments: ''skill required'' is just one factor, it is not a core factor, no single factor is dispositive, skilled and unskilled workers can be employees (just as they can be independent contractors), and whether a skilled construction worker is an employee or independent contractor is determined by applying all of the factors, particularly the core factors. In that vein, the suggestion that this factor will necessarily indicate independent contractor status for experienced workers is unfounded. Experience is not the same as skill, and, even if the worker is skilled through experience, this factor will indicate employee status if the work at issue requires no specialized training or skill or the individual is dependent upon the potential employer to equip him or her with any skills or training necessary to perform the job. Thus, if no specialized training or skill is required for the work, this factor suggests employee status regardless of the experience, skill, or training possessed by the worker. The Department understands that workers with more experience, training, or participation in apprenticeship programs may bring more required skill (assuming skill is required) to a working relationship. But if that is the case, it is one non-core factor among multiple factors and likely will not impact the determination. Additionally, while the Department does not believe that training is equivalent to skill, it does believe that training is relevant. If the work does not require any training or the worker needs the potential employer to provide the training necessary to perform the work, that indicates economic dependence for the work consistent with the ultimate inquiry for determining a worker's status, much as courts have held repeatedly.

OOIDA generally supported the proposed skill factor but suggested that ''ongoing or corrective training required by a hiring carrier indicates that the driver does not possess the necessary skill and should weigh in favor of employee status.'' The Department agrees that, applying the skill factor, such necessary training would indicate employee status. FSI commented that the Department ''should clarify that optional offerings such as seminars on macroeconomic and market trends or training on new SI tools are not the type of 'skills or training necessary to perform the job''' because ''[t]hese trainings are broadly educational and applicable across numerous industries, and firms provide them as a service to attract and retain financial advisors.'' ShiftKey requested the Department to clarify that ''the 'skills or training necessary to do the job' does not take into account certain orientation measures or policies of a work environment'' because, ''[o]ften in the healthcare environment, there are policies that are necessary to orient an independent healthcare professional to a work site to ensure patient safety.'' Applying the skill required factor, these types of trainings would not be taken into account if they are not necessary to perform the work, but it is not clear that such is the case based on the commenters' descriptions.

Relatedly, Littler WPI requested that the Department delete certain language from the proposed skill factor explaining when the factor may indicate employee status (''the individual is dependent upon the potential employer to equip him or her with any skills or training necessary to perform the job''). This commenter argued that this language ''overlaps with the . . . opportunity for profit or loss factor, which includes consideration of whether the individual or potential employer invest in equipment or have initiative to improve skills through training'' and ''fails to distinguish between voluntary and mandatory training, creating an unresolved conflict with . . . the control factor.'' The Department disagrees. It does not believe that there is any overlap with the consideration of investment because only the worker's investment—not the potential employer's investment—is considered, as explained in the discussion of the opportunity for profit or loss factor above. Additionally, the Department also does not believe that there is any conflict with the control factor because the consideration under the control factor is whether the training is provided ''to comply with specific legal obligations, satisfy health and safety standards,'' etc., whereas the consideration under the skill factor is whether the training is necessary to perform the work. Moreover, the proposed deletion would unbalance this factor's description of when it points to employee status and when it points to independent contractor status.

American Society of Travel Advisors commented that ''where skills are required for the performance of the contracted work, . . . the provision of those skills by the engaging party should not weigh in favor of employee status if the individual has the freedom, both under the contract and in fact, to acquire those skills from a source other than the engaging party.'' The Department declines to adopt this suggestion because, as explained above, the potential employer's provision of the skills required to perform the work suggests, as a matter of economic reality and actual practice, that the worker is economically dependent on the potential employer for the work.

American Council of Life Insurers suggested that the final rule ''identify insurance sales and financial advising as services that require skill and initiative indicative of independent contractor status.'' American Association of Advertising Agencies recommended that the final rule ''include a non-trades example to reflect the modern professional services landscape'' and ''provide a necessary signal that this factor applies equally to the knowledge economy.'' Independent Work Coalition also recommended that the final rule include an ''example from a non-trades context, such as a software developer, graphic designer, or other knowledge-economy worker who brings specialized technical skills to an engagement without receiving training from the engaging business, to signal that the factor applies with equal force outside the construction industry.'' *See also* U.S. Hispanic Business Council (commenting that ''the Department

should include a non-trades example, such as a software developer or graphic designer''). In response, the Department reiterates that the skill factor, like the rest of the analysis, does not point to employee or independent contractor status for all workers in any particular industry, but rather, like the judicial framework from which it is derived, is generally-applicable across industries, including the knowledge economy.

American Association of Advertising Agencies ''urge[d] the Department to clarify . . . that a worker's skill should be evaluated based on the nature of the expertise rather than the presence of formal credentials or professional licensure'' and suggested that ''many of the most highly skilled independent contractors developed their expertise through independent experience, self-directed study, or specialized project work rather than traditional degree programs.'' Uber commented that the proposal did ''not address skill developed through work experience,'' adding that ''[p]eople often start as neophytes and become experts through repetition'' and such ''expertise should not be discounted simply because it was earned through work.'' U.S. Hispanic Business Council suggested that ''the absence of formal credentials or licensure is not determinative, and that skill developed through a worker's independent experience is consistent with independent contractor status.'' Flex Association stated that ''skills learned by providing services over time can be consistent with independent-contractor status—all professionals get better through experience.'' Independent Work Coalition asserted that ''the absence of formally credentialed or licensed skill is not dispositive under this factor, and that skill developed over time through a worker's own independent experience across an engagement or engagements is consistent with independent contractor status and does not indicate the kind of employer-provided training that weighs toward employee status.'' *See also* U.S. Chamber (commenting that '' 'specialized training or skill' does not need to be something learned through formal education'').

In response to these comments, the Department believes that a worker's specialized skills can come—and, indeed, often do come—from multiple sources, and are not limited to degrees, credentials, and licensures. In response to the comment by American Association of Advertising Agencies, skill can come from work experience, independent study, or simply practice and repetition. The absence of a formal license or certification is not dispositive of whether a worker has specialized skills. Of course, skill can also come from educational or training programs which award degrees, credentials, and licenses.[321] Indeed, as the name of the ''skill required for the work'' factor indicates, the fact that a worker possesses skills does not necessarily indicate independent contractor status; the factor specifically examines whether the work at issue requires specialized training or skill and whether the potential employer provides the specialized training or skill (if it is required). In other words, this rule is not a box-checking exercise, or an inventory list, but rather sets forth an analysis designed to resolve whether the economic reality of a particular worker is that of an independent contractor or employee.

National Home Delivery Association urged the Department ''to explicitly recognize a CDL reflects specialized skill'' and asserted that last-mile home delivery of big and bulky items is also a specialized skill. Scopelitis likewise urged the Department ''to explicitly recognize a CDL reflects specialized skill,'' and it asserted that a worker who ''provid[es] delivery services in equipment that does not require a CDL also possesses specialized skill.'' As these commenters noted, the 2024 Rule recognized that ''drivers performing work requiring [CDLs] are likely using specialized skills as compared to drivers generally.'' [322] The Department reaffirms its position in both 2021 and 2024 that, if a CDL is required to perform the work and the worker brings a CDL to the relationship, then, absent other evidence, the skill factor should lean toward independent contractor status. Regarding delivery services more generally, however, the possible circumstances are too varied (compared to a CDL) for the Department to agree or disagree with these commenters' requests regarding delivery work not involving a CDL; it depends on the facts, including whether the delivery work requires specialized training or skill and, if so, whether the potential employer provides it.

For all these reasons, the Department finalizes the ''skill required'' factor in § 795.105(d)(2)(i) as proposed, with the exception of a minor non-substantive edit (changing ''and/or'' to ''or'').

2. The Degree of Permanence of the Working Relationship Between the Individual and the Potential Employer (§ 795.105(d)(2)(ii))

The Department proposed to adopt the regulatory text from the 2021 Rule, § 795.105(d)(2)(ii), which describes the degree of permanence of the working relationship between the individual and the potential employer, as the second other economic reality factor. The Department proposed that this factor would weigh in favor of the individual being an independent contractor to the extent the work relationship is by design definite in duration or sporadic, which may include regularly occurring fixed periods of work, although the seasonal nature of work by itself would not necessarily indicate independent contractor classification. The proposal also provided that this factor would weigh in favor of the individual being an employee to the extent the work relationship is instead by design indefinite in duration or continuous. The Department further proposed in the NPRM to not include the concept of exclusivity in the permanence factor, as exclusivity is more directly related to the control factor.[323]

Many commenters supported the framing of the permanence factor as proposed in the NPRM. *See, e.g.,* FSI; Flex Association; Independent Work Coalition; National Retail Federation; U.S. Chamber. They generally felt that this factor was appropriately categorized as a secondary, less-probative factor, *see, e.g.,* FSI; U.S. Chamber, though some commenters thought that this factor should be eliminated altogether, *see* American Trucking Association; CWI; FedEx. Additionally, several commenters supported the proposal to not consider the exclusivity of the relationship as an aspect of the permanence factor, *see* CWI; National Association of Home Builders; U.S. Chamber, whereas others felt that exclusivity was critical, urging the Department to ''clarify in the final rule that the duration of a working relationship is only probative of employee status under this factor when the potential employer has actually imposed requirements or restrictions that prevent the worker from being in business for themselves—such as exclusivity requirements or prohibitions on working for others,'' National Retail Federation; *see also* American Society

[321] Although a license can be a source of skill, the Department has historically found that whether the worker is him- or herself licensed by a State or local government is not material to the determination of the worker's status, as explained in the section below discussing additional factors.

[322] 89 FR 1714. In response to comments stating that a CDL can demonstrate specialized skill, the Department in the 2021 Rule ''agree[d] that credentials such as certifications and licenses can be helpful indicators of specialized skill, though they are by no means the only indicators of such skill.'' 86 FR 1191.

[323] *See* 91 FR 9954–55.

of Travel Advisors; American Trucking Association.

Business commenters frequently emphasized their concern that focusing on the length of a work relationship was not appropriate because it would encompass many situations in which contractors and businesses choose to have or negotiate continual, repeat, or long-term engagements with one another that do not indicate economic dependence. *See, e.g.,* Bowling Proprietors Association of America; CWI; Flex Association; Independent Work Coalition; Littler WPI; U.S. Chamber. For example, U.S. Chamber of Commerce urged the Department to revise this factor to focus on the ''indefiniteness of the relationship, not the length of the relationship,'' explaining that ''[i]ndependent workers and businesses enter into long-term contracts and contracts that are renewed regularly due to superior service, competitive costs, or the lack of alternative service providers, and these relationships are not evidence of the permanence of the relationship or employee status.'' CWI similarly believed that this factor ''penalizes long-term contractor relationships that both parties voluntarily renew because the relationship works well'' and encouraged the Department to revise the language to focus instead on the parties' contractual terms and ''whether the relationship is contractually indefinite by design, not merely long-running in practice.'' Some of these commenters specifically noted the nature of work engagements in particular industries, contending that the application-based, trucking, and construction industries often use discrete task-based or project-based engagements, and that each of these must be considered independently rather than as a continuous relationship. *See* Flex Association; Independent Work Coalition; Instacart; Littler WPI; Scopelitis.

On the other hand, some worker organizations noted that in certain industries where work has fixed end points, such as construction and agriculture, the fact that there is a fixed term should not favor independent contractor status as it does not indicate economic independence. *See* IBT; NWJP; SMART and SMACNA. For example, NWJP argued that the Department should retain the language from the 2024 Rule that provided guidance that permanence should be considered in the context of the type of business or industry, such as how the agricultural industry relies heavily on seasonal labor, which it noted is well-established in case law. Similarly, SMART and SMACNA highlighted the importance of the ''proper application'' of the permanence factor in the project-based construction industry and urged the Department to recognize that this factor is ''generally less likely to be probative of worker status in industries characterized by seasonal, temporary, sporadic, or project-based work relationships but permanent and exclusive employment for the duration of a project weighs in favor of employee status.'' And IBT requested additional guidance explaining that ''a worker's lack of permanent or indefinite employment status is in many cases not due to the worker's own business initiatives but rather to the employer's unilateral structuring of the relationship.''

Another frequent request raised by business commenters was for the Department to address ''continuity driven by employer requirements'' as compared to choices that workers make to accept future work or to continue working for a particular entity. TechNet; *see also* Flex Association; Instacart; National Retail Federation. For example, Instacart requested revisions to the regulatory text to provide that ''[c]ontinuity that originates with the worker's own choices is fundamentally different from continuity that originates with the employer's expectations and requirements.''

Several commenters emphasized the importance of permanence in the analysis. For example, SHRM conducted a survey of its members to determine which of the economic reality factors organizations found most useful when determining employment status under the FLSA, and commented that survey respondents consistently ranked permanence as the second most useful indicator (following control, which they ranked as the most useful indicator). And IBT commented that ''[u]nder decades of jurisprudence, permanence strongly indicates economic dependence. Workers who rely on a firm for steady, ongoing work, even when paid per task, are employees.''

After considering the comments received on this factor, the Department believes it is appropriate to retain permanence as one of the less-probative factors in the economic reality analysis and declines to eliminate this factor. As noted in the NPRM, courts and the Department routinely consider this factor when applying the economic reality analysis under the FLSA to determine employee or independent contractor status.[324] Indeed, the Department is not aware of a circuit that does not identify permanence as a standalone factor. As the SHRM survey showed, this factor is viewed as a useful indicator among human resources professionals as well.

Moreover, the Department believes that its regulatory text ameliorates many of the concerns raised by commenters. First, regarding the concern that this factor fails to recognize that business entities often have repeat work engagements without their relationship being one of employer-employee, the regulatory text explicitly states that ''this factor weighs in favor of an individual being an independent contractor to the extent the work relationship is by design definite in duration . . . which *may include regularly occurring fixed periods of work*'' (emphasis added). As American Association of Advertising Agencies observed in supporting this language, this may encompass situations in which, for example, advertising agencies ''frequently re-engage specialized independent contractors . . . for successive defined-duration client campaigns'' that are ''dictated by the specific needs of [the campaign] rather than an indefinite employment relationship.''

Additionally, commenters that were concerned that their long-standing business relationships with particular service providers or specialized contractors alone would somehow override the two primary factors and establish an employment relationship seem to misunderstand the analysis. *See, e.g.,* Bowling Proprietors Association of America, WAFLA. The Department has clearly stated—both in the preamble and regulatory text—that the two core factors are the first properly considered and most important in making the proper classification—and that the other factors such as permanence are ''less probative and, in some cases, may not be probative at all, and thus are highly unlikely, either individually or collectively, to outweigh the combined probative value of the two core factors.'' § 795.105(c). Thus, it should be clear that a long-standing relationship alone would not disqualify an individual from recognition as an independent contractor under the economic reality test.

The Department does not believe it is necessary to provide any additional guidance on this issue or to establish a more rigid approach that prioritizes the definite or indefinite nature of the work

[324] *See* 91 FR 9954 (citing 86 FR 1192–93 (referring to WHD Opinion Letter FLSA2019–6 at 4; *Razak,* 951 F.3d at 142; *Hobbs,* 946 F.3d at 829; *Karlson,* 860 F.3d at 1092–93; *McFeeley,* 825 F.3d at 241; *Keller,* 781 F.3d at 807; *Scantland,* 721 F.3d at 1312)).

(including discrete ''engagements'') over the duration of the working relationship between the parties, as requested by some commenters. In response to similar comments received during the rulemaking for the 2021 Rule, the Department similarly declined to change the regulatory text. At the time, the Department noted that because the focus of the economic realities test is not on technical formalities, it may be that a long relationship could be evidence of permanence despite a contract with a definite end, and an employer may have a permanent relationship with an employee despite requiring the employee to enter into annual employment contracts or a potential employer may have a long-term relationship reflected in several short-term contracts.[325] Although the Department viewed indefiniteness as a strong indicator of permanence, it still viewed the length of a working relationship as relevant to this factor. The Department continues to believe this is the appropriate view and proper approach.

Second, the Department agrees with the commenters that emphasized that case law supports recognizing that the seasonal nature of work is not necessarily associated with independent contractor status. Indeed, the regulatory text for this factor explicitly states that ''the seasonal nature of work by itself would not necessarily indicate independent contractor classification.'' § 795.105(d)(2)(ii). The Department explained in the NPRM that the seasonal nature of work would not indicate independent contractor status where the worker's position is permanent for the duration of the relevant season and where the worker has done the same work for multiple seasons.[326] Additionally, as the Department explained in the 2021 Rule and the NPRM, ''in certain industries where employees are often employed for short periods, a short term of employment would not indicate independent contractor status.'' [327]

Regarding the issue of worker choice versus continuity requirements imposed by an employer, the Department does not believe that further explanation in the regulatory text for the permanence factor is necessary. The Department agrees with the commenters who posited that whether a work relationship is exclusive is best considered under the control factor, and it sees these types of employer-imposed continuity requirements as akin to requirements that workers work for that employer rather than for others. Rather than blurring these concepts by considering them under both the control and permanence factors, the Department elects to maintain consideration of these concepts under control. Further, as explained when responding to similar comments in the 2021 Rule, ''explicitly stating that a relationship is not permanent whenever the worker chooses for it to be long-term is not accurate. After all, every employee to some extent chooses whether to continue working for their employer, and . . . [a] long-term relationship is always the result of choices by both the potential employer and the worker.'' [328]

Finally, as this rule is intended to be generally applicable to all industries, the Department declines to provide additional industry-specific regulatory text or examples on how the permanence factor would be applied in particular industries, as several commenters requested. *See, e.g.,* American Association of Advertising Agencies; IFA; National Restaurant Association; WAFLA. The Department believes that the regulation discussing permanence is generally understandable and applicable in all industries. Accordingly, the Department finalizes § 795.105(d)(2)(ii) as proposed.

3. Whether the Work Is Part of an Integrated Unit of Production (§ 795.105(d)(2)(iii))

In § 795.105(d)(2)(iii), the Department proposed to return to considering ''whether the work is part of an integrated unit of production.'' This factor weighs in favor of an individual being an independent contractor ''to the extent his or her work is segregable from the potential employer's production process'' and weighs in favor of an individual being an employee ''to the extent his or her work is a component of the potential employer's integrated production process for a good or service.'' This factor is ''different from the concept of the importance or centrality of the individual's work to the potential employer's business.''

As the NPRM explained, the Department believes the ''integrated unit'' framework is more probative of whether a worker is economically dependent on the potential employer for work than the 2024 Rule's consideration of whether the work is ''an integral part of the employer's business.'' The NPRM further explained that the 2024 Rule's inquiry into whether the work is ''critical, necessary, or central to the potential employer's principal business'' lacks sufficient precision for the modern economy.[329]

Most business-side commenters expressed support for the ''integrated unit'' factor as compared to the ''integral part'' framework. *See, e.g.,* American Association of Advertising Agencies; American Society of Travel Advisors; CWI; FSI; Independent Bakers Association; Instacart; Littler WPI; Private Care Association; ShiftKey. For example, SHRM stated that this framework ''more accurately captures the distinction between independent contractors and employees and provides a clearer, more administrable standard for worker classification.'' Coalition to Promote Independent Entrepreneurs observed that ''whether a specific service is a component of a client's integrated production process for a good or service is readily apparent to an independent contractor and the client at the outset,'' while the ''integral part'' analysis ''interjects profound uncertainty into worker-status determinations'' by requiring two highly factual determinations—defining the potential employer's ''principal business'' and assessing whether the worker's services are ''critical, necessary, or central'' to that principal business. *See also* IFA (''[B]usinesses do not pay employees or independent contractors to engage in work that is not in some sense critical or necessary to their operations.''); Flex Association (''Businesses that pay for non-critical, non-essential, unnecessary work tend not to stay in business very long. So the work's importance says very little about a worker's classification.'').

Some commenters expressed uncertainty regarding the meaning of ''integrated unit of production'' as applied in the modern service-oriented, technology-based economy. *See, e.g.,* Littler WPI (stating that ''a 'production line' analogy is of limited usefulness in an economy becoming more and more service-oriented and technology-based''); Richard Reibstein (asking the Department to clarify this factor using ''words that include businesses that provide services''). A small number of commenters suggested that this factor should be eliminated altogether due to the difficulty of defining a potential employer's ''production process'' in the modern economy. *See* National Home

[325] *See* 86 FR 1192.

[326] *See* 91 FR 9955 (citing *Paragon,* 884 F.3d at 1236–37); *see also* § 795.115(c)(3) (example of housekeeper who returns each year during ski season and whose work is long-term, indefinite and continuous, weighing in favor of employee status). In this final rule, the Department is adopting this example (proposed in § 795.115(b)(6), now renumbered as § 795.115(c)(3)) with the correction of a small typographical error where the word ''the'' was missing in the last sentence.

[327] 86 FR 1193; 91 FR 9955.

[328] 86 FR 1193.

[329] *See* 91 FR 9956.

Delivery Association (''Despite a step in the right direction, NHDA believes this factor has little probative value in today's service-based economy and should be eliminated altogether.''); Institute for the American Worker (''If the Department determines, after considering comments, that the integrated-unit factor remains difficult to apply consistently even in its corrected form, we would alternatively urge the Department to eliminate this factor from the analysis altogether.'').

Several worker-side commenters criticized the departure from the ''integral part'' framework and its consideration of the centrality of the work, which they described as more consistent with Supreme Court and circuit court precedent. *See, e.g.,* AFL–CIO; AFSCME; Coalition of State Officials; NWJP. These commenters criticized the relative narrowness of the ''integrated unit'' approach and the relegation of this factor to non-core status. *See, e.g.,* AFL–CIO (asserting that this rule would permit employers to ''label essential functions such as delivery, driving, warehousing, and customer service as peripheral or externally provided, even where those functions define the business itself''); Farmworker Justice (emphasizing the centrality of farmworkers' role in farming operations).

Having considered these comments, the Department adopts the ''integrated unit'' factor as proposed. As the NPRM explained, the Department believes that the Supreme Court's articulation of this factor in *Rutherford Food*—which considered whether the work is ''part of the [potential employer's] integrated unit of production,'' 331 U.S. at 729—better reflects how it considered this factor in both *Rutherford Food* and *Silk.* The ''integral part'' language in *Silk* was not included among the enumerated factors that the Court identified as ''important for decision.'' 331 U.S. at 716. To the extent it can be read as such a factor, it was not very probative because both groups of workers at issue in that case were ''integral,'' but one group of workers were employees and the other independent contractors. *Id.* at 717–19. Elsewhere in *Silk,* the Court used ''integrated'' in relation to the scope of a potential employer's business: ''[f]ew businesses are so completely integrated that they can themselves produce the raw material, manufacture and distribute the finished product to the ultimate consumer without assistance from independent contractors.'' *Id.* at 714. Thus, it is integration rather than integrality that determines the scope of a potential employer's business and whether it encompasses a specific worker's services.

As it did in the NPRM and in the 2021 Rule, the Department acknowledges that its approach diverges from that taken by most circuit courts. The Department nonetheless finds the divergence appropriate based on how those courts have considered integrality. There are many cases in which integrality bears little weight in the final analysis, demonstrating its lesser probative value. *See Express Sixty-Minutes,* 161 F.3d at 305 (finding independent contractor status despite arguments that ''the work performed by the drivers is an integral and indispensable part of Express' business''); *Paragon,* 884 F.3d at 1237–38 (integrality supported independent contractor status but was outweighed by factors supporting employee status); *Flint Eng'g,* 137 F.3d at 1443–44 (finding that rig welders' work was ''important'' but not reiterating that fact when summarizing the ultimate conclusion that they were employees); *see also Mednick,* 508 F.2d at 300–01 (finding ''no clear cut conclusion'' from the fact that plaintiff's work was ''not an integrated part'' of the defendant's business but ''may have been very useful or even necessary''). There are also some cases in which the integrality of the work is functionally synonymous with its integration into the potential employer's business, such that focusing on integration will have the same result. *See, e.g., Castillo,* 704 F.2d at 191 (describing cotton chopping interchangeably as ''part of an 'integrated economic unit''' and ''an integral phase'' of the defendant's cotton growing operation); *Antenor,* 88 F.3d at 937 (in joint employer context, describing snap bean pickers' work as ''a routine line-job integral to the growers' business'' and ''one part of an 'integrated economic unit' operated by the growers''). The critical difference between the two approaches rests in this rule's curtailment of considerations of ''importance'' or ''necessity,'' which extend beyond the original meaning of this factor in *Rutherford Food* and fail to provide meaningful guidance. *See Zheng* v. *Liberty Apparel Co.,* 355 F.3d 61, 73 (2d Cir. 2003) (''Interpreted broadly, this factor could be said to be implicated in *every* subcontracting relationship [in the joint employer context], because all subcontractors perform a function that a general contractor deems 'integral' to a product or a service.''); *Lauritzen,* 835 F.2d at 1541 (Easterbrook, J., concurring) (''*Everything* the employer does is 'integral' to its business—why else do it?'').

The divergence recognized above should not be mistaken for divergence regarding the overarching legal framework because consideration of ''integrality'' is not itself integral to the economic reality test. The Fifth Circuit, for example, typically does not include integrality among its enumerated factors, yet that variation has never been understood to create a circuit split. This rule—like the legal precedent from which it is distilled—is not mechanical, and courts may organize and articulate factors differently while applying the same ultimate inquiry into economic independence. Nor is consideration of whether a worker's services are ''integral'' to the potential employer's business prohibited by this rule. The economic reality inquiry remains a totality-of-the-circumstances analysis, and § 795.105(d)(2)(iv) permits consideration of facts and factors beyond those enumerated to the extent they indicate whether the worker is operating an independent business or is economically dependent on the potential employer for work. Integrality may be considered when the circumstances make it relevant. For the reasons explained above, however, the Department believes that integrality—understood as the importance, centrality, or necessity of the work—will ordinarily have little or no probative value. Nearly every business obtains work because it regards that work as useful or necessary, including work performed by independent contractors. Treating importance as evidence of employee status tends to produce the same answer regardless of the worker's actual economic independence. This rule does not prohibit consideration of integrality where appropriate but declines to include that generally uninformative consideration among the enumerated factors and instead includes, consistent with Supreme Court precedent, consideration of integration into the potential employer's business.

Regarding the criticisms from the business community, the Department does not believe that applying the ''integrated unit'' factor poses any special difficulties in the modern economy. As the regulatory text explains, this factor is intended to apply to production processes ''for a good or service'' and is, therefore, not limited to businesses with production lines and is not incompatible with a service-based economy. The Department recognizes that there may be cases where the scope of a particular business's integrated operation, and whether it encompasses a particular individual's work, may be

difficult to ascertain. However, the Department does not believe the task is so difficult that it is necessary to exclude a factor that was important to the decision in *Rutherford Food* and that has some bearing on the ultimate inquiry, particularly in cases where the two core factors do not both point toward the same classification.

Beyond expressing general support for or criticisms of the ''integrated unit'' factor, many business commenters requested specific language to delineate, elevate, or diminish the relevance of certain considerations. *See, e.g.,* Flex Association (requesting four specific criteria to find that a worker is integrated into a potential employer's business); Richard Reibstein (requesting clarification that providing ''services that no one else at the company provides'' weighs in favor of independent contractor status); Uber (requesting language stating that a potential employer's production process ''terminates with a usable product or service'' and ''does not extend to independent uses of the product''). The Department does not attempt to identify every potentially relevant consideration under this factor, nor will it demarcate any specific consideration as relevant in every case. What is relevant in one case may not be relevant in another. Steering this factor toward specific considerations that may not always be relevant, or perhaps even intelligible as applied to a specific business or service, will only complicate the analysis, diminishing the utility and value of the rule, especially to the Department, to the detriment of the Department's goal of fostering predictable outcomes.

Institute for the American Worker requested the Department to state that this factor ''does not weigh against independent contractor status merely because the worker performs the same type of service that the hiring entity provides to its customers.'' Whether a worker performing the same type of service as a business is integrated into the business's production process depends on the facts of the case. For example, a waiter who takes orders from, and delivers food to, customers dining in a restaurant performs the same type of service as the restaurant itself, *i.e.,* serving food to the restaurant's customers. The waiter in this scenario is part of the restaurant's integrated production process for food services. On the other hand, a law firm may hire an outside lawyer to represent it in a matter unrelated to the legal services that it provides to its own clients. Despite performing the same type of service as the law firm, the lawyer is not a part of the law firm's integrated production process for legal services. As these examples illustrate, the fact that a worker performs the same type of service as the potential employer may be highly relevant in some cases but not so relevant in others.

U.S. Chamber of Commerce requested that this factor be revised to state that a worker who ''performs the majority of services off the premises of the business, including at consumer locations, in transit, or via remote means, is generally not part of an integrated unit of production.'' As the Department explained in the 2021 Rule, whether work is performed on the business's physical premises is not always relevant to this factor.[330] And more generally, as explained in the discussion of possible additional factors below (§ 795.105(d)(2)(iv)), the Department is confident that where the work is performed is not material to the determination of employee or independent contractor status. In any event, there are many instances where an employee may be part of an integrated unit despite performing work at a different location than other employees, including at consumer locations and in transit, and vice versa. *See, e.g., Whitaker House,* 366 U.S. at 32 (holding that workers who produced copies of a sample product at home were employees); *Thomas* v. *Brock,* 617 F. Supp. 526, 535 (W.D.N.C. 1985), *aff'd in part, modified in part on other grounds,* 810 F.2d 448 (4th Cir. 1987) (door-to-door seller of cookies and candy was ''completely integrated'' in the distributor's business). There are also instances where a worker may perform work on a business's physical premises that is discrete, segregable, and unrelated to any integrated process. *See, e.g.,* Richard Reibstein (suggesting that ''a landscaper that mows the lawn on a company's suburban headquarters'' is a ''classic misapplication of this factor''). Thus, although the location of the work may inform whether particular work is part of the integrated unit of production, it is not always the case that it will be probative.

Some commenters requested the Department to clarify that a worker's use of systems or technologies provided by a business does not mean the worker is part of the business's integrated unit of production. Securities Industry Financial Markets Association (financial advisors' use of a broker-dealer's platform to effect securities transactions); U.S. Chamber (workers' use of SI tools or protocols provided by a business). The relevance—whether to the ''integrated unit'' factor or to any other factor considered under this rule—of a worker's use of technologies provided by a business will depend on all the circumstances of each case. Particularly for technologies that are constantly evolving, it is not possible to draw any firm conclusions about their use in this generally applicable rule.

Some commenters requested clarification that this factor does not depend on whether a worker's output is ''commercially significant'' or ''valuable'' to a business. *See* CWI; Instacart. Relatedly, U.S. Chamber of Commerce requested that the Department revise the example in proposed § 795.115(b)(8) to illustrate that a worker may produce work that is important to a business for commercial reasons, such as increasing revenue, without being a component of the business's integrated unit of production. It is true that the commercial value of work does not necessarily make it integrated. For example, a successful advertising campaign can have significant value for a business without necessarily rendering the individual who came up with the campaign a component of the business's integrated operation. The Department believes the regulatory text properly addresses this distinction by differentiating integrated work from work that is merely ''important.''

Finally, many commenters requested that the Department clarify, through explanations or examples, how this factor would apply in specific industries, including trucking, construction, financial advising, insurance, food services, and delivery services, or to specific contractual arrangements, such as franchising. *See* American Council of Life Insurers; American Securities Association; Associated Builders and Contractors; IFA; National Restaurant Association; National Retail Federation; OOIDA. Many commenters requested examples involving multi-sided platforms, particularly an example involving a worker who provides services to end-market consumers through a digital platform, modeled after the virtual marketplace company described in WHD Opinion Letter FLSA2025–2 (though the opinion letter used the ''integral part'' formulation, not the ''integrated unit'' formulation). *See, e.g.,* Flex Association; Independent Work Coalition; Littler WPI; U.S. Chamber; U.S. Hispanic Business Council. The facts that inform the ''integrated unit'' factor are too circumstance-specific to apply blanket statements to entire industries or broad types of contractual arrangements. Any particular task that is common in a particular industry may be

[330] 86 FR 1195.

performed in one instance by a worker who is part of an integrated unit of production and in another instance by a segregable unit. In other words, this factor may point in a different direction for workers who perform similar duties in the same industry but who are more or less integrated into the potential employer's processes based on the potential employer's business model. That said, the Department appreciates that examples are helpful to understanding how each factor operates, which is why the Department is readopting the related examples in proposed § 795.115(b)(7) and (8), now reordered to § 795.115(c)(4) and (5), which involve an editor and a journalist respectively.

The Department received some requests to revise or eliminate these examples, including from self-identified freelance writers and editors. One freelance writer, Brittany VanDerBill, requested that the Department eliminate proposed § 795.115(b)(7), which she compared to ''prong B of the disastrous ABC test,'' referring to the test used in some states which requires work to be outside the usual course of the potential employer's business in order for the worker to be an independent contractor. Another freelance writer, Karen Anderson criticized proposed § 795.115(b)(8) for ''suggest[ing] that a freelance journalist shouldn't be submitting anything more than once every two to three weeks, and that the submission must be subjected to being either accepted or rejected by the publisher[.]'' U.S. Chamber of Commerce requested that the Department abandon or revise proposed § 795.115(b)(7), specifically objecting to the phrase ''entire production process'' as a ''looser formulation'' that risks encompassing nonemployees such as management consultants or lawyers who may have ''some kind of 'involvement' with a business's 'entire production process.'" Three freelance writers and editors submitted a joint comment that was generally supportive of these examples but suggested several modifications. *See* Kim Kavin et al. Among other suggestions, they advised changing the potential employer in both examples from a newspaper to a ''media brand'' to reflect the types of entities that are more common in the modern technological environment. Regarding proposed § 795.115(b)(7), they asserted that laying out articles should not indicate employee status because modern publishing software allows freelancers to deliver content where layout choices are made simultaneously with the writing. Regarding proposed § 795.115(b)(8), they objected that a frequency of one article submission every 2 to 3 weeks is ''as antiquated as the idea of print-only newspapers.'' They also criticized proposed § 795.115(b)(8) for suggesting that a freelancer's communications with the potential employer should be limited to a single employee, noting that a freelancer may have many reasons to communicate with several different employees regarding, for example, handling rights to artwork accompanying the freelancer's work or the freelancer's invoice for payment.

Upon consideration of these comments, the Department will retain these examples with modifications. The Department believes the commenters that have requested elimination of these examples have misunderstood them. To be clear, neither of these examples conclude that the worker is an employee or independent contractor. Like all the examples in § 795.115, these examples focus on a single factor. Under this rule, the ultimate determination requires consideration of all the factors, with control and opportunity for profit or loss being the most probative. The fact that one worker's work is part of an integrated unit while another worker's is segregable does not automatically mean that one is an employee and the other is an independent contractor. Therefore, these examples neither resemble an ABC test nor require freelancers to conform their conduct to specific parameters to continue being independent contractors. Finally, the phrase ''entire production process'' in proposed § 795.115(b)(7) (now § 795.115(c)(4)) is not meant to indicate that the editor is involved in the production process in a generalized or tangential sense but rather the opposite. The editor not only writes articles but also assigns them, reviews and revises them, and publishes them in coordination with other editors. Therefore, the editor is involved in the entire production process and not segregable from it.

Although the Department is retaining these examples, it takes the point made by several freelancers that the proposed regulatory text does not accurately reflect journalistic practices in the digital age. Accordingly, it has made revisions to modernize these examples. First, the Department has changed the context from a newspaper to a digital news outlet to reflect the increasing prominence of online-only media sources. For simplicity and ease of understanding, the Department maintains the focus on a publisher of a single type of content that is generally familiar to the public (news articles). Second, instead of layout decisions, these examples use decisions regarding the timing of publication to illustrate the extent of each worker's integration into the publication's production process, with the editor being responsible for determining when articles will be published and setting deadlines accordingly, while the journalist is responsible only for the specific articles he writes. The purpose of this revision is to reflect digital editorial practices in which individual contributors may make layout decisions without involvement in the overall production process. Third, the Department has deleted the reference to a specific frequency of article submissions in § 795.115(c)(5)(i). The Department did not intend to imply that a specific threshold of productive output would determine whether an individual is part of an integrated production process and therefore omits this reference to avoid confusion. Finally, the Department has revised the sentence in § 795.115(c)(5)(i) describing the journalist's interactions with the potential employer's employees to distill the salient point that the journalist does not work in concert with the employees. *See* 86 FR 1196 (noting that employee status is indicated where a worker ''performs identical or closely interrelated tasks'' as employees); *see also Rutherford Food,* 331 U.S. at 726, 729 (finding that workers ''work[ing] alongside admitted employees of the plant operator'' were part of an integrated economic unit). This sentence as proposed indicated that the journalist communicated with only one of the potential employer's employees, but a journalist may need to communicate with many different persons employed by a single entity on matters relating to his otherwise segregable work. Whether a worker's interactions with employees demonstrate integration will depend more on the content of the communications than the fact of them. As revised, this sentence now shows how the journalist's work is distinct from the employees' rather than how many employees interact with the journalist.

For all the reasons explained above, the Department finalizes § 795.105(d)(2)(iii) as proposed and finalizes the related examples in § 795.115(c)(4) and (5) with modifications.

4. Additional Factors (§ 795.105(d)(2)(iv))

The Department proposed regulatory text in § 795.105(d)(2)(iv) providing that: ''Additional factors may be

relevant in determining whether an individual is an employee or independent contractor for purposes of the FLSA, but only if the factors in some way indicate whether the individual is in business for him- or herself, as opposed to being economically dependent on the potential employer for work.'' [331]

The Department explained in the NPRM that it and courts ''have consistently stated that the identified factors are not exhaustive and additional factors may be considered'' and that both the 2021 Rule and the 2024 Rule provided for consideration of additional factors.[332] The Department advised that additional factors are relevant only to the extent that they help answer the ultimate inquiry—*i.e.,* whether the individual worker is in business for him- or herself or is economically dependent on the employer for work. Citing the 2021 Rule, the Department further advised that factors that do not bear on this ultimate inquiry, such as whether an individual has alternate sources of wealth or income and the size of the potential employer, are not relevant.[333] The Department invited comments on whether it should identify in the final rule certain facts or factors (in addition to or in lieu of the individual's alternate sources of wealth or income and the size of the employer) as not relevant because they do not bear on the individual's economic dependence.

The Department also addressed in the NPRM the weight that would be given to any additional factors, explaining that, because two factors would be ''core'' factors that typically carry greater weight than other factors, any additional factors would be less probative than the core factors. The Department added that the ''precise weight of any additional factors would depend on the circumstances of each case and would be unlikely to outweigh either of the core factors.'' [334] The Department expressed its expectation that ''additional factors will not be considered in many cases because the identified factors will be more than sufficient to make the determination.'' [335]

The Department received several comments addressing proposed § 795.105(d)(2)(iv), as well as comments identifying certain factors that the commenters believed were material or not material to determining employee or independent contractor status.

As an initial matter, Center for Workplace Compliance supported ''the clarification that the enumerated factors are non-exhaustive and must be evaluated in light of the economic dependence inquiry described in § 795.105(b). This emphasis on holistic review preserves longstanding doctrine while providing a clearer analytic framework for applying the economic reality test consistently in practice.'' FMI—The Food Industry Association commented that the 2024 Rule ''cited the additional unnamed factors following the six-factor totality of the circumstances test and thus, was interpreted as if a seven- or more-factors had to be considered in every case to classify a worker.'' This commenter added that the 2024 Rule's ''approach created uncertainty and confusion among businesses'' and that proposed § 795.105(d)(2)(iv) ''recognizes this misaligned citation, reiterates that the underlying economic reality test is based on two core factors,'' and clarifies that '' 'additional factors will not be considered in many cases because the identified factors will be more than sufficient to make the determination' '' (quoting proposed § 795.105(d)(2)(iv)). The Department agrees and reiterates that any additional factors are not a sixth factor to consider beyond the five enumerated factors and that additional factors will not be considered in many cases because the five enumerated factors will be more than sufficient to decide the case.

Richard Reibstein commented that courts have ''considered *dozens* of other factors that bear on the question of a worker's independence, including (to name just a few) whether the potential employer has the right to terminate the worker for any reason at any time; whether the worker has the right to accept or decline engagements; [336] whether the parties are subject to an agreement indicating an intent to establish an independent contractor relationship; and whether the worker operates in the form of a corporate entity, including as a limited liability company'' (emphasis in original). The Department believes that the first two factors identified by Reibstein are already part of the consideration under the control factor.

Like Reibstein, other commenters suggested that the intent of the parties to establish an independent contractor relationship should be considered as part of the analysis. For example, Cetera Financial Group stated that ''adding the intention of the parties as a factor in the Economic Realities test is entirely within the province of the Department. It should be deemed a threshold issue, or at the least made one of the core factors in the framework set forth in the Proposal.'' FedEx similarly commented that ''[t]he parties' intent should be a principal element. Documentation of the agreed relationship, the expectations set by contract, and the practical arrangements made by the parties can further inform status, and such evidence should be weighed alongside the core factors.'' Relatedly, FedEx suggested whether the worker is ''responsible for the payment of tax liability and securing independent insurance coverage'' should also be considered.

The Department, however, declines to include the intent of the parties, contractual formalities, or related concepts as additional factors. These concepts are particularly manipulable and, as the Department explained in both the 2021 and 2024 Rules,[337] Supreme Court precedent forecloses such considerations from controlling whether the FLSA applies to particular workers.[338] Specific to employee or independent contractor status, the Court held in *Rutherford Food* that, ''[w]here the work done, in its essence, follows the usual path of an employee, putting on an 'independent contractor' label does not take the worker from the protection of the Act.'' [339] Accordingly, numerous circuit courts of appeals have rejected the intention of the parties as

[331] 91 FR 9974.

[332] *Id.* at 9956–57 (citing *Silk,* 331 U.S. at 716; WHD Opinion Letter FLSA2025–2 at 5). The Department further explained that this provision was consistent with proposed § 795.105(c) (which stated that the identified ''factors are not exhaustive'').

[333] *Id.* at 9956 (citing 86 FR 1196).

[334] *Id.*

[335] *Id.* at 9957 (citing 89 FR 1717 (explaining in the 2024 Rule that, ''in many instances, consideration of additional factors will not be necessary because the relevant factual considerations can and will be considered under one or more of the enumerated factors'')).

[336] FedEx also suggested that whether the worker has the right to decline work be an additional factor.

[337] *See* 86 FR 1179, 1193 (''[I]t is not contractual formalities that are relevant to the inquiry, but economic reality.''), 1196 (''As has been the case since the concepts underlying the economic realities test was articulated, the test does not depend on labels assigned to workers.''); *see also* 89 FR 1670–71.

[338] *See Tony & Susan Alamo,* 471 U.S. at 302 (holding that the FLSA must be ''applied even to those who would decline its protections''); *Barrentine* v. *Arkansas-Best Freight Sys., Inc.,* 450 U.S. 728, 740 (1981) (''FLSA rights cannot be abridged by contract or otherwise waived because this would 'nullify the purposes' of the statute and thwart the legislative policies it was designed to effectuate.'') (quoting *Brooklyn Savings Bank* v. *O'Neil,* 324 U.S. 697, 707 (1945)); *see also Lauritzen,* 835 F.2d at 1544–45 (''The FLSA is designed to defeat rather than implement contractual arrangements. If employees voluntarily contract to accept $2.00 per hour, the agreement is ineffectual.'') (Easterbrook J., concurring).

[339] 331 U.S. at 729.

controlling in the economic reality test.[340]

The Division has historically advised that certain other facts are not relevant to the determination of employee or independent contractor status. For example, the July 2008 version of Fact Sheet 13 stated that ''[s]uch facts as the place where work is performed, the absence of a formal employment agreement, or whether an alleged independent contractor is licensed by State/local government are not considered to have a bearing on determinations as to whether there is an employment relationship. Additionally, the Supreme Court has held that the time or mode of pay does not control the determination of employee status.'' [341] Flex Association commented that the Department should ''restore that discussion [from the July 2008 version of Fact Sheet 13] in a final rule now,'' but ''clarify that while these types of considerations do not indicate employee status, they could indicate independent contractor status when viewed in light of the enumerated economic-reality factors.'' [342] The Department continues to believe that where the work is performed, the absence of a formal employment agreement, and whether an alleged independent contractor is licensed by State/local government are not considered to be material to the determination of employee or independent contractor status, and that the time or mode of pay does not control the determination.[343] The Department declines Flex Association's suggestion that these facts cannot indicate employee status but can indicate independent contractor status. As the Department has explained throughout this final rule, its goal is to provide an analysis that does not favor an employee or independent contractor outcome. The Department has sought to describe each factor in this way, and to be consistent, is taking that same approach for any additional considerations. Advising that certain additional considerations cannot indicate employee status but can indicate independent contractor status would be contrary to the Department's overall goal in this final rule.

The Department explained in the NPRM that the preamble to the 2021 Rule had advised that whether an individual has alternate sources of wealth or income and the size of the hiring company are also not relevant when determining employee or independent contractor status.[344] The Department reiterates that those facts are not relevant because they do not bear on the ultimate inquiry of whether the worker is economically dependent on the potential employer for work or is in business for him- or herself. This is also consistent with the discussion of economic dependence in § 795.105(b), which provides that ''[e]conomic dependence does not focus on the amount of income the worker earns, or whether the worker has other sources of income.''

Finally, the Department received numerous comments requesting that the final rule state that the provision of (or contributions to) benefits or portable benefits (particularly when required or permitted by state or local law) does not indicate that workers are employees. Commenters that requested some form of this included Associated Builders and Contractors, CHRO Association, Flex Association, Libertas Institute, Littler WPI, National Retail Federation, and the Senate Health, Education, Labor and Pensions (HELP) Committee (Chair and three Majority members).

To the extent that provision of (or contributions to) benefits or portable benefits is required by law, the guidance in § 795.105(d)(1)(i) that ''[r]equiring the individual to comply with specific legal obligations . . . does not constitute control that makes the individual more or less likely to be an employee under the Act'' could apply. However, § 795.105(d)(1)(i) may not apply because the provision of (or contributions to) benefits or portable benefits may not involve the potential employer requiring the individual worker to do anything. And in any event, many of the commenters focused on the voluntary provision of benefits. Indeed, some states have enacted laws so that the provision of (or contributions to) portable benefits to workers does not make them employees, or is not relevant to determining employee status, under those states' laws. For example, earlier in 2026, Georgia and West Virginia joined states like Tennessee, Alabama, and Utah in enacting such laws. The comment from the Senate HELP Committee (Chair and three Majority members) described efforts in states to pass such laws as well as an analogous bill that was introduced in the Senate.

Commenters offered policy arguments in support of this request. For example, the Senate HELP Committee (Chair and three Majority members) asserted that ''entities that work with independent workers fear they are restricted from offering portable benefits,'' but ''labor and employment laws were never intended to prevent workers from accessing benefits,'' and ''[t]his is backwards-looking and unfairly disadvantages independent workers, as most companies decline opportunities to provide non-employees benefits altogether over fears of expensive litigation.'' Littler WPI stated that ''businesses fear to provide such benefits to independent contractors as doing so can bring with it obligations of employment status that are often incompatible with the independent contracting relationships freely entered into by individuals and businesses,'' and suggested that the Department not ''discourage changes in state or other laws that require or permit businesses to provide protections and benefits to their independent contractor partners.'' CHRO Association commented that ''[s]uch clarification would meaningfully encourage the extension of

[340] *See, e.g., Safarian* v. *American DG Energy Inc.,* 622 F. App'x 149, 151 (3d Cir. 2015) (stating that, even where ''the parties structure[ ] the relationship as an independent contractor, . . . the caselaw counsels that, for purposes of the worker's rights under the FLSA, we must look beyond the structure to the economic realities''); *Scantland,* 721 F.3d at 1311 (''This inquiry is not governed by the 'label' put on the relationship by the parties or the contract controlling that relationship, but rather focuses on whether 'the work done, in its essence, follows the usual path of an employee.' '') (quoting *Rutherford Food,* 331 U.S. at 729); *Superior Care,* 840 F.2d at 1059 (''[E]mployer's self-serving label of workers as independent contractors is not controlling.''); *Robicheaux* v. *Radcliff Material, Inc.,* 697 F.2d 662, 667 (5th Cir. 1983) (explaining that ''[a]n employee is not permitted to waive employee status,'' and affirming that welders were employees despite having signed independent contractor agreements); *Driscoll,* 603 F.2d at 755 (''Economic realities, not contractual labels, determine employment status for the remedial purposes of the FLSA.''); *but see Saleem,* 854 F.3d at 141 (noting that the workers' ''agreements also designated them as independent contractors'' and that some of them ''formed corporations to operate their franchises'' as one aspect of its determination that the workers ''demonstrated independence and initiative in selecting franchise agreements that best fit their business plans, and in choosing—independent of Franchisor Defendants—to persist in those affiliations'').

[341] This language was also in the original 1997 version of Fact Sheet 13 (which is discussed *supra* at n.64); *see also Rosenwasser,* 323 U.S. at 363 (''The time or mode of compensation, in other words, does not control the determination of whether one is an employee within the meaning of the Act and no court is justified in reading in an exception based upon such a factor.'').

[342] FedEx did not reference Fact Sheet 13 but suggested that whether there is ''a written contract between the parties'' and whether the worker is ''responsible for securing a business license and registration as applicable'' should be considered as additional factors.

[343] Though where the work is performed is generally not indicative of employee or independent contractor status, there may be facts regarding a business requiring that work be done onsite alongside employees of the business that are relevant under the control factor or the integrated unit factor as discussed above in the context of those factors. *See, e.g., Rutherford Food,* 331 U.S. at 729–30 (concluding that workers were employees in part because the workers were ''part of an integrated unit of production'' by performing a job on the employer's production line, using the employer's premises and equipment, where the ''managing official of the plant kept close touch on the operation'').

[344] 91 FR 9956 (citing 86 FR 1196).

benefits and protections to contingent workers, would further the Department's statutory mission of protecting workers, and would in no way impede the Department's ability to address intentional misclassification where it occurs.''

Having considered the comments, the Department believes that it should counter any perceived disincentive and encourage businesses to provide (or contribute to) benefits for non-employee workers consistent with the growing interest in making portable benefits available, which would benefit workers and society. Accordingly, in the Department's view, whether the potential employer provides (or contributes to) benefits or portable benefits is not relevant in determining whether a worker is an employee or independent contractor. Contrary to Flex Association (which asserted that ''a company's decision to participate in a portable benefits program established by a state is not indicative of employment under the FLSA, and, in fact, highly suggests that the worker is an independent contractor''), the Department believes that both the provision and non-provision of benefits should be irrelevant when determining employee or independent contractor status. This is a more balanced approach that does not favor either outcome, consistent with the Department's overall intent in this rulemaking, as explained above, to provide an analysis that does not favor employee or independent contractor outcomes. Thus, the provision of benefits to a worker would not be indicative of employee status, and the non-provision of benefits to a worker or the participation in a portable benefits program geared to non-employee workers would not be indicative of independent contractor status.[345] Additionally, consistent with the discussion of economic dependence in this rule, the provision or non-provision of benefits to workers is not relevant to whether the worker is economically dependent on the potential employer *for work* (the ultimate inquiry). Whether the worker is provided benefits is often a function of how the potential employer classifies the worker and thus is not necessarily indicative of the economic reality of the worker's working relationship with the potential employer. And providing portable benefits to non-employee workers is a laudable effort to make benefits available to workers for whom benefits were previously not available because of their non-employee status and thus does not reflect the underlying economic reality of those workers' working relationships with potential employers.[346]

For all these reasons, the Department is finalizing § 795.105(d)(2)(iv) as proposed.

H. Primacy of Actual Practice (§ 795.110)

Proposed § 795.110 stated that the actual practice of the parties—of both the individual and the potential employer—is more relevant than what may be contractually or theoretically possible. Proposed § 795.110 further stated that an individual's theoretical abilities to negotiate prices or work for competing businesses are less meaningful if, as a practical matter, the individual is prevented from exercising such rights and, likewise, a business's contractual authority to supervise or discipline an individual may be of little relevance if in practice the business never exercises such authority.

As it did in the 2021 Rule, the Department explained that this principle is grounded in the Supreme Court's holding that '' 'economic reality' rather than 'technical concepts' is to be the test of employment'' under the FLSA.[347] The NPRM further explained that the emphasis on actual practice does not mean that unexercised contractual powers, rights, and freedoms are never relevant but merely less relevant than powers, rights, and freedoms that are actually exercised.

Several worker advocacy organizations criticized this provision for minimizing the significance of a potential employer's unexercised contractual right of control to the question of economic dependence. *See, e.g.,* National Partnership for Women and Families et al.; NWJP. Some commenters emphasized the ''implicit threat'' that a potential employer may hold over workers where it reserves contractual rights to discipline and terminate them. *See* NWJP (''A right to terminate workers' employment becomes an implicit threat that, of course, makes them more dependent on the business that has that right, regardless of whether a worker ever is terminated.''); *see also* Farmworker Justice (''We encourage the DOL to not discount the ultimate control that a business holds when it has the ability to fire or discipline a worker.''). Some commenters focused on ''indirect approaches [to control] like algorithmic management or productivity tracking.'' Philadelphia Legal Assistance; *see also* Coalition of State Officials (stating that the Department ''ignores the importance of employers' reserved control using modern technology for intense surveillance and algorithmic control of workers''). Coalition of State Officials asserted that the focus on control actually exercised by a potential employer is ''read generously, equivalent to the common law standard'' and counter to the FLSA's broad standard of employment, citing *New York* v. *Scalia,* 490 F. Supp. 3d 748, 786–87 (S.D.N.Y. 2020).

Business commenters generally expressed support for this provision, but several of them requested revisions to address circumstances where a party voluntarily chooses not to exercise contractual rights. *See, e.g.,* CWI; Flex Association. U.S. Chamber of Commerce requested the Department to state that a worker's voluntary choice not to exercise a contractual right either indicates independence or is not determinative of his or her employment status, whereas a business's choice not to exercise a contractual right of control should weigh in favor of independent contractor status. SHRM requested that the Department state that a worker's unexercised contractual rights ''affirmatively weigh in favor of independent contractor status,'' but that a business's unexercised contractual rights are ''materially less probative than actual practice.'' Some commenters requested a revision stating that a worker must identify conduct by the potential employer ''that, as a matter of fact, prevented the worker from exercising'' contractual rights such as the ability to negotiate prices or work for competing businesses. National Home Delivery Association; Scopelitis; *see also* American Bakers Association (requesting that ''employee status is suggested only when a potential employer prevented the individual, as a

[345] In the 2021 Rule, the Department stated that ''providing a worker with the same employer-provided health or retirement plans on the terms that a business also gives its own employees may indicate the worker is not an independent contractor but rather an employee.'' 86 FR 1185. However, the growing availability of portable benefits programs indicates that circumstances are changing some and that benefits programs in which employers participate are not available solely to employees.

[346] The Department recognizes that the provision of employee benefits is one factor among many that is considered under the common law ''right to control the manner and means by which the product is accomplished'' analysis for determining employee or independent contractor status. *Reid,* 490 U.S. at 751–52. The ultimate inquiry under the FLSA, however, is not control but whether the worker, as a matter of economic reality, is economically dependent on the potential employer for work or is in business for him- or herself. As explained above, not considering the provision or non-provision of employee benefits is consistent with the FLSA-specific inquiry.

[347] 91 FR 9957 (quoting 86 FR 1203); *see Whitaker House,* 366 U.S. at 33.

matter of contract or fact, from exercising [certain] rights'').

Several labor unions, without specifically addressing § 795.110, supported the importance of looking beyond contractual provisions. IBT stated that ''actual practice, not contract labels or unilateral paper designations by employers, controls the classification inquiry.'' AFSCME and SEIU invoked Judge Easterbrook's observation that the FLSA is ''designed to defeat rather than implement contractual arrangements.'' *Lauritzen,* 835 F.2d at 1545 (Easterbrook, J., concurring). AFL–CIO criticized the Department for ''elevating factors that can be readily shaped through contract design and business structuring,'' but did not acknowledge that § 795.110 is designed to ensure that the FLSA is ''applied in a way that looks beyond 'technical concepts' and contractual labels,'' AFL–CIO (quoting *Whitaker House,* 366 U.S. at 33).

Having considered the views expressed by commenters, the Department is finalizing § 795.110 as proposed. The Department believes that the primacy of actual practice is a neutral interpretive principle, intended to encompass both workers' and businesses' actual practices, consistent with the way courts and the Department have long applied the FLSA's economic reality test. *See, e.g., Usery,* 527 F.2d at 1312 (''It is not significant how one 'could have' acted under the contract terms. The controlling economic realities are reflected by the way one actually acts.''). The Department declines commenter suggestions that would disrupt that neutrality by assigning greater weight to one party's unexercised contractual rights but not the other's—both from worker-side commenters placing the emphasis on a business's reserved rights of control and from business-side commenters requesting unequal treatment of individuals' and businesses' decisions not to exercise contractual rights. As the NPRM explained, this provision does not categorically disregard unexercised contractual rights.[348] Parties may proffer evidence regarding unexercised contractual provisions, and such evidence may well be relevant, even if it is not as relevant as evidence of actual practice. *See, e.g., Saleem,* 854 F.3d at 141 (workers' ability to terminate contracts at any time ''constituted a significant restriction on the ability of [the potential employers] to exercise control''); *Brant,* 43 F.4th at 665–67 (finding that potential employer's ''right to gather remotely and to monitor huge quantities of data,'' coupled with ''constant threat of termination,'' favored employee status).

The Department disagrees with Coalition of State Officials' contention that prioritizing control that is actually exercised is equivalent to the common law control test instead of the broader scope of employment that the FLSA requires. In many cases, the actual practices of the parties will establish the existence of an employment relationship despite what a ''skillfully devised'' contract might suggest. *Silk,* 331 U.S. at 715; *see, e.g., Scantland,* 721 F.3d at 1313–14 (dismissing the probative value of plaintiffs' contractual right to decline work assignments where they testified that doing so led to threats of termination or being refused future work assignments); *Usery,* 527 F.2d at 1312 (contractual right to set hours does not show worker control where the hours are controlled by the potential employer in reality). Furthermore, while the economic reality test is broad in the sense that it covers more workers as a general matter, a reserved right of control that might establish employee status under common-law analysis does not necessarily do so under the economic-reality test. In *Bartels,* the court of appeals concluded that musicians were employees of the dance halls under the common-law test because the contracts gave the halls a right to control their services. *Birmingham* v. *Bartels,* 157 F.2d 295, 304 (8th Cir. 1946), *rev'd,* 332 U.S. 126 (1947). The Supreme Court reversed, applying the economic reality test to hold that musicians were not employees of the dance halls notwithstanding a contractual stipulation that the halls ''shall at all times have complete control of the services which the [musicians] will render.'' *Bartels,* 332 U.S. at 128 n.1, 132. The Court looked beyond that contractual allocation of control to the circumstances of the parties' relationship as a whole to reach that conclusion. *Id.* at 130–32.[349]

The Department also disagrees with the interpretation suggested by various business commenters that only affirmative conduct by a potential employer to prevent a worker from exercising contractual rights should diminish the relevance of such rights. The extent to which such a right is probative depends on whether it represents a genuine and practicable opportunity, rather than merely appearing in a written agreement. Courts have therefore discounted rights that were hypothetical or could not realistically be exercised. *See, e.g., Hobbs,* 946 F.3d at 833 (discounting the proposition that welders ''could hypothetically negotiate their rate of pay'' where the evidence did not show negotiation in practice); *Keller,* 781 F.3d at 808 (finding a genuine dispute of fact concerning whether a technician could work for other companies where his schedule was dictated by circumstances outside his control, including customer locations and availability); *Mitchell* v. *John R. Cowley & Bro., Inc.,* 292 F.2d 105, 109 (5th Cir. 1961) (discounting a watchman's contractual right to furnish services to others based on practical constraints affecting his ability to do so). Affirmative interference by the potential employer may be strong evidence that the right lacks practical significance, but such interference is not required. At the same time, a particular worker's voluntary decision not to exercise an otherwise available contractual right does not, standing alone, make that right merely theoretical. Evidence that similarly situated workers exercise the same contractual right may demonstrate that the opportunity is real and practically available even though the particular worker whose status is at issue elects not to pursue it. The relevant inquiry is whether the worker has a genuine ability to exercise the right under the actual circumstances.

Finally, the Department received some requests for minor clarifications or revisions. Some business commenters requested the Department to clarify that ''nothing in the proposed rule changes the burden of proof in a challenge to a worker's classification under the FLSA.'' National Home Delivery Association; Scopelitis. The Department confirms that nothing in this rule is intended to alter the burden of proof in FLSA misclassification cases. That said, the Department considers it unnecessary to revise proposed § 795.110, which does not address the burden of proof but rather the weight of the evidence. Some business commenters requested the Department to clarify that contractual terms that accurately reflect the actual practices of the parties may be relevant. Flex Association; Instacart; TechNet; *see also* IFA (arguing that contracts are relevant as ''one part of the economic reality'' and should not be ''completely disregarded''). As discussed, this rule does not categorically disregard the relevance of contractual terms. Where the evidence regarding the parties'

[348] 91 FR 9957–58.

[349] For the same reason, the Department disagrees with the suggestion that the actual-practice provision is contrary to *New York,* 490 F. Supp. 3d at 786–87. The joint employer rule at issue in that case made it a necessary condition for an entity to be considered a joint employer that the entity ''actually exercised'' control based on at least one of four control factors. *Id.* Under the instant rule, control is neither necessary nor sufficient.

actual practices is consistent with terms of the applicable contractual agreement, such terms may have substantial probative value.[350] The probative value of such terms follows from their consistency with actual practice. Accordingly, § 795.110 properly confirms the primacy of actual practice.

I. Examples of Analyzing Economic Reality Factors (§ 795.115)

In the NPRM, the Department proposed to readopt most of the regulatory text of § 795.115 from the 2021 Rule, which provided six illustrative examples demonstrating ''how the factors listed in § 795.105(d) may be analyzed under the facts presented'' in the examples.[351] The NPRM included a factual revision to the 2021 Rule's first illustrative example,[352] a minor edit to another example (changing the word ''rewrites'' to ''revises''), and two new examples applying the ''amount of skill required for the work'' factor, which would ensure that this section provides examples on all of the economic reality factors identified in § 795.105(d). Consistent with the 2021 Rule, each example would provide a set of facts followed by an ''Application'' section discussing how a particular factor would apply to those facts and whether the factor would indicate employee or independent contractor status under those facts. The discussion in each ''Application'' section would be ''limited to substantially similar factual situations.''

Commenter feedback on the NPRM's proposed illustrative examples is addressed in the preamble discussions for the economic reality factor applied in each example (Sections IV.F.-G. of this notice). However, as a general matter, many commenters expressed support for the adoption of illustrative examples. *See, e.g.,* Association for Competitive Technology; CPAC Foundation Center for Regulatory Freedom; Center for Workplace Compliance. For example, SHRM commented that ''those responsible for day-to-day implementation do not always have the capacity to parse dense legal and regulatory text, and clear, real-world examples can help translate complex standards into actionable guidance.'' *See also* NFIB (similar). U.S. Chamber of Commerce commented that ''examples possess many of the benefits of the Department's other forms of subregulatory guidance,'' and, ''[w]hile not as fact intensive as opinion letters, . . . nonetheless 'provide valuable insight into how an agency interprets the laws it is responsible for enforcing.' '' [353] Washington Legal Foundation commented that ''[w]hile [the proposed] examples can't cover every contingency, each one brightens the lines drawn by the rest of the regulation. That kind of clarity is always welcome.'' Many commenters urged the Department to adopt more illustrative examples. *See, e.g.,* Pacific Legal Foundation (characterizing illustrative examples as ''the single most important vehicle through which the Department can deliver clarity''); *see also* Elizabeth Gardner; Truckload Carriers Association. Conversely, while several commenters offered criticisms or suggested edits to some of the NPRM's proposed examples, the Department identified only one comment opposing the adoption of any examples. *See* NWJP (asserting that the NPRM's examples ''inappropriately encourage a mechanical application of the test because they each focus on a single factor not considered in relationship to other facts and factors'').

Commenter feedback indicated widespread appreciation for examples showing how the economic reality factors apply. Indeed, the Department stated in the 2024 Rule that ''examples are helpful to workers and businesses alike.'' [354] Like the 2021 Rule, the 2024 Rule provided examples ''to illustrate the application of each factor of the economic reality test as applied to various factual scenarios.'' [355] Unlike the 2021 Rule, the 2024 Rule provided the examples in the preamble rather than in the regulatory text (following the discussion in the preamble of each factor were examples applying the factor). The 2024 Rule explained that the examples ''provide the greatest value by residing in the preamble to the final rule following the detailed discussion of the relevant factor'' because such ''examples can provide a capstone for each section's discussion of the relevant economic reality factor, rather than being disconnected from that discussion and appearing only in regulatory text.'' [356]

Upon further consideration, the Department believes that including examples in the regulatory text makes them more accessible to the public, which is more likely to refer to the regulatory text than the preamble. The regulatory text—not the preamble—is what is published in the Code of Federal Regulations. The examples constitute a clearly delineated section in that regulatory text following the discussion of the factors in the regulatory text and therefore are not meaningfully ''disconnected.'' No commenters expressed a preference for the adoption of illustrative examples in the preamble discussion rather than in the regulatory text.

Many commenters requested the adoption of additional illustrative examples involving specific occupations, industries, and workplace practices. Nearly all of these requests were submitted by businesses and the associations and law firms that represent them, which recommended guidance advising that various facts or business practices would either be indicative of independent contractor status or at least not indicative of employee status. *See, e.g.,* CWI; Flex Association; IFA; myBasePay; ShiftKey; Shared Economy Services; SHRM; U.S. Chamber; Littler WPI; *but see* IBT (generally opposing the rulemaking but acknowledging the potential benefit of ''illustrative examples tailored to modern employment models, including algorithmic control, subcontracting layers, and exclusive dealing arrangements'').

The Department appreciates the interest in more illustrative examples from business stakeholders that wish to engage independent contractors. However, because the purpose of this rulemaking and the analysis adopted herein is not to classify more workers as independent contractors, the Department has decided to add three pairs of examples to those it proposed in the NPRM, with each pair juxtaposing factual circumstances that would be indicative of employment and independent contractor status, respectively. The three pairs of examples would address: (1) application of the control factor to individuals who obtain work assignments through a digital platform application; (2) application of the control factor to individuals who may be farm labor contractors; [357] and (3) application of

[350] *See* 91 FR 9949.

[351] *See* 86 FR 1247–48.

[352] The NPRM proposed to revise § 795.115(b)(1) from the 2021 Rule by replacing references to a speed limiting device imposed by a motor carrier with references to drug and alcohol testing. The Department explained that it proposed the change to avoid potential confusion over whether federal motor carrier safety regulations require the installation of speed limiting devices. *See* 91 FR 9958.

[353] This commenter quoted Keith E. Sonderling & Bradford J. Kelley, The Sword and the Shield: The Benefits of Opinion Letters by Employment and Labor Agencies, 86 Mo. L. Rev. 1171, 1176 (2022).

[354] 89 FR 1724.

[355] *Id.* at 1722.

[356] *Id.* at 1724.

[357] While a farm labor contractor who is in business for him- or herself is not ''an employee of an agricultural employer or agricultural association'' under MSPA, 29 U.S.C. 1802(7), agricultural employees are sometimes wrongly classified as farm labor contractors. The Department

the opportunity for profit or loss factor to truck drivers who lease their truck from a motor carrier. These new examples are discussed in greater detail in section IV.F and will be located in § 795.115(b)(2)–(5) and (8)–(9) in the final regulatory text. To make the examples easier to find, the Department has relocated certain examples from where they originally appeared in the 2021 Rule and NPRM so all of the examples will be grouped together by factor.

Finally, the Department notes that, in response to commenter feedback, it has revised the two examples in proposed § 795.115(b)(7)–(8) (applying the ''integrated unit'' factor to an editor and a journalist, respectively), which now appear in § 795.115(c)(4)–(5) of the final regulatory text. These revisions are discussed earlier in section IV.F.2.

J. Changes to the FMLA and MSPA Regulations

The Department proposed to revise the regulations addressing employee or independent contractor status under the FMLA and MSPA to clarify that the analysis in part 795 applies when determining employee or independent contractor status under those statutes too. For the FMLA regulations, the Department proposed to revise the definition of ''Employee'' in 29 CFR 825.102 by adding a statement that ''the criteria set forth in §§ 795.105 through 795.110 of this chapter apply to any determination of whether an individual is an employee or independent contractor.'' The Department also proposed to revise 29 CFR 825.105(a) by adding the following sentence: ''The criteria set forth in §§ 795.105 through 795.110 of this chapter apply to any determination of whether an individual is an employee or independent contractor.'' Additionally, the Department proposed to delete the following sentence in 29 CFR 825.105(a): ''Mere knowledge by an employer of work done for the employer by another is sufficient to create the employment relationship.'' For the MSPA regulations, the Department proposed to revise 29 CFR 500.20(h)(4) to remove the six economic reality factors (as well as reference to the factors and several case citations) and replace them with a cross-reference providing that questions of employee or independent contractor status under MSPA ''should be resolved in accordance with the criteria set forth in §§ 795.105 through 795.110 of this chapter.''

The NPRM explained that both the FMLA and MSPA statutorily incorporate the FLSA's definitions regarding the scope of employment and the Department's FMLA and MSPA regulations recognize that the scope of employment under those statutes is determined by the FLSA.[358] The NPRM explained that it proposed these revisions to confirm that a uniform analysis should apply under the FLSA, FMLA, and MSPA, consistent with Congressional intent. The NPRM also explained that it proposed to delete the sentence in the FMLA regulations advising that ''[m]ere knowledge by an employer of work done'' is sufficient to create an employment relationship, which was added to the regulations as part of a general discussion of the employment relationship, to further confirm that the multifactor analysis in 29 CFR part 795 will apply when determining an individual worker's classification as employee or independent contractor under the FMLA.[359]

Overall, commenters' opinions on the proposed revisions to the FMLA and MSPA regulations tracked their opinions on the proposed revisions to part 795. Many commenters that supported the proposed FLSA analysis also supported its application to the FMLA and MSPA on the basis that a uniform standard across all three statutes will enhance its clarity and predictability. *See, e.g.,* Americans for Prosperity Foundation; Center for Workplace Compliance; CWI; Competitive Enterprise Institute; Goldwater Inst.; Senate HELP Committee (Chair and three Majority members); U.S. Chamber; U.S. Hispanic Business Council; Washington Legal Foundation; Wisconsin Inst. For Law & Liberty. Many commenters that opposed the proposed FLSA analysis also opposed its application to the FMLA and MSPA on the grounds that it is inconsistent with the broad scope of employment Congress intended for all three statutes. *See, e.g.,* A Better Balance; Center for WorkLife Law; IBT; Joint Center for Political & Economic Studies; Legal Aid at Work; Nichols Kaster; Reps. Bobby Scott and Ilhan Omar; SEIU. Many opposed commenters expressed concerns that extending the FLSA analysis to the FMLA and MSPA will exacerbate the misclassification that they believe to be the likely consequence of its application to the FLSA. *See, e.g.,* 114 State Legislators; A Better Balance; Allegheny County et al.; Center for WorkLife Law; CLASP; Economic Policy Institute; National Women's Law Center; PHI; Reps. Bobby Scott and Ilhan Omar; Sen. Bernard Sanders et al.

Aside from these across-the-board expressions of support or opposition, the Department received a small number of comments addressing specific aspects of the FMLA and MSPA. Adding to their concerns regarding increased misclassification, worker advocacy groups expressed concerns of concomitant harms that they perceive as likely due to unique aspects of the FMLA and MSPA. These commenters asserted that reclassification of employees to independent contractors will weaken the FMLA's protections for all workers because it will reduce the number of employees an employer employs, which determines, in part, whether the employees are eligible for FMLA-protected leave. *See, e.g.,* AFSCME; CLASP; National Partnership for Women & Families et al. These commenters reported that 44 percent of workers are currently ineligible for FMLA-protected leave, with 15 percent of workers ineligible due solely to employer worksite size, and expressed concerns that this number would increase.[360] Farmworker advocacy groups asserted that ''certain unique structures in farm work, like the use of farm labor contractors (FLCs), leads to farmworker mistreatment and attempts to shift liability away from farms,'' that farm labor contractors are ''the most common violators of federal wage and hour laws in agriculture,'' and that farm labor contractors are ''often undercapitalized and, in practice, difficult or impossible to sue for damages.'' Farmworker Justice; National Center for Law and Economic Justice; *see also* Philadelphia Legal Assistance (making similar observations and stating that farmworkers' ''economic vulnerability through the seasonal nature of their work, the isolation that long periods of travel and distance from their support systems cause, and limited English proficiency'' lead to their

decided to add a pair of examples addressing individuals who may be farm labor contractors because, unlike the 2021 Rule, this rulemaking implicates the Department's MSPA regulations. Moreover, as CWI noted in its request for such examples, ''agricultural workers and farm labor contractors operate in substantially different factual circumstances than white collar workers.''

[358] 91 FR 9959; *see* 29 U.S.C. 1802(5) (providing that ''employ'' for purposes of MSPA has the meaning given such term under section 3(g) of the FLSA); 29 U.S.C. 2611(3) (providing that ''employee'' and ''employ'' for purposes of the FMLA have the same meanings given such terms in sections 3(e) and (g) of the FLSA).

[359] 91 FR 9959.

[360] *Key Facts: The Family and Medical Leave Act* (Jan. 2026), National Partnership for Women & Families, *https://nationalpartnership.org/report/fmla-key-facts/.*

''widespread mistreatment and exploitation'').

Specific to MSPA, some commenters argued that the diminishment of non-core factors would make it more difficult to find that agricultural workers are employees and may even ''incentivize farm operators to adopt more '[e]xploitative' working arrangements like sharecropping or share-farming.'' CLASP; *see also* Farmworker Justice.[361] Some commenters asserted that the determination of employee or independent contractor status under MSPA must align with a specific set of cases previously identified as relevant by Congress or the Department. *See* Farmworker Justice; NWJP; Texas RioGrande Legal Aid. In a report accompanying MSPA, the House Committee on Education and Labor identified four specific cases as ''determinative'' on questions of employee or independent contractor status. H.R. Rep. No. 97–885, at 7 (1982) (citing *Rutherford Food,* 331 U.S. 722; *Driscoll,* 603 F.2d 748; *Mednick,* 508 F.2d 297; and *Usery,* 527 F.2d 1308). In its 1997 regulations, the Department cited five specific cases (two of which were also cited in the House Committee's report and three of which were decided subsequently) to aid in resolving whether a worker is an independent contractor or employee. 62 FR 11747 (amending 29 CFR 500.20(h)(4)) (citing *Rutherford Food,* 331 U.S. 722; *Driscoll,* 603 F.2d 748; *Lauritzen,* 835 F.2d 1529; *Beliz,* 765 F.2d 1317; and *Castillo,* 704 F.2d 181).

Finally, as described above in section III.E, some commenters asserted that the Department did not adequately explain its reasons for amending these regulations now when it declined to do so in 2024 and 2021. *See* Coalition of State Officials; National Women's Law Center; NWJP. Coalition of State Officials contended that the Department's stated reason of avoiding confusion regarding what analysis should apply constitutes ''unsubstantiated speculation'' and fails to consider the confusion arising from ''abruptly changing course on a longstanding policy.'' This commenter further contended that unique provisions of the FMLA and MSPA must be considered before proceeding with a uniform approach. Except as described above and in section III.E, the Department did not receive any comments addressing specific aspects of the FMLA or the substance of the proposed revisions to 29 CFR part 825. In addition to the comments described above, the Department received comments addressing specific aspects of MSPA and the substance of the proposed revisions to 29 CFR part 500, which are discussed further below.

For all the reasons that the Department has explained for finalizing the proposed rule for the FLSA, the Department finalizes its proposal for the FMLA and MSPA as well, with additional minor, non-substantive edits (changing ''whether or not,'' ''and/or,'' ''his/her,'' and ''he/she''). The Department reiterates that it believes this rule provides clear guidance that is consistent with how courts have applied the economic reality factors and is well-suited to remedying misclassification without discouraging legitimate independent contractor relationships. As discussed in the NPRM and above in section III.E, the Department believes that uniformity among the FLSA, FMLA, and MSPA is not only consistent with Congress's intent but also beneficial to employers, businesses, and workers because it will encourage consistent results.

In finalizing the proposed revision to the MSPA regulations, the Department is not rejecting the case law relied on by the House Committee on Education and Labor when Congress enacted MSPA and by the Department when it promulgated the 1997 regulations. *See* H.R. Rep. No. 97–885, at 7 (citing *Rutherford Food,* 331 U.S. 722; *Driscoll,* 603 F.2d 748; *Mednick,* 508 F.2d 297; and *Usery,* 527 F.2d 1308); 62 FR 11747 (citing *Rutherford Food,* 331 U.S. 722; *Driscoll,* 603 F.2d 748; *Lauritzen,* 835 F.2d 1529; *Beliz,* 765 F.2d 1317; and *Castillo,* 704 F.2d 181). The Department recognizes that these cases have been foundational in shaping the analysis that it finalizes today. As the Department has explained, it believes that this rule is, in some respects, more aligned with *Rutherford Food* than the 2024 Rule was.[362] As for the circuit court cases, the Department believes that they provide several helpful principles and are generally consistent with the economic reality factors described in this rule. Yet they do not cohere into one generally applicable rule, as this rule seeks to do. The House Committee acknowledged that the cases it cited ''give a slightly different description of the five or six factors which are to be considered in making this determination, but each eschews the traditional common law 'right to control' test.'' *See* H.R. Rep. No. 97–885, at 7. Indeed, those four cases cited in the House Report illustrate some of the variations in the economic reality test with which the Department has grappled in fashioning a cohesive rule, such as whether investment is part of the opportunity factor, *see Mednick,* 508 F.2d at 301 (characterizing plaintiff's investments in inventory as a ''means of increasing his 'profits'''), and whether initiative should be considered under the skill factor, *see Usery,* 527 F.2d at 1314. Most notably, each case takes a different approach to integration. *Rutherford Food,* 331 U.S. at 729 (introducing the ''integrated unit of production'' formulation); *Driscoll,* 603 F.2d at 750 (characterizing strawberry growers as ''an integral part of Driscoll's strawberry growing operation, rather than an independently viable enterprise''); *Mednick,* 508 F.2d at 300–01 (using an ''integrated part'' formulation but also noting that the plaintiff's work ''may have been very useful or even necessary''); *Usery,* 527 F.2d at 1311 (omitting this factor altogether). The House Committee's instruction that this case law ''be determinative'' cannot mean that it must apply mechanically to all subsequent cases—except with respect to its uniform rejection of the common law control test.

The cases previously cited by the Department similarly vary in the methods by which the courts arrive at their conclusions. While the Seventh and Ninth Circuits recited a similar six-factor test, *Driscoll,* 603 F.2d at 754; *Lauritzen,* 835 F.2d at 1535, the Fifth Circuit identified the ''critically significant'' factors as ''(1) how specialized the nature of the work is, and (2) whether the [alleged independent contractor] is 'in business for himself.''' *Beliz,* 765 F.2d at 1327–28 (quoting *Castillo,* 704 F.2d at 190). The Fifth Circuit collapsed skill, permanence, and integration within the first of these factors, while the second factor incorporated control and opportunity for profit or loss. *See id.* at 1328. Notwithstanding these variations, all these cases concluded that the relevant workers were most likely employees of the defendant farmers/growers. *Beliz,* 765 F.2d at 1320, 1328 (farm labor contractor and the migrant workers he recruited were employees of defendant vegetable producer); *Castillo,* 704 F.2d at 184, 192 (farm labor contractor and the field workers he hired were employees of defendant cotton producer); *Driscoll,* 603 F.2d at 751, 755 (reversing district court's holding that strawberry growers were independent contractors on defendant's strawberry farms); *Lauritzen,* 835 F.2d at 1538 (''No trial is needed to sort out the material facts in these circumstances in

[361] *See supra* section IV.E.

[362] 91 FR 9941–42.

order to come to the conclusion of law that these migrant workers are employees, entitled to the protection of the FLSA.''). The Department sees no reason to believe that this rule would produce a different outcome in any of these cases and has no intention for it to do so.

The Department acknowledges that it must ''be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account'' when revising regulations. *Wages & White Lion,* 604 U.S. at 570 (internal quotation marks and citation omitted). As it did in the 2021 Rule, the Department believes that the regulatory standard for determining an individual's classification status under MSPA is generally consistent with the FLSA guidance finalized in this rule.[363] Therefore, the Department does not believe that reliance interests will be affected by this rule. In the 2021 Rule, the Department stated that it preferred to ''proceed incrementally,'' thereby signaling its intent to revisit this question at a later date.[364] Having considered the comments and the regulatory history to date, the Department believes that it is appropriate to take this next step now.

Among commenters that generally welcomed the extension of this rule to MSPA, there was one request for a minor revision, plus a few requests for clarifications and examples. Trevar Kolodny proposed a revision to the first sentence of 29 CFR 500.20(h)(4), which currently states: ''The definition of the term employ may include consideration of whether or not an independent contractor or employment relationship exists under the Fair Labor Standards Act.'' Kolodny argued that the word ''may'' should be changed to ''shall'' because application of the FLSA's definition is mandatory. The Department declines this suggestion. The word ''may'' in this sentence does not mean that the Department may disregard the FLSA's definition of ''employ.'' The sentence simply means that some (but not all) work arrangements governed by MSPA may involve a question of whether an independent contractor or employment relationship exists. Elsewhere, the regulation is clear that the FLSA's definition of ''employ'' applies. *See* 29 CFR 500.20(h)(1) (''The term employ has the meaning given such term under section 3(g) of the [FLSA].'').

WAFLA, while generally welcoming the revision to the MSPA regulations, requested clarification that it ''will not disrupt legitimate farm labor contracting relationships that comply with MSPA's separate registration, disclosure, and operational requirements.'' WAFLA asserted that a ''properly registered FLC that recruits and manages workers across multiple farms, supplies its own workforce management infrastructure, bears payroll and administrative responsibility for its crew, and operates under a separate legal entity plainly satisfies the proposed rule's core factor analysis as an independent contractor of the agricultural employer.'' The Department has no intention to disrupt legitimate farm labor contracting relationships. However, whether a farm labor contractor is an independent contractor or an employee would depend upon application of all the factors set forth in this rule to the circumstances of the case. WAFLA also requested clarification that the Department is not altering the existing language in 29 CFR 500.20(h)(4) regarding the ''downstream effect of FLC classification.'' WAFLA noted its support for retaining this language. The Department confirms that it is retaining the language in 29 CFR 500.20(h)(4) that provides: ''If it is determined that the farm labor contractor is an *employee* of the agricultural employer/association, the agricultural workers in the farm labor contractor's crew who perform work for the agricultural employer/association are deemed to be employees of the agricultural employer/association and an inquiry into joint employment is not necessary or appropriate.''

Finally, some commenters requested additional guidance on the extension of this rule to MSPA in the form of examples involving agricultural workers. *See* CWI (requesting at least one example involving agricultural or seasonal labor); National Association of Convenience Stores et al. (requesting practical guidance on MSPA's employment definitions for the benefit of businesses with multi-contractor operations); WAFLA (requesting an agricultural example demonstrating how the permanence factor applies to seasonal specialty crop service providers). The Department agrees that additional examples involving agricultural workers will be helpful to illustrate the application of this rule in the agricultural context and therefore finalizes new examples in § 795.115(b). Because the Department has received several comments particularly addressing the multilayered relationships among agricultural employers, farm labor contractors, and agricultural workers, the Department believes that an example focusing on control will be most helpful for this purpose. The example in § 795.115(b)(4) illustrates a situation in which a grower exercises substantial control over key aspects of the work performed by an individual engaged as a farm labor contractor, indicating that the individual is an employee of the grower. In this example, if the economic reality test as a whole establishes that the individual is employed by the grower, then the agricultural workers on the individual's crew would also be employees of the grower. Conversely, the example in § 795.115(b)(5) illustrates a situation in which an individual engaged by a grower as a farm labor contractor exercises substantial control over key aspects of the work, indicating independent contractor status.

The Department notes that, while it will assess the employee or independent contractor status of farm labor contractors for FLSA and MSPA purposes using the analysis in this rule, it will continue to assess the employee or independent contractor status of H–2A labor contractors for purposes of the H–2A labor program using the ''general common law of agency,'' as the Department's H–2A regulations provide. *See* 20 CFR 655.103(b) (distinguishing between an ''employee'' and ''H–2A labor contractor''). For statutes that do not incorporate the FLSA's ''suffer or permit'' standard, the Department will continue to apply other standards to assess employee or independent contractor status.

K. Severability (§ 795.120)

The Department proposed a severability provision in § 795.120 providing that any provision of part 795 found to be invalid or unenforceable or stayed ''shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof.'' [365] The Department explained that it relied on the well-settled legal principle that one portion of a rule may remain operative if another portion is deemed impermissible as long as the agency would independently adopt the remaining portion and the remaining portion can operate sensibly without the impermissible portion.[366]

Relatedly, the Department explained throughout the NPRM that it was proposing to both rescind the 2024 Rule

[363] 86 FR 1177.

[364] *Id.*

[365] 91 FR 9975.

[366] *Id.* at 9960.

and adopt a revised part 795 as a replacement. In other words, rescission of the 2024 Rule would be separate from adoption of revised regulations regarding employee or independent contractor status in part 795. Thus, the Department expressed a clear intent in the NPRM that, ''if the regulations that it finally adopts as 29 CFR part 795 at the culmination of this rulemaking are thereafter invalidated, enjoined, or otherwise not put into effect, then the 2024 Rule and its regulations would nonetheless be rescinded for all the reasons set forth by the Department in this rulemaking.'' The Department acknowledged that, ''in such a case, it would have no generally-applicable regulations addressing employee or independent contractor status under the FLSA (which was the case for 83 years following the FLSA's enactment until the 2021 Rule),'' and that it ''would provide subregulatory guidance for stakeholders'' in such case.[367]

The Department further explained in the NPRM that its proposed changes to the FMLA and MSPA regulations were separate from its proposed changes to the FLSA regulations in 29 CFR part 795. Accordingly, the Department clearly expressed that, if the ''proposed changes to the FLSA regulations in 29 CFR part 795 are finalized but thereafter invalidated, enjoined, or otherwise not put into effect, in whole or in part, then the Department intends that its proposed changes to the FMLA and MSPA regulations would remain in effect.'' [368]

The Department received one comment addressing severability. Referring to the Department's expressed intent that rescission of the 2024 Rule would be independent and severable from adoption of the analysis to replace it, Legal Aid at Work criticized the Department for ''seek[ing] to generate a scenario where there will be no regulatory guidance on independent contractor definition at all. Without any guidance, the alleged lack of clarity upon which the proposed rule is premised will be made worse.'' The Department believes in the practical benefits of generally applicable regulations on employee and independent contractor status and that the analysis adopted herein provides clear and consistent guidance going forward, and thus is not seeking to generate the scenario suggested by this commenter. Separately, it has identified many concerns with and negative effects of the 2024 Rule (all discussed earlier in section III of this rule), and for those reasons, the 2024 Rule should not be left in place if the analysis adopted herein is invalidated.

Accordingly, the Department is finalizing § 795.120 as proposed and expressing again its clear intent that, in the event that the regulations adopted in this final rule at 29 CFR part 795 are invalidated, enjoined, or otherwise not put into effect, in whole or in part, then (1) the 2024 Rule and the regulations from the 2024 Rule would still be rescinded for all the reasons set forth by the Department in this rulemaking, and (2) the changes to 29 CFR parts 500 (MSPA) and 825 (FMLA) adopted in this final rule would still remain in effect. The Department reaffirms that it would provide subregulatory guidance for stakeholders if this were to happen.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8.

This final rule does not contain a collection of information subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

VI. Regulatory Review Analysis Conducted in Accordance With Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review, and Executive Order 14192, Unleashing Prosperity Through Deregulation

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and OMB review. *See* 58 FR 51735 (Oct. 4, 1993). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a regulatory 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 a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OIRA has determined that this rule is economically significant under section 3(f)(1) of Executive Order 12866.

Executive Order 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. *See* 76 FR 3821 (Jan. 21, 2011). Executive Order 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 rule is an Executive Order 14192 deregulatory action, as the Department estimates that perpetual cost savings attributable to the rule—including reduced compliance costs and reduced litigation costs—would exceed one-time regulatory familiarization costs. The analysis provided below outlines the impacts that the Department anticipates may result from this final rule and was prepared pursuant to the above-mentioned Executive orders.

A. Need for Rulemaking

As explained more fully in section III of this rule, the Department is concerned that the 2024 Rule failed to provide an analysis for distinguishing between independent contractors and employees under the FLSA that was sufficiently clear and led to predictable outcomes. The Department is separately concerned that the 2024 Rule's description of several economic reality factors could have been viewed as setting a higher bar to find independent contractor status than required under the law. Among other harms, an analysis which is ambiguous or perceived as too restrictive of independent contracting can deter

[367] *Id.*

[368] *Id.*

businesses from engaging with bona fide independent contractors or cause them to unnecessarily classify such individuals as employees—concerns emphasized by many self-identified independent contractors who have participated in the Department's recent rulemakings on this topic.

Accordingly, in this rulemaking, the Department is rescinding the 2024 Rule and largely readopting the 2021 Rule (with some modifications and enhancements), which provided a sharpened economic reality analysis and did not impede successful enforcement actions by the Department to pursue and remedy misclassification of FLSA-covered employees as independent contractors.[369] Additionally, the Department is revising the regulations addressing employee or independent contractor status under MSPA and the FMLA so that the analysis in part 795 applies when determining employee or independent contractor status under those statutes too.

B. Overview of Estimated Effects

The Department believes that replacing the 2024 Rule with the 2021 Rule is likely to improve the welfare of both workers and businesses on the whole. With respect to businesses, the Department believes that the improved clarity provided by the rule would increase the efficiency of the labor market, allowing businesses to be more productive and decreasing their litigation burden. With respect to workers, broadly speaking, this rule would likely have three categories of potential effects.

First, this rule would make it easier for the millions of individuals who currently work as independent contractors and those who hire them to comply with the law. Compliance cost savings would be shared between the independent contractors and businesses for which they work.

Second, legal clarity may encourage firms to create independent contractor arrangements for roles that did not previously exist, which may attract workers who otherwise would not work in that field. Such job creation would benefit workers and firms alike.[370]

Third, as a result of the improved clarity of the rule, businesses might convert some existing positions from employee status to independent contractor status. Although the Department maintains that the streamlined core factor analysis in this rule is neither more nor less permissive of independent contractor relationships as compared to the Department's prior analysis,[371] the Department expects that this rule could reduce to some degree the voluntary classification of independent contractors as employees—a practice several commenters called ''overclassification.'' [372] This refers to situations where businesses classify workers who are in business for themselves (and thus independent contractors) as employees to avoid legal risk (in the event that the business does not satisfy the FLSA's requirements).[373] This rule would provide the greatest legal certainty to employers classifying a worker as an independent contractor if the worker substantially controls the work and has a meaningful opportunity for profit or loss—a scenario that, to the Department's knowledge, no federal appellate court has ever found to be an FLSA employment relationship.

Businesses would only reclassify workers classified as employees into independent contractors if the clarity provided by this rule outweighs legal risk. Any benefit to businesses of modified classifications would need to outweigh the costs, including any autonomy they cede to workers in such arrangements and any costs associated with implementation or modifying the classification itself, and such a relationship would need to be compatible with their business models. Further, in many cases, workers would have a choice of whether to agree to the new independent contractor arrangement in the sense that the worker could decide to end his or her relationship with a business unless he or she remains classified as an employee. AFSCME submitted a comment countering the Department's position that workers would have the freedom to choose to enter into independent contractor arrangements, asserting that the most vulnerable and least informed of workers would either accept such reclassification willingly, are coerced to accept, or are unaware of how their employers should classify them. Conversely, the Chamber of Progress submitted a comment emphasizing that many workers prefer the option of an independent contractor arrangement because it affords them greater autonomy and schedule flexibility. The overall effect of job conversion on workers would be ambiguous and could vary from worker to worker, but the Department expects that any reclassification of workers classified as employees into independent contractors attributable to this rulemaking would be minimal, as the Department is not aware of significant reclassification that occurred when the 2021 Rule was in effect, nor did commenters note that any significant reclassification occurred.

The Department has attempted to place the magnitude of these potential impacts into context. Drawing on the best available evidence from the Contingent Worker Supplement (CWS), labor market studies of flexible work (Mas and Pallais, 2017; Chen et al., 2019),[374] and a recent evaluation of a 2019 California law that changed that state's standard for determining independent contractor classification in a manner that restricted independent contracting [375] (Palagashvili et al.,

[369] *See supra,* nn.170 & 175 and their accompanying text.

[370] *See* Liya Palagashvili, ''Consequences of Restricting Independent Work and the Gig Economy,'' Mercatus Center (2022), available at *https://www.mercatus.org/research/policy-briefs/consequences-restricting-independent-work-and-gig-economy.*

[371] As explained in section I.F. of this rule, the Department has been applying its pre-2021 guidance on employee or independent contractor status, which it has previously characterized as ''neither more nor less permissive of independent contractor relationships as compared to'' the 2021 Rule. *See* 86 FR 1240.

[372] *See supra* section III.D. Several commenters characterized the classification of independent contractors as employees as a form of ''misclassification,'' analogous to the misclassification of employees as independent contractors. However, it is not unlawful to classify a worker as an employee even if he or she is an independent contractor.

[373] *See* Richard J. Reibstein, Lisa B. Petkun & Andrew J. Rudolph, *How Companies Can Minimize the Risks of Independent Contractor Misclassification,* 40 Tax Mgmt. Comp. Plan. J. 207 (Aug. 3, 2012), republished at *https://www.jdsupra.com/legalnews/how-companies-can-minimize-the-risks-of-35626/* (discussing the ''voluntary reclassification'' of independent contractors and noting that ''some lawyers and legal commentators routinely advise businesses to cease using ICs or to reclassify all of their ICs as employees to avoid the potential for misclassification liability''); *see also* Daniel P. O'Meara, *A Preventative Approach To Using Independent Contractors,* J. Accountancy (Sept. 1, 1997), *https://www.journalofaccountancy.com/issues/1997/sep/prevent* (advising companies to ''resolve close cases by concluding the workers are employees'' to avoid legal risk).

[374] Alexandre Mas & Amanda Pallais, ''Valuing Alternative Work Arrangements,'' 107 a.m. Econ. Rev. 3722 (2017); Keith Chen et al., ''The value of flexible work: Evidence from Uber drivers,'' 127 J. of Political Econ. 2735 (2019).

[375] *See* Assembly Bill No. 5 (''AB 5''), Ch. 296, 2019–2020 Reg. Sess. (Cal. 2019) (codifying the ''ABC'' test articulated in *Dynamex Operations W., Inc.* v. *Superior Court,* 416 P.3d 1 (Cal. 2018)). California's ABC test presumes an individual worker is an employee unless the potential employer can satisfy three elements: absence of control of the worker, that the worker performs work outside the employer's usual course of business, and that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. The California legislature subsequently extended exemptions from the ABC test for several professions. These exemptions include certain writers, photographers,

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2024),[376] the Department estimates that the number of independent contractors could increase by 1 to 3 percentage points following the implementation of this rule. On today's labor force of approximately 25 million workers who rely on independent contracting as their primary or secondary job,[377] this would represent between 0.25 million and 0.75 million additional independent contracting relationships, with a central estimate of 0.5 million.[378] The rationale for this estimate is explained in greater detail in section VI.E.3.

The Department assumes that this increase would occur almost entirely through new labor force entry rather than through the reclassification of existing employees. This assumption reflects Palagashvili et al.'s findings that, while AB 5 reduced independent contracting, there was no statistically significant evidence that it increased traditional employment, contrary to the impact that may have been anticipated as the law discouraged independent contractor classification.[379] This suggests few independent contractors were ''switched'' to traditional employees as a result of California's law. The Department believes the converse would be true here—that the reclassification of employees to independent contractors would remain small while new entry of independent contractors would be more significant (though lower, in terms of magnitude, than the converse impact under AB 5). Indeed, the final rule's effect on reclassification should be even smaller than under AB 5 because, unlike AB 5, it would not change the underlying classification standard (*i.e.,* the economic reality test); it would merely clarify the test. As such, permissible reclassification would be limited to workers who already possess the characteristics of being in business for themselves but are classified as employees due to perceived legal uncertainty. Meanwhile, employers that are holding back from engaging independent contractors would have the clarity to expand opportunities, creating genuine new participation.

The Department acknowledges that these estimates are subject to significant uncertainty. The precise number of new entrants, the distribution of reclassified positions across industries and firm sizes, and the demographic characteristics of affected workers cannot be reliably projected.

The Department estimates that the undiscounted regulatory familiarization costs of this rule would be $495.7 million in the first year. However, the Department estimates that this rule would yield $694.8 million dollars in net cost savings per year.[380] Over a 10-year analytic time horizon, this results in an annualized net cost savings of $638.3 million and $628.8 million using a 3 percent and 7 percent discount rate respectively. In addition, and as discussed below, the Department estimates that the total undiscounted benefits to workers from new labor force entry could amount to $26.3 billion over 10 years, with an additional $10.9 billion accruing to broader society in the form of taxes collected on the earnings of the new labor. These earnings are estimated at $131.7 billion over 10 years as described in section VI.E.3 below. On an annualized basis, the Department estimates that the benefits from increased labor force participation could amount to $2.63 billion at a 7 percent discount rate, depending on the number of new entrants and their characteristics. For purposes of Executive Order 14192, the Department calculated the difference between the total cost savings and the total costs in 2025 dollars, discounted over a perpetual time horizon using a 7 percent discount rate beginning in 2026. This results in an annualized net cost savings over a perpetual time horizon of $628.8 million. Other anticipated costs, benefits, and cost savings are discussed qualitatively. Table 1 below summarizes the estimated costs and cost savings categorized by their impact on establishments and independent contractors.

TABLE 1—SUMMARY OF RULE IMPACTS

[$2025 millions]

Impact	Year 1	Years 2–10	Annualized values[a]	
			7% discount	3% discount
Regulatory Familiarization Costs				
Establishments	187.6	0.0	24.9	21.4
Independent Contractors	308.05	0.0	40.9	35.1
Total	495.7	0.0	65.8	56.5
Cost Savings From Increased Clarity				
Employers	571.3	571.3	571.3	571.3
Independent Contractors	110.1	110.1	110.1	110.1

videographers, photo editors, and illustrators. *See* AB 2257, Ch. 38, 2019–2020 Reg. Sess. (2020).

[376] Liya Palagashvili et al., ''Assessing the Impact of Worker Reclassification: Employment Outcomes Post–California AB5,'' Mercatus Working Paper (2024), *https://www.mercatus.org/research/working-papers/assessing-impact-worker-reclassification-employment-outcomes-post.*

[377] *See infra* section VI.C.

[378] The Department believes that this 0.5 million figure represents an appropriate estimate of the total number of new independent contractor arrangements that could be created by this final rule, in part because some individuals and businesses operating in states with analyses that are more restrictive of independent contracting, such as the ''ABC'' tests used in California or Massachusetts, are unlikely to be affected by this rule. Because state worker classification standards vary considerably, it is not possible for the Department reliably to estimate the precise number of workers subject to particular standards. Some states apply different classification standards depending on the industry or the law at issue. To illustrate, Indiana applies an ABC test for unemployment insurance but not wage-and-hour purposes, while New York applies an ABC test in the construction industry only. Even states that generally apply an ABC test have numerous exemptions. For example, California law contains more than 100 possible exemptions from its ABC test, including for certain rideshare drivers, freelance writers, and accountants. *See* Palagashvili et al., *supra* n.376. Given the variations within states as to how they apply their laws, the Department does not believe that categorically designating states as either ABC-test or common-law jurisdictions would provide a reliable basis for adjusting its estimates to account for differences in state law.

[379] Palagashvili et al., *supra* n.376.

[380] The Department notes that this might be an overestimate of the effects of this rule to the extent that some workers and businesses in certain states with analyses that are more restrictive of independent contracting might not be affected by this rulemaking.

TABLE 1—SUMMARY OF RULE IMPACTS—Continued

[$2025 millions]

Impact	Year 1	Years 2–10	Annualized values [a]	
			7% discount	3% discount
Total	681.4	681.4	681.4	681.4
Cost Savings from Reduced Litigation	13.3	13.3	13.3	13.3
Total Cost Savings	694.7	694.7	694.7	694.7
Net Cost Savings	199.1	694.7	628.8	638.3

[a] Annualized over 10-years.

C. Current Number of Independent Contractors

The Department estimated that there were 24.8 million independent contractors in the United States in 2023, the most recent year of data available.[381] As explained above, the Department believes the number of independent contractors for purposes of the FLSA, MSPA, and FMLA would increase as a result of this rule. There are a variety of estimates of the number of independent contractors, and these span a wide range based on methodologies and how the population is defined. In its comment, the American Association of Advertising Agencies cited a survey conducted by the Upwork Research Institute that claims 64 million Americans performed freelance work in 2023.[382] The Americans for Prosperity Foundation referenced a study by Matthew Zane in its comment that estimates that there are approximately 70.4 million freelance workers in the United States.[383] The Department believes that the Current Population Survey (CPS) Contingent Worker Supplement (CWS) is the most appropriate estimate of the number of independent contractors; however, there are potential biases in these data, as noted. Estimates from other sources are presented as well to demonstrate the potential range.

1. Department of Labor Estimate

The CPS is conducted by the U.S. Census Bureau and published monthly by the Bureau of Labor Statistics (BLS). The sample includes approximately 60,000 households and is nationally representative. Periodically since 1995, and most recently in 2023, the CPS has included a supplement to collect data on contingent and alternative employment arrangements. Based on the CWS, there were 11.9 million independent contractors in 2023, amounting to 7.4 percent of workers.[384] The CWS measures those who say that their independent contractor job is their primary job and that they worked at the independent contractor job in the survey's reference week. However, while the Department refers to the CWS measure of independent contractors throughout this analysis, due to the survey's design it should be uniformly recognized as representing a constrained subsection of the entire independent contractor pool. Due to its methodological constraints, the CWS measure should be differentiated from other, more comprehensive measures.

The BLS's estimate of independent contractors includes workers ''who are identified as independent contractors, independent consultants, or freelance workers, regardless of whether they are identified as wage and salary workers or self-employed.'' Workers reporting that they are self-employed are asked: ''Are you self-employed as an independent contractor, independent consultant, freelance worker, or something else?'' Those identified as wage and salary workers in the basic CPS are asked: ''Last week, were you working as an independent contractor, an independent consultant, or a freelance worker?''

The Department believes that the CWS offers an appropriate lower bound for the number of independent contractors. However, there are several possible limitations in this data. It is important to note that independent contractors are identified in the CWS in the context of the respondent's main job (*i.e.,* the job with the most hours).[385] Therefore, the estimate of independent contractors does not include those who may be employees for their primary jobs but also work as independent contractors for a secondary or tertiary job. This is likely the largest limiting factor in the data when trying to estimate the population of workers doing any work as an independent contractor. For example, Lim et al. (2019) estimates that for 48 percent of independent contractors, such work is their primary source of income.[386] Applying this estimate to the 11.9 million independent contractors estimated from the CWS results in 24.8 million independent contractors.[387]

The CWS's large sample size results in small sampling error. However, the questionnaire's design may result in some non-sampling errors. For example, one potential limitation of the data is that the CWS includes information to calculate estimates of the prevalence of independent contractors at a single point in time, that is, during a specified week (generally the week prior to the interview). These numbers will thus underestimate the prevalence of independent contracting over a longer timeframe, which may better capture the size of the population.[388] For example, Farrell and Greig (2016) used a randomized sample of 1 million Chase customers to estimate prevalence of the Online Platform Economy.[389] They

[381] Estimate based on calculation using BLS Current Population Survey (CPS) Contingent Worker Survey (CWS) data. U.S. Bureau of Labor Statistics, *Contingent and Alternative Employment Arrangements—July 2023,* USDL–24–2267 (Nov. 8, 2024), *https://www.bls.gov/news.release/pdf/conemp.pdf.*

[382] Upwork Research Institute, *Freelance Forward 2023* (Dec. 12, 2023), *https://www.upwork.com/research/freelance-forward-2023-research-report.*

[383] Matthew Zane, *How Many Freelancers Are There In The U.S.?* (Feb. 27, 2023) (updated Feb. 7, 2026), *https://www.zippia.com/advice/how-many-freelancers-in-the-us/.*

[384] *Id.*

[385] While self-employed independent contractors are identified by the worker's main job, other independent contractors answered yes to the CWS question about working as an independent contractor last week. Although the survey question does not ask explicitly about the respondent's main job, it follows questions asked about the respondent's main job.

[386] Lim et al., *Independent Contractors in the U.S.: New Trends from 15 Years of Administrative Tax Data* (2019), *https://www.irs.gov/pub/irs-soi/19rpindcontractorinus.pdf.*

[387] 11.9 million independent contractors * (1 + (52 ÷ 48)).

[388] In any given week, the total number of independent contractors would have been roughly the same, but the identity of the individuals who do it for less than the full year would likely vary. Thus, the number of unique individuals who are independent contractors would exceed the one-week estimate.

[389] D. Farrell & F. Greig, *Paychecks, Paydays, and the Online Platform* (2016), JPMorgan Chase Institute, *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2911293.* The authors define the Online Platform Economy as ''economic activities involving online intermediaries.'' This

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found that ''[a]lthough 1 percent of adults earned income from the Online Platform Economy in a given month, more than 4 percent participated over the three-year period.'' However, a factor of four is likely too large of an adjustment because a 3-year period does not represent the current workforce any more than does a 1-week period, and because there is likely more week-to-week volatility in participation in the Online Platform Economy than among independent contractors.

CWS also uses proxy responses, which may underestimate the number of independent contractors. The RAND American Life Panel (ALP) survey conducted a supplement in 2015 to mimic the CPS CWS questionnaire. The results of the survey were summarized by Katz and Krueger (2018).[390] This survey found that independent contractors comprise 7.2 percent of workers.[391] Katz and Krueger identified two primary factors to explain the 0.5 percentage point difference in magnitude between the 2017 CWS and the ALP: (1) cyclical conditions and (2) differences in survey methods (*e.g.,* the use of self-responses only in the ALP supplement). The first factor does not reflect a bias in either survey or estimate, whereas the second factor *may* reflect an underestimate in the CWS estimate. Therefore, the Department believes a reasonable upper-bound on the potential bias due to the use of proxy responses in the CWS is 0.5 percentage points (7.2 versus 6.7).[392]

Another potential source of bias in the CWS data is that some respondents may not self-identify as independent contractors, and others who self-identify may be improperly classified. There are reasons to believe that some workers, who are legally considered independent contractors, would not self-identify as such. For example, individuals who do only informal work may not view themselves as independent contractors.[393] In the CWS, one person answers the survey questions about everyone living in the household. Thus, respondents provide data about themselves and others living with them. People who report about other household members may not be able to answer all questions about others' employment arrangements.[394]

Conversely some workers misclassified as independent contractors may answer in the affirmative, despite not truly being independent contractors. The prevalence of misclassification is unknown, but it is generally understood to be common. NELP conducted a literature review of federal studies and state-level audits estimating misclassification of employees as independent workers and found that the share of employers misclassifying workers ranged from 10 percent to 30 percent.[395]

Because reliable data on the potential magnitude of these biases are unavailable, the Department has not calculated any estimates of how these biases may impact the estimated number of independent contractors.

Because the CWS estimate represents only the number of workers who worked as independent contractors on their primary job during the survey reference week, the Department applied the research literature and adjusted this measure to include workers who are independent contractors in a secondary job or who were excluded from the CWS estimate due to other factors. As noted above, integrating the estimated proportions of workers who are independent contractors on secondary or otherwise excluded jobs produces an estimate of 24.8 million. Given the prevalence of independent contractors who work sporadically and earn minimal income, adjusting the estimate according to these sources captures some of this population. It is likely that this figure is still an underestimate of the true independent contractor pool.

2. Range of Estimates in the Literature

To further consider the range of estimates available, the Department conducted a literature review, the findings of which are presented in Table 2. Other studies were also considered but are excluded from this table because the study population was much broader than just independent contractors or because they are limited to one state.[396]

includes ''labor platforms'' that ''connect customers with freelance or contingent workers'' and ''capital platforms'' that ''connect customers with individuals who rent assets or sell goods peer-to-peer.'' As such, this study encompasses data on income sources that the Department acknowledges might not be a one-to-one match with independent contracting and could also include work that is part of an employment relationship. However, the Department believes that including data on income earned through online platforms is useful when discussing the potential magnitude of independent contracting.

[390] L. Katz & A. Krueger, *The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015* (2018), *https://scholar.harvard.edu/lkatz/publications/rise-and-nature-alternative-work-arrangements-united-states-1995-2015.*

[391] The estimate is 9.6 percent without correcting for overrepresentation of self-employed workers or multiple job holders. *Id.* at 31.

[392] In addition to the use of proxy responses, this difference is also due to cyclical conditions. The impacts of these two are not disaggregated for independent contractors, but if we applied the relative sizes reported for all alternative work arrangements, we would get 0.36 percentage point difference due to proxy responses. Additionally, it should be noted that this may not entirely be a bias. It stems from differences in independent contracting reported by proxy respondents and actual respondents. As Katz and Krueger explain, this difference may be due to a ''mode'' bias or proxy respondents may be less likely to be independent contractors.

[393] The Department believes that including data on informal work is useful when discussing the magnitude of independent contracting, although not all informal work is done by independent contractors. The Survey of Household Economics and Decisionmaking asked respondents whether they engaged in informal work sometime in the prior month. It categorized informal work into three broad categories: personal services, on-line activities, and off-line sales and other activities, which is broader than the scope of independent contractors. These categories include activities like house sitting, selling goods online through sites like eBay or craigslist, or selling goods at a garage sale. The Department acknowledges that the data discussed in this study might not be a one-to-one match with independent contracting, but it nonetheless provides useful data for this purpose. *See Economic Well-Being of U.S. Households in 2016—May 2017,* Board of Governors of the Federal Reserve System, *https://www.federalreserve.gov/publications/2017-economic-well-being-of-us-households-in-2016-employment-jobs-work.htm.*

[394] U.S. Bureau of Labor Statistics, *Electronically mediated work: new questions in the Contingent Worker Supplement,* Monthly Labor Review (Sept. 2018), *https://www.bls.gov/opub/mlr/2018/article/electronically-mediated-work-new-questions-in-the-contingent-worker-supplement.htm.*

[395] National Employment Law Project, *Public Task Forces Take on Misclassification: Best Practices* (2020), *https://www.nelp.org/app/uploads/2020/02/Policy-Brief-Public-Task-Forces-Take-on-Employee-Misclassification-Updated-August-2020.pdf.*

[396] *See, e.g.,* McKinsey Global Institute, *Independent Work: Choice, Necessity, and the Gig Economy* (2016), *https://www.mckinsey.com/featured-insights/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy;* Kelly Services, *Agents of Change* (2015), *https://www.kellyservices.com/global/siteassets/3-kelly-global-services/uploadedfiles/3-kelly_global_services/content/sectionless_pages/kocg1047720freeagent20whitepaper20210x21020final2.pdf;* Robles & McGee, *Exploring Online and Offline Informal Work: Findings from the Enterprising and Informal Work Activities (EIWA) Survey* (2016), *https://doi.org/10.17016/FEDS.2016.089;* Upwork, *Freelancing in America* (2019); Washington Department of Commerce, *Independent Contractor Study* (2019), *https://deptofcommerce.app.box.com/v/independent-contractor-study;* Farrell & Greig, *supra* n.389; MBO Partners, *State of Independence in America* (2016), *https://www.mbopartners.com/state-of-independence/mbo-partners-state-of-independence-in-america-2016/;* Abraham et al., *Measuring the Gig Economy: Current Knowledge and Open Issues* (2018), *https://www.nber.org/papers/w24950;* Collins et al., *Is Gig Work Replacing Traditional Employment? Evidence from Two Decades of Tax Returns* (2019), *https://www.russellsage.org/research/outputs/gig-work-replacing-traditional-employment-evidence-two-decades-tax-returns;* Gitis et al., *The Gig Economy: Research and Policy Implications of Regional, Economic, and Demographic Trends,* American Action Forum (2017), *https://www.americanactionforum.org/research/gig-economy-research-policy-implications-regional-economic-demographic-trends/;* Dourado & Koopman, *Evaluating the Growth of the 1099 Workforce,* Mercatus Center (2015), *https://www.mercatus.org/publication/evaluating-growth-1099-workforce.*

The RAND ALP [397] and the General Social Survey's (GSS's) Quality of Worklife (QWL) [398] supplement are widely cited alternative estimates. The W.E. Upjohn Institute for Employment Research conducted large-scale telephone surveys to obtain their estimates on the independent contractor population.[399] However, the Department chose to use the CWS as our primary estimate over these other sources primarily because of the significantly larger sample sizes.

Jackson et al. (2017) [400] and Lim et al. (2019) [401] use tax information to estimate the prevalence of independent contracting. In general, studies using tax data tend to show an increase in prevalence of independent contracting over time whereas survey data do not. The use of tax data has some advantages and disadvantages over survey data. Advantages include large sample sizes, the ability to link information reported on different records, the reduction in certain biases such as recall bias, and records of all activity throughout the calendar year (the CWS only references one week). Disadvantages are that independent contractor status needs to be inferred; there is likely an underreporting bias (*i.e.,* some workers do not file taxes); researchers are generally trying to match the IRS definition of independent contractor; and the estimates include misclassified independent contractors. A major disadvantage of using tax data is that the data are not publicly available and thus cannot be verified or adjusted as necessary.

TABLE 2—SUMMARY OF ESTIMATES OF INDEPENDENT CONTRACTING

Source	Method	Definition	Percent of workers (%)	Sample size	Year
CPS CWS	Survey	Independent contractor, consultant or freelance worker.	7.4	~60,000	2023
ALP	Survey	Independent contractor, consultant or freelance worker.	7.2	6,028	2015
GSS QWL	Survey	Independent contractor, consultant or freelancer.	14.10	2,538	2014
Jackson et al.	Tax data	Independent contractor, household worker.	[a] 3.3	[b] ~5.9 million	2014
Lim et al.	Tax data	Independent contractor	8.1	1% of 1099–MISC and 5% of 1099–K.	2016
W.E. Upjohn Institute for Employment Research.	Survey	Independent contractor	15	~61,000	2023

[a] Summation of (1) 2,132,800 filers with earnings from both wages and sole proprietorships and expenses less than $5,000, and (2) 4,125,200 primarily sole proprietorships with less than $5,000 in expenses.
[b] Estimate based on a 10 percent sample of self-employed workers and a 1 percent sample of W2 recipients.

D. Potential Costs

The Department considered several costs in evaluating the rule. The Department quantified regulatory familiarization costs and estimated that they will total $495.7 million in Year 1. Other potential costs, including those raised by commenters, were not quantified, for reasons explained in the sections that follow.

1. Regulatory Familiarization Costs

Regulatory familiarization costs represent direct costs to businesses associated with reviewing a new regulation. To estimate the total regulatory familiarization costs imposed, the Department used (1) the number of establishments and government entities; (2) the wage rate for the employees reviewing the rule; and (3) the number of hours that it estimates employers would spend reviewing the rule. This section presents the calculation for establishments first and then the calculation for independent contractors.

Regulatory familiarization costs may be a function of the number of establishments or the number of firms.[402] Presumably, the headquarters of a firm would conduct the regulatory review for businesses with multiple locations and may also require some locations to familiarize themselves with the regulation at the establishment level. Other firms may either review a rule to consolidate key takeaways for their affiliates, or they may rely entirely on outside experts to evaluate a rule and relay the relevant information to their organization (*e.g.,* a chamber of commerce). The Department used the number of establishments to estimate the fundamental pool of regulated entities—which is larger than the number of firms. This assumes that regulatory familiarization occurs at both the headquarters and establishment levels.

There may be differences in familiarization cost by the size of establishments; however, the analysis does not assess different costs for establishments of different sizes. Furthermore, the analysis does not revise down for states where the laws may more stringently limit who may be an independent contractor (such as California) and thus this rule will have little to no effect on classifications in those states.[403] To estimate the number

[397] L. Katz & A. Krueger, *The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015* (2018), *https://scholar.harvard.edu/lkatz/publications/rise-and-nature-alternative-work-arrangements-united-states-1995-2015.*

[398] *See* Abraham et al., *Measuring the Gig Economy: Current Knowledge and Open Issues* (2018) (referring to the 2014 QWL in Table 4), *https://www.nber.org/papers/w24950.*

[399] K.G. Abraham et al., *The Independent Contractor Workforce: New Evidence on Its Size and Composition and Ways to Improve Its Measurement in Household Surveys* (2023), *https://www.nber.org/papers/w30997.*

[400] Jackson, Looney & Ramnath, *The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage* (2017), *https://home.treasury.gov/system/files/131/WP-114.pdf.*

[401] Lim et al., *supra* n.386.

[402] An establishment is commonly understood as a single economic unit, such as a farm, a mine, a factory, or a store, that produces goods or services. Establishments are typically at one physical location and engaged in one, or predominantly one, type of economic activity for which a single industrial classification may be applied. An establishment contrasts with a firm, or a company, which is a business and may consist of one or more establishments. *See* BLS, ''Quarterly Census of Employment and Wages: Concepts,'' *https://www.bls.gov/opub/hom/cew/concepts.htm.*

[403] Pursuant to FLSA section 18(a), states and localities may enact wage and hour laws that are broader than the FLSA's provisions. *See* 29 U.S.C. 218(a); *Overnite Transp. Co.* v. *Tianti,* 926 F.2d 220, 222 (section 18(a) demonstrates Congress's intent to allow state regulation to coexist with the FLSA).

of establishments incurring regulatory familiarization costs, the Department used the Statistics of U.S. Businesses (SUSB).[404] In 2022, the most recent year available, there were 8.3 million establishments. These data were supplemented with the 2022 Census of Government that reports 90,888 local government entities, and 51 state and federal government entities for a total universe of 8,389,450 establishments and governments.[405]

The applicable universe used by the Department for assessing familiarization costs of this final rule is all establishments that engage independent contractors, which is a subset of the universe of all establishments. In 2019, Lim et al. used extensive IRS data to model the independent contractor market and found that 34.7 percent of firms hire independent contractors.[406] These data are based on annual tax filings, so the dataset includes firms that may contract for only parts of a year. Multiplying the universe of establishments and governments by 35 percent results in 2.91 million entities.[407] The Department did not estimate familiarization costs for companies that may decide to work with independent contractors only after this rule is finalized, because they would need to familiarize themselves with the current legal framework even in the absence of this rule.[408]

As stated above, even without this rule any firm that does not currently engage any independent contractors but chooses to do so in the future would have to familiarize itself in the baseline case, so this rule does not impact those firms. Essentially, it would be reasonable to assume that any firm without independent contractors that reviews this rule and ultimately decides to hire independent contractors is doing so because the firm believes the new relationship will be beneficial. Such a situation would result in net benefits to the employer that compensate for any familiarization costs.

The Department assumes that a Compensation, Benefits, and Job Analysis Specialist (SOC 13–1141) (or a staff member in a similar position) will review the rule.[409] According to the most recent Occupational Employment and Wage Statistics (OEWS) estimates, these workers had a mean wage of $40.54 per hour.[410] Given the clarification to the Department's interpretation of who is an employee and who is an independent contractor, the Department assumes that it will take on average about 1 hour to review the final rule. Based on prior rulemakings, the Department believes that an hour, on average, is appropriate. Assuming benefits are paid at a rate of 42 percent of the base wage, and overhead costs are 17 percent of the base wage, the reviewer's effective hourly rate is $64.46; thus, the average cost per establishment would be $64.46.[411] Therefore, the undiscounted regulatory familiarization costs for establishments in Year 1 are estimated to be $187.6 million ($64.46 × 2,911,139). Regulatory familiarization costs in future years are assumed to be de minimis. This amounts to a 10-year annualized cost of $20.1 million at a discount rate of 7 percent.

For regulatory familiarization costs for independent contractors, the Department uses its estimate of up to 24.8 million independent contractors and assumes each independent contractor will spend an average of 30 minutes to review the regulation. The average time spent by independent contractors is estimated to be shorter than for establishments and governments. This difference is in part because the Department believes independent contractors will likely rely on summaries of the key elements of the rule made available by the Department, worker advocacy groups, media outlets, and accountancy and consultancy firms, as has occurred with other rulemakings. This time is valued at $24.85, which is the median hourly wage rate for independent contractors in the CWS of $23.94 updated to 2025 dollars using the gross domestic product (GDP) deflator.[412] [413] Therefore, the undiscounted regulatory familiarization costs to independent contractors in Year 1 are estimated to be $308.05 million ($24.85 × 0.5 hour × 24.8 million). The total one-time undiscounted regulatory familiarization costs for establishments, governments, and independent contractors are estimated to be $495.7 million. Regulatory familiarization costs in future years are assumed to be de minimis. Employers and independent contractors will continue to familiarize themselves with the applicable legal framework, so this rulemaking is not expected to impose costs after the first year. This amounts to a 10-year annualized cost of $51.1 million at a discount rate of 3 percent or $53.0 million at a discount rate of 7 percent.

2. Other Costs

Aside from the familiarization costs described above, it is possible that the rule will result in additional costs. In the NPRM, the Department invited public comment on other potential costs of this rule. Apart from concerns over potential changes that would qualify as transfer effects (addressed in section VI.F.), commenter feedback on the potential costs of this rule generally fell into four categories: impacts to tax revenues; impacts on competition; impacts on minorities and women; and impacts on employer provided benefits. The Department evaluated all of the potential costs that were identified and examined many of the citations provided. Upon review, the Department was unable to confirm or substantiate any of these alleged cost categories in its own research. Therefore, in this section of the analysis, the Department addresses the points raised and discusses the qualitative merits but does not quantify estimates for inclusion in its top line figures.

[404] U.S. Census Bureau, 2021 SUSB Annual Data Tables by Establishment Industry, 2022 SUSB Annual Data Tables by Establishment Industry.

[405] U.S. Census Bureau, *2022 Census of Governments, https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html.*

[406] *See* Lim et al., *supra* n.386, at 66 (Table 10: Firm sample summary statistics by year (2001–2015)).

[407] Although firms that do not currently use independent contractors are not counted in this universe of employers, to allow for an error margin, the Department is using a rounded 35 percent of the total number of establishments.

[408] An added dimension is that the final rule is expected to provide significant clarity, which would result in time and cost savings (net of regulatory familiarization costs) for those outside the pool of firms with existing independent contractor relationships. These (net) cost savings are not included in this analysis, consistent with this analysis' treatment of resulting growth in the independent contractor universe.

[409] A Compensation/Benefits Specialist ensures company compliance with federal and state laws, including reporting requirements; evaluates job positions, determining classification, exempt or non-exempt status, and salary; plans, develops, evaluates, improves, and communicates methods and techniques for selecting, promoting, compensating, evaluating, and training workers. *See* BLS, *Occupational Employment and Wage Statistics Query System, https://data.bls.gov/oes/#/industry/000000* (last updated May 2024).

[410] Occupational Employment and Wage Statistics, U.S. Bureau of Labor Statistics (May 2025), *https://data.bls.gov/oes/#/area/0000000/2025.*

[411] 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.

[412] The Department's calculation of the median hourly wage is based on the July 2023 Contingent and Alternative Employment Arrangements release, where the median weekly earnings for full-time contingent workers is $838 and the definition of full-time work status is 35 hours or more per week ($838 ÷ 35 hours = $23.94).

[413] In the 2021 Rule the Department included an additional 45 percent for benefits and 17 percent for overhead. These adjustments have been removed here, because independent contractors do not usually receive employer-provided benefits and generally have overhead costs built into their hourly rate.

a. Comments Regarding Impacts to Tax Revenue and Public Assistance

Several commenters asserted that increased independent contracting would reduce state tax revenue and increase reliance on public assistance programs. A group of 114 state legislators from 23 states submitted a joint comment asserting that the NPRM's regulatory impact analysis failed to account for the ''quantifiable costs [to states] related to an increase in the number of workers classified as independent contractors.'' The legislators commented that ''[t]he financial architecture of state government depends, in significant part, on the number of workers classified as employees,'' since ''[u]nemployment insurance trust funds,'' ''[w]orkers' compensation systems,'' ''[s]tate income tax withholding, paid family and medical leave programs, and disability insurance funds all rely on the employment relationship as the mechanism through which contributions are collected.'' Citing a 2026 study from the Economic Policy Institute, the legislators estimated that the cost to social insurance programs from independent contractor classification ''ranged between approximately $600 to $3,045 *annually, per worker,*'' and, applying the average of that range ($1,941) to the midpoint of the Department's own estimate of 500,000 new independent contracting relationships, calculated ''a loss to state social insurance programs of over $970 million *annually, in perpetuity.*'' [414] The legislators also cited federal government data indicating that independent contractors are ''nearly twice as likely as payroll employees to lack health insurance (17.9% compared to 9.0%) and more than twice as likely to rely on public insurance programs (33.9% compared to 15.6%),'' and cited state-specific studies estimating unemployment insurance and income tax revenue losses in Wisconsin, Michigan, Massachusetts, and Pennsylvania attributable to independent contractor classification.

Maryland Comptroller Brooke E. Lierman submitted a comment focused specifically on this gap, citing Maryland-specific enforcement data reporting that state investigations found $52 million in unreported taxable wages due to workplace fraud, $3.6 million in tax, interest, and penalties assessed against businesses for misclassification, and 7,767 misclassified workers identified in fiscal year 2025, a ''nearly 39% increase over the prior year.'' Coalition of State Officials raised similar concerns, asserting that the Department ''fails to consider the foreseeable administrative and enforcement costs its proposed rule would impose on states as enforcers of state labor laws,'' including increased wage-and-hour complaints following reclassification and the cost of public outreach in states with independent contractor standards that have historically tracked the federal standard. This coalition cited state-specific data, including a 2022 Pennsylvania report finding that 48,939 employers annually misclassified at least one employee, affecting approximately 259,000 employees, and estimating $91 million in annual losses to its Unemployment Compensation Trust Fund and up to $124.5 million in lost General Fund revenue in 2019 attributable to misclassification.[415] The coalition also cited a Minnesota Office of the Legislative Auditor estimate that 22 percent of randomly audited employers in 2018 misclassified at least one employee, and a 2024 Minnesota-focused analysis estimating state tax revenue losses of $506 million to $1.3 billion from payroll fraud and worker misclassification in 2019.

NABTU submitted additional data addressing the fiscal costs associated with misclassification generally, including data specific to the construction industry. NABTU cited a 2006 GAO estimate that in that year, the federal government ''lost out on $2.72 billion in Social Security, unemployment, and income taxes,'' and a Department-commissioned study finding that ''misclassifying just one percent of workers annually results in a $198 million hit to unemployment insurance trust funds.'' [416] NABTU further cited state-specific findings, including that New York lost ''more than $7 million in unemployment taxes'' to misclassification in 2014; that construction misclassification costs New Jersey ''nearly $9 million in state income taxes and up to $6.7 million in unemployment insurance''; that Massachusetts's unemployment insurance fund lost at least $24.5 million in 2019 due to construction misclassification (and lost $91 million in income taxes in 2004 by a separate estimate); that ''California recovered approximately $15 million in unpaid unemployment insurance premiums and $18 million in unpaid workers' compensation premiums'' in 2018; that Wisconsin lost ''$25 million in unpaid workers' compensation premiums over 10 years and $56.7 million in unpaid state income tax in 2021 alone''; and that Texas's unemployment insurance fund loses an estimated $54.5 million annually to construction misclassification.

As discussed in section VI.C, the Department does not anticipate significant reclassification of existing employees because of this rule and expects most growth in independent contracting to come from new labor force entrants. The 114 State Legislators, Maryland Comptroller, Coalition of State Officials, and NABTU each apply cost estimates for existing worker misclassification, that is, cases where workers who are employees are wrongfully classified as independent contractors under applicable legal standards with no connection to this rule, to project fiscal effects from this rule's clarification of the standard for the FLSA, FMLA, and MSPA. The Department notes that this rule will not change the underlying legal standard for who is an employee or independent contractor, and that any reclassification of existing employees as independent contractors will not be substantial (and will involve to some extent workers who were already in business for themselves, *i.e.,* workers who were properly independent contractors anyway, but the employer defensively classified them as employees due to legal uncertainty). And the Department continues to believe that the population of new independent contractor relationships attributable to this rule will primarily consist of new labor force entrants rather than the reclassification of existing employees as independent contractors. To that extent, the per-worker cost estimates drawn from misclassification audits and enforcement actions, which by definition involve incorrect classification determinations, may not directly translate to the permissible new independent contractor relationships the Department anticipates from this rule. The Department also notes that Maryland's cited enforcement data describes year-over-year increases in

[414] Ismael Cid-Martinez et al., Economic Policy Institute, *Misclassifying workers as independent contractors is costly for workers and social insurance systems* (Apr. 15, 2026), *https://files.epi.org/uploads/319535.pdf.*

[415] Pa. Dep't of Labor & Indus., *Joint Task Force on Misclassification of Employees: Final Report,* at 12 (Dec. 1, 2022), *https://www.pa.gov/content/dam/copapwp-pagov/en/dli/documents/individuals/labor-management-relations/llc/documents/act-85-final-report.pdf.*

[416] U.S. Government Accountability Office, GAO 06–656, *Employment Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification* (July 2006), *https://www.gao.gov/assets/gao-06-656.pdf;* Lalith de Silva et al., *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs* (2000), *https://www.dol.gov/agencies/eta/research/publications/independent-contractors-prevalence-and-implications-unemployment.*

misclassification identified under existing law, which is obviously not attributable to this rule, since it has not yet taken effect, and that NABTU's cited figures likewise describe the baseline costs of existing misclassification rather than a projected marginal effect of this rule. The Department acknowledges that misclassification is still likely to occur (both inadvertently and willfully) under this rule. However, as mentioned previously, the Department expects this rule will aid efforts to reduce the misclassification due to the increased clarity that it provides employers, employees, and independent contractors. Additionally, the clarity provided by the rule will help the Department enforce compliance and detect misclassification violations more easily.

The Department did not identify sufficiently reliable, generalizable data isolating the marginal fiscal effect of this specific rulemaking, as distinct from the existing baseline of state law and enforcement, to support a quantified adjustment to the rule's cost-benefit analysis.

b. Comments Relating to Fair Competition

Mechanical Contractors Association of America (MCAA), joined in substance by several individual commenters, asserted that the rule will ''accelerate the race to the bottom'' in the construction and mechanical contracting industry. MCAA stated that construction contractors relying on the independent contractor business model ''derive an almost 50% cost advantage over MCAA members and other ethical contractors'' that invest in a skilled workforce, and cited estimates that the widespread industry use of independent contractor classification ''allows these companies to avoid approximately $2.98 billion per year in Social Security and Medicare taxes,'' ''causes an estimated $1.74 billion annual shortfall in state workers' compensation programs and results in annual state unemployment insurance shortfalls of over $700 million.'' MCAA further estimated that construction workers classified as independent contractors lose between $12,440.84 and $19,526.77 in annual wages compared to similarly-situated employees, and commented that easing independent contractor classification would make it easier for firms to engage ''undocumented workers because businesses are not required to verify the work authorization of independent contractors.''

NABTU raised substantially similar concerns, citing additional data on the labor cost differentials that make misclassification attractive to construction employers. NABTU cited studies finding that employers who misclassify workers save as much as 30 percent in labor costs, and a Michigan study finding a labor cost differential of 20 to 40 percent of payroll when contractors avoid unemployment insurance tax, workers' compensation premiums, the employer share of Social Security, and pension or medical insurance, with avoided workers' compensation premiums alone amounting to as much as 50 percent of wages in some trades. NABTU cited a range of state-level misclassification-rate studies, including findings of 73 percent among Michigan residential construction workers, one-third of construction workers in North Carolina and Texas, 16 percent in Minnesota, 18 percent in Iowa, and one in six construction workers in California. NABTU added that because materials and equipment costs are largely standardized in construction, labor cost savings from misclassification translate directly into a substantial competitive advantage in bidding, disadvantaging contractors who properly classify their workers.

This rule does not alter the underlying legal standard, the economic reality test, and is not intended to make independent contractor classification more permissive; rather, it clarifies how the existing test should be applied. The Department's cost-benefit analysis in this section addresses regulatory familiarization, increased clarity, and litigation cost savings; it does not attempt to quantify the estimates MCAA and NABTU cite regarding existing industry-wide misclassification, because those estimates describe the current baseline level of misclassification under existing law rather than a cost attributable to this rulemaking. The Department notes that the wide range of state-specific misclassification-rate estimates NABTU cites (16 percent to 73 percent depending on the state and study) itself reflects substantial measurement variability that advises caution in attributing any particular figure to this rule's effect. To the extent misclassification already occurs under the applicable legal standards, the Department notes that such conduct is wrong and that resulting violations of the FLSA can be remedied regardless of this rule, which addresses the classification standard rather than the availability of enforcement against violators.

c. Comments Regarding Income Inequality and Impacts on Minorities and Women

Center for Worklife Law commented that this rule would ''strip workplace protections'' under the FMLA, MSPA, and the PUMP Act, such as employer obligations to accommodate breastfeeding workers and provide leave following childbirth, and that ''[r]ather than empowering workers, this reclassification [to independent contractor status] will push many caregivers—particularly low-income mothers—out of the workforce entirely.'' National Women's Law Center similarly wrote that the NPRM ''threatens to exclude many working mothers by encouraging misclassification of employees as independent contractors and empowering employers to deny responsibility for providing appropriate facilities and adequate break time for nursing parents in their workforce.'' Justice for Migrant Women stated the rule ''will worsen the affordability problem for low-wage workers, increase wealth inequality, and impoverish communities with less wages circulating in the local economy.''

National Women's Law Center additionally submitted wage-gap and earnings data underlying its concern. It cited its own analysis finding that women working full-time, year-round are typically paid ''81 cents for every dollar paid to men, and the gaps are significantly worse for many women of color,'' citing data from the same analysis regarding the pay differential for Black women (65 cents), Latinas (58 cents), and Native American women (58 cents), and further commenting that ''the wage gap widened'' between 2022 and 2024, ''the first statistically significant decline in the wage gap in two decades.'' National Women's Law Center also cited a New School Center for New York City Affairs study finding that in New York's personal-services sector, employee wages rose 24.5 percent in inflation-adjusted terms between 2013 and 2018 (a period of state minimum-wage increases) while independent-contractor earnings in the same sector fell 3.9 percent over the same period, which it offered to rebut the Department's assumption that independent contractors generally receive an earnings premium sufficient to offset any lost benefits and legal protections. National Women's Law Center further commented that ''misclassification is rampant in low-paid, labor-intensive industries, such as manicurists/pedicurists, customer service representatives, home care and housekeeping, janitorial services, and

app-dispatched work,'' where ''women, people of color, and immigrants tend to be overrepresented'' due to ''occupational segregation and other labor issues.''

Other commenters offered data on the value of independent work for women. American Association of Advertising Agencies noted that ''[a] 2019 study from the Freelancers Union found that 45% of female freelancers work in creative or knowledge-based services.'' Chamber of Progress explained that ''[w]omen, in particular, have increasingly turned to gig work after being disproportionately affected by the pandemic,'' citing school closures and job losses in hospitality, cleaning, and personal services, and stated that women ''account for 58% of DoorDash drivers and roughly half of Uber's delivery drivers.''

The Department takes these concerns seriously, and notes that this rule does not alter substantive FMLA or PUMP Act obligations for employees; instead, it clarifies the classification analysis used to determine whether someone is an employee or an independent contractor. Regarding National Women's Law Center's earnings data specifically, the Department's earnings-offset analysis discussed in section VI.E below is based on economy-wide CWS data using regression methods (Upjohn Institute; Katz and Krueger) that control for observable worker characteristics, rather than sector-specific data of the kind National Women's Law Center cites. As discussed further in section VI.E, the Department believes the New York personal-services finding National Women's Law Center cites, like other sector-specific studies in the record, examines a population that may not be representative of the broader independent contractor population from which the Department's central earnings estimate is drawn. The Department did not identify a basis to adjust its economy-wide earnings-offset estimate specifically for the subpopulations identified but acknowledges that earnings effects may vary by industry.

E. Potential Benefits and Cost Savings

This rule is expected to result in various benefits and cost savings. For example, this rule will increase clarity concerning whether a worker is an employee or independent contractor under the FLSA, which in turn could lead to more consistent classification outcomes while reducing compliance and litigation costs for firms that engage independent contractors. Relatedly, workers may benefit from having more clarity about their rights related to their work status. Additional benefits may accrue due to increases in availability of services across various sectors, constituting a consumer surplus. Finally, due to increased clarity, there could be a reduction in FLSA litigation involving alleged misclassification.

1. Increased Clarity

The Department anticipates that this rule will increase clarity concerning whether a worker should be classified as an employee or as an independent contractor under the FLSA. This will reduce the burden faced by employers, potential employers, and workers in understanding the distinction and how the working relationship should be classified. It is unclear exactly how much time would be saved, but the Department provides some quantitative estimates to provide a sense of the magnitude. The importance of increased clarity is noted by an article authored by Caitlin Kapolas on behalf of Lift HCM which notes that misclassification due to lack of clarity can result in fines, back taxes, and potential lawsuits (not necessarily under the FLSA)—all consequences businesses can avoid with proper worker classification.[417]

The Department expects that this rule will produce cost savings by clarifying the classification process. To quantify this cost-savings, the following variables need to be defined and estimated: (1) the number of new employer-worker relationships being assessed to determine the appropriate classification; (2) the amount of time saved per assessment; and (3) an average wage rate for the time spent. The Department estimates this will result in an undiscounted annual cost savings of $681.4 million. The Department began with its estimate of the number of independent contractors as the basis for estimating the number of new relationships. As discussed, according to the CWS, there were 11.9 million workers in 2023 who were independent contractors in their primary job. Adjusting this figure to account for independent contractors in their secondary job results in 24.8 million independent contractors. According to Lim et al. (2019), in 2016 the average number of 1099–MISC forms issued per independent contractor was 1.43.[418] Therefore, the Department assumes the average independent contractor has 1.43 jobs per year. This number does not account for the workers who do not file taxes, a recognized limitation in the cited study. Because it is unclear whether those who do not file taxes would have a higher or lower number of jobs per year, the Department does not believe that this limitation biases the estimate in either direction. Multiplying these two numbers (1.43 jobs per year × 24.8 million independent contractors) results in an estimated 35.5 million new independent contractor relationships. A subset of new independent contractor relationships will have time savings associated with the rule. Such a reduction is difficult to quantify because it is unclear how many establishments and independent contractors will realize benefits of increased clarity. It is also possible that the increased clarity of classifying workers will lead to compound effects that generate far greater cost-savings over time. Nonetheless, because it is possible that only a subset of new independent contractor relationships receive the cost savings associated with increased clarity, the Department has reduced the number in the estimate by 25 percent.[419] This results in 26.6 million new independent contractor relationships with cost savings to both the engaging firm and the independent contractor.[420]

Following a similar methodology to the 2021 Rule, the Department has assumed that employers would save 20 minutes of time and independent contractors would save 10 minutes per each new independent contractor relationship.[421] These numbers are small because they represent the marginal time savings for each relationship, not the entire time necessary to identify whether an independent contractor relationship holds.

To estimate the cost savings due to the increased clarity that the rule provides, the Department applies the following estimates. For employers, this time is valued at a loaded hourly wage rate of $64.46. This is the mean hourly rate of Compensation, Benefits & Job Analysis Specialists (13–1141) from the OEWS multiplied by 1.63 to account for benefits and overhead. For independent contractors, this time is valued at $24.85 per hour (median wage rate for

[417] Caitlin Kapolas, Lift HCM, *Independent Contractor vs. Employee: Key Differences and Compliance Tips* (2025), *https://lifthcm.com/article/independent-contractor-vs-employees.*

[418] Lim et al., *supra* n.386, at 61.

[419] The Department requested comments and data on this estimated reduction, which yielded no substantive data or critiques on its merit. Therefore, the Department believes this is an appropriate assumption in this analysis.

[420] As noted earlier, this might be an overestimate of the effects of this rulemaking to the extent that some workers and businesses in certain states might not be affected by this rulemaking. *See supra,* n.378.

[421] These time savings are based on a 33 percent assumed reduction in the estimated familiarization time per new arrangement for both independent contractors discussed above in section VI.D.1. (reduced from 30 minutes to 20 minutes) and employers (reduced from 1 hour to 40 minutes).

independent contractors in the CWS of $23.94 adjusted to 2025 dollars using the GDP deflator). Using these numbers, the Department estimates that contracting firms would save $571.3 million annually and independent contractors would save $110.1 million annually due to increased clarity. In sum, this is estimated to be an undiscounted annualized cost savings of $681.4 million. The Department assumes the parameters used in this cost savings estimate would remain constant over time. This assumes no growth in independent contracting, no real wage growth, and no subsequent innovation in the employer-worker relationship. These assumptions facilitate simplicity of calculation.

TABLE 3—COST SAVINGS DUE TO INCREASED CLARITY FOR EMPLOYERS AND INDEPENDENT CONTRACTORS

Parameter	Value (upper bound due to interaction with state-level independent contracting laws)
Number of new relationships (per year):	24,791,667
Independent Contractors	1.43
New independent contractor jobs to assess using clearer analysis	35,452,083
Adjustment factor	75%
Total	26,589,063
Time savings per job (minutes):	
Employers	20
Independent contractors	10
Value of time:	
Employers	$64.46
Independent contractors	$24.85
Total Savings:	
Employers	$571,297,915
Independent contractors	$110,128,261
Total	$681,426,176

2. Reduced Litigation

In the NPRM, the Department noted that its proposal, if finalized, could result in decreased litigation due to increased clarity and reduced misclassification, and the Department welcomed feedback on how to quantify the potential reduction in litigation.[422] Having considered this question, the Department estimates cost savings due to reduced litigation by applying the methodology used in the Department's 2021 Rule, which quantified litigation cost savings as being equal to an estimated number of lawsuits avoided because of the rule multiplied by the average litigation cost per lawsuit.

a. Number of Cases Avoided

According to the Public Access to Court Electronic Records (PACER) system, there were 1,258 Federal Cases relating to the FLSA filed in the first quarter of 2025.[423] Following the methodology used in the 2021 Rule, the Department used a sample of 500 cases from the 1,258 cases filed in the first quarter of 2025 and identified 40 cases (or 8%) as involving disputes over employee or independent contractor status.[424] This ratio was applied to the 1,258 cases identified above yielding an estimate of 101 lawsuits related to independent contractor status during the examination period. The Department assumes that the increased clarity of the rule will reduce the number of Federal FLSA cases involving independent contractor status by 10 percent as stakeholders would better understand and be better able to agree on classification determinations without having to litigate.[425] Applying the 10 percent reduction to the 101 independent contractor related cases yields an estimated reduction of approximately 10 cases during the quarter. The Department multiplied the number of cases avoided during the quarter by 4 to determine the number of cases avoided over the course of the year. This results in an estimate of 40 cases related to independent contractor disputes avoided annually. This estimate of reduction in the number of independent contractor lawsuits filed does not take into account any reduction in filings resolved before litigation or by alternative dispute resolution, neither of which are captured in PACER data.

b. Average Litigation Cost per Case

The Department applied an estimate of litigation costs of $331,014 per case.[426] To obtain this estimate, the Department conducted a search for FLSA cases in the aforementioned sub-sample of 40 cases that contained sufficient litigation cost information to estimate the average costs of litigation in the Westlaw Case Evaluator tool and on PACER to ascertain how much plaintiffs in these cases were paid for attorney fees, administrative fees, or other costs, apart from any monetary damages

[422] 91 FR 9966.

[423] The Department examined PACER data from the first quarter of 2025 because this quarter was several months after the 2024 Rule took effect (on March 11, 2024) but before the Department announced on May 1, 2025, that it would no longer apply the 2024 Rule in its own enforcement actions. *See* FAB 2025–1.

[424] PACER does not provide a granular classification of FLSA case types to identify the number of cases specific to independent contractor disputes, so the Department performed a keyword analysis with spot checking of a random sample of 500 cases filed in the first quarter of 2025, determining that 8.0 percent of cases were related to independent contractor status (40/500 = 8.0 percent).

[425] This aligns with the methodology the Department used to estimate reduced litigation costs in the 2021 Rule, 86 FR 1234–35, and in the 2019 Regular Rate Under the Fair Labor Standards Act rule, 84 FR 68767–68.

[426] The 40 cases assessed for this analysis were retrieved from Westlaw's Case Evaluator database using a keyword search for case summaries from the first quarter of 2025 mentioning the terms ''FLSA'', ''gig'' and ''fees.'' This was not limited to cases associated with independent contracting. Although the initial search yielded 40 responsive cases, the Department excluded 33 cases where the verdict is still pending, and a settlement amount has not been reached. The smaller case sample size, and the narrower range of the plaintiff's total recovery and award amount contributes to the difference in the average litigation cost amount in this rule and the 2021 rule, where the Department used similar methodology to estimate average litigation costs of $654,182 per case. *See* 86 FR 1234–35.

attributable to the alleged FLSA violations. After determining the plaintiff's total litigation costs for each case, the Department then doubled the figures to account for litigation costs that the defendant employers incurred. According to the Analysis, the average litigation cost for FLSA cases concluded in our subsample was $331,014.

Applying these figures to the estimated 40 cases that could be avoided each year due to this rule, the Department estimates that avoided litigation costs resulting from the rule total to $13.3 million per year.[427]

3. Increased Labor Force Entry

The Department anticipates that most benefits of this rule will arise from new labor force entry. A recent assessment of a 2019 California law (AB 5) that changed the standard for determining independent contractor classification under that state's law in a manner that restricted independent contracting found that self-employment fell by 10.5 percent in affected occupations and overall employment fell by 4.4 percent in affected occupations.[428] The Department believes this rule will have an effect in the opposite direction because it will be viewed as less restrictive of independent contracting than the 2024 Rule. However, this labor force effect would be smaller in magnitude because the change to California's independent contractor analysis codified under AB 5 was more substantial than the change to the Department's guidance regarding the analysis under Federal wage and hour law that could occur as a consequence of this rule, which will not change the underlying classification standard (*i.e.,* the economic reality test) and would primarily add clarity. Additionally, this rule will not likely impact some individuals operating in states that have tests under those states' own laws that are more restrictive of independent contracting, though the exact offsetting impact of such state laws is difficult to determine because of significant variation in state laws' exemptions and applications.[429] Accordingly, the Department estimates that the number of independent contractors will increase by 1 to 3 percent.

As explained, the Department assumes this increase results from independent contractors entering the workforce. That assumption is based on Palagashvili et al.'s finding that there was no statistically significant evidence that AB 5 increased traditional employment—suggesting that few independent contractors switched to traditional employment—but that AB 5 resulted in a statistically significant decrease of independent contractors in the labor force.[430] The converse effect will be an increase in independent contractors in the labor force without significant reclassification of employees to independent contractors. The Department acknowledges that, due to data limitations and complexities involving the interpretation of different state labor laws, the Department might be overestimating or underestimating the potential impact of this rule on the number of independent contractors and the overall labor force. Also, Palagashvili et al., admit a lack of parallel trends for the pre-treatment period—which raises questions about the reliability of their difference-in-difference identification strategy.

Using the above estimate of 24.8 million independent contractors, the Department's assumption results in between 248,000 and 744,000 (1 and 3 percent of all independent contractors respectively) new workers entering the workforce as independent contractors, with half being full-time and half being part-time independent contractors.[431] Using the above hourly wage estimate of $24.85 for full-time independent contractors and assuming that each works full-time (40 hours per week for 52 weeks per year), the Department estimates that each new full-time worker will have the opportunity to earn $51,690 per year. Using the median wage estimate of $415.17 weekly for part-time independent contractors and assuming they work year-round,[432] [433] the Department estimates that each new part-time independent contractor will have the opportunity to earn $21,589 per year. Earnings are an intermediate result toward the goal of estimating worker surplus, which is a net value amount that accounts for the opportunity cost of time and effort. Bartik (2015) estimates such net value to range from 10 to 19 percent of earnings.[434] Based on this finding, the Department assigns a midpoint value of 14.5 percent to total earnings to quantify the social benefit derived from increased earnings. Assuming that the number of independent contractors increases by the central estimate of 2 percent, this results in estimated additional undiscounted total earnings of approximately $131.7 billion. Applying the 14.5 percent estimate of societal value to this finding yields a societal benefit attributable to those additional undiscounted earnings of $26.3 billion (for 496,000 new entries evenly split between full-time and part-time workers) over 10 years or an annualized increase of $2.63 billion at a 7 percent discount rate. Moreover, a

[427] The Department's approach to estimating litigation cost savings takes into account the impact of the rule on the number of relevant cases filed. The approach does not take into account the impact of the rule on promoting settlements in the future among cases that are filed (*i.e.,* some cases that may not have settled may now settle, and some cases that would have settled may now settle earlier). Clarifying a rule may increase the settlement rate among cases filed, reducing litigation costs further. *See* Jonah B. Gelbach, *The Reduced Form of Litigation Models and the Plaintiff's Win Rate,* 61 J. Law & Econ. 125 (2018), *https://www.journals.uchicago.edu/doi/10.1086/699151.*

[428] Palagashvili et al., *supra* n.376. The occupations affected by the California law exclude the approximately 109 occupations for which a statutory exemption from the ABC test exists. *Id.,* Appendix Table A1.

[429] The FLSA does not preempt or ''excuse noncompliance with'' state laws that establish stricter standards based on the state's own law and definitions. 29 U.S.C. 218(a). In states that use an ABC test, there is significant variation in the number of occupations and/or industries that are exempt from the test. Furthermore, some states apply the test for purposes of unemployment insurance, for example, but not wage and hour law.

[430] Palagashvili et al., *supra* n.376. The impact of AB 5 on affected occupations was estimated across four occupation subsamples using data on the percentage of employed workers who were self-employed by occupation: (1) Occupations in the lowest quartile of prevalence of self-employment, (2) Occupations in the second quartile of prevalence of self-employment, (3) Occupations in the third quartile of prevalence of self-employment, and (4) Occupations in the highest quartile of prevalence of self-employment.

[431] Based on the 2023 Contingent Worker Supplement (CWS), the Department's estimate of an even distribution of full-time and part-time workers entering the labor force may underestimate the actual distribution of full-time Independent Contractors and the potential economic impact of new labor force participants. *See Contingent and Alternative Employment Arrangements—July 2023, supra* n.381. Additionally, as noted earlier, this might be an overestimate of the effects of this rulemaking to the extent that some workers and businesses in certain states might not be affected by this rulemaking. *See supra* n.378.

[432] The median weekly earnings for part-time workers in the 2023 CWS is $400. The listed wage reflects which is the median weekly wage rate for part-time independent contractors updated to 2025 dollars using the gross domestic product (GDP) deflator.

[433] Annual wage estimate for part-time Independent Contractors is based on the 2023 CWS estimate for the median usual weekly earnings of part-time workers ($415.17 per week × 52 weeks = $21,589). *See Contingent and Alternative Employment Arrangements—July 2023, supra* n.381.

[434] The estimates cited here are drawn from Timothy J. Bartik, ''Social Benefits from Job Creation Much Higher in High-Unemployment Local Economies,'' *Investing in Kids* (July 17, 2015), available at Investing in Kids blog post, *https://investinginkids.net/2015/07/17/social-benefits-from-job-creation-much-higher-in-high-unemployment-local-economies/.* The blog post summarizes results from Bartik's article, ''The Social Value of Job Loss and Its Effect on the Costs of U.S. Environmental Regulations,'' *Review of Environmental Economics and Policy* (2015) Timothy J. Bartik, *The Social Value of Job Loss and Its Effect on the Costs of U.S. Environmental Regulations,* 9 Rev. Environmental Econ. & Pol'y 179 (2015).

benefit accruing to broader society, in the form of taxes collected on the additional earnings, is estimated as 17 percent of those earnings, or $2.19 billion annually.[435]

Along the same lines, a substantial body of evidence demonstrates that workers derive significant benefit from flexible work arrangements. Using administrative data on Uber drivers, Chen et al. (2019) estimate that the ability to choose when to work yields more than twice the surplus that drivers would obtain in less flexible alternatives.[436] The Department, however, does not quantify the economic value of additional flexibility (except insofar as it is embedded in the worker surplus quantification above).

4. Consumer Surplus

The Department anticipates that this rule will produce benefits by reducing uncertainty and improving labor market conditions. Removing uncertainty improves labor market efficiency by reducing deadweight loss. As discussed in section III (''Need for Rulemaking'') of this rule, the Department believes emerging and innovative economic arrangements that benefit both workers and business require reasonable certainty regarding the worker's classification as an employee or independent contractor. Legal uncertainty may deter businesses from offering independent contractor arrangements or developing them in the first place.[437] If so, the result would be economic deadweight loss: legal uncertainty prevents mutually beneficial independent contractor arrangements. This rule may produce cost savings by reducing deadweight loss. Nonetheless, due to the abundance of variables at play, the Department has not attempted to quantify the precise amount of that reduction.

Qualitatively, expanded participation in independent contracting also increases service availability in sectors such as ridesharing, delivery, personal services, and creative/professional contracting. Evidence from ride-hailing markets indicates that greater supply reduces wait times and rationing, generating consumer surplus.[438] While the Department does not attempt to quantify these gains in the base case, such benefits are conceptually distinct from transfers and may be material.

5. Broader Labor Market Benefits

Additional benefits may arise from expanding labor force participation among groups that highly value flexibility (*e.g.,* caregivers, students, older workers); supporting continued labor market attachment during periods when traditional employment is infeasible; and enhancing efficiency by better aligning heterogeneous worker preferences with available work arrangements. These effects are difficult to quantify but represent genuine improvements in worker welfare and economic efficiency.

Some commenters agreed that expanding independent contracting can lead to employment gains. For example, Americans for Tax Reform cited the results of their 2020 survey that indicated that 72 percent of application-based ridesharing and delivery drivers in California supported California Proposition 22, which provided application-based transportation and delivery companies an exception to AB 5 by classifying their drivers as independent contractors, rather than employees, while providing certain benefits for the drivers.[439] According to Americans for Tax Reform, these exemptions serve to encourage increased labor market participation by affording workers with increased flexibility. Americans for Tax Reform also reported that ''[n]ine in ten drivers said they started driving so that they could have the flexibility of when and where to work, and 68 percent said they would have to stop their work if the state tried to force them into fixed employment arrangements.''

Flex Association agreed with the Department's position and noted that 88% of workers with children stated that the flexibility of application-based work makes it easier to balance family and work responsibilities. According to its internal estimates, this flexibility is ''estimated to be worth $11 billion to these workers each year,'' with this work bringing them ''an additional $5.1 billion a year in higher income compared to their next best alternative.'' Flex Association added that independent contractors have benefitted from the flexibility and entrepreneurial opportunity afforded by platform-based work.

F. Potential Transfer Effects

The substantive effect of the final rule is not intended to favor independent contractor or employee classification relative to the status quo. However, the Department assumes in this RIA that the increased legal certainty associated with the added clarity of this final rule could lead to an increase in the number of independent contractor arrangements. The Department expects that most of this increase would be attributable to the creation of independent contractor opportunities involving workers who were not previously in the workforce (*i.e.,* increased labor force entry) rather than the reclassification of employees into independent contractors. For example, as explained above, Palagashvili, et al., did not find that AB 5 resulted in a significant increase in traditional employment, suggesting that few independent contractors switched to traditional employment as a result of California's law.[440] The implication is that reclassification due to this final rule would likewise remain small, especially since the Department is not changing the underlying legal standard (*i.e.,* economic reality and economic dependence) but is instead merely clarifying the analysis.

Nonetheless, the Department believes that some reclassification may occur involving workers who are functionally in business for themselves but are currently being (or would be) classified as employees due to legal uncertainty that this rule dispels. To the extent that job conversion costs and other factors such as employee bargaining power deter businesses from reclassifying existing employment relationships, businesses might be more likely to prospectively alter the classification of future work arrangements, suggesting that this ''reclassification'' effect might be blunted in the short term.

Assuming that this rule alters the classification of some individuals who would otherwise be classified as employees, potential transfers may result from differences in employer-provided benefits, tax liabilities, and earnings between employees and independent contractors. Although affected individuals could experience a decrease in employer-provided benefits and an increase in tax liabilities,

[435] The source for the 17 percent input is *https://aspe.hhs.gov/sites/default/files/documents/639756a60fbe7e51786bcec176ad52f1/Standard-RIA-Values-2025.pdf.*

[436] Chen et al., *supra* n.374, at 2769.

[437] *See* Griffin Toronjo Pivateau, *The Prism of Entrepreneurship: Creating A New Lens for Worker Classification,* 70 Baylor L. Rev. 595, 628 (2018) (''The continued demand for innovative work solutions requires a new classification test. Without clarification, parties will be unwilling to engage in new or innovative work arrangements.''); *see also* R. Hollrah and P. Hollrah, *The Time Has Come for Congress to Finish Its Work on Harmonizing the Definition of* ''*Employee*''*,* 26 J. L. & Pol'y 439 (2018), *https://brooklynworks.brooklaw.edu/jlp/vol26/iss2/1/.*

[438] Juan Camilo Castillo et al., *Matching and Pricing in Ride Hailing: Wild Goose Chases and How to Solve Them* (February 13, 2024), *https://ssrn.com/abstract=2890666* or *http://dx.doi.org/10.2139/ssrn.2890666.*

[439] Isabelle Morales, *Survey: App-Based Drivers Want to Maintain Independent Contractor Status,* Americans for Tax Reform (Aug. 7, 2020), *https://atr.org/survey-app-based-drivers-want-maintain-independent-contractor-status/.*

[440] Palagashvili et al., *supra* n.376.

independent contractors also tend to receive higher gross earnings than employees to offset tax, benefits, and other expenses, thus making much of the transfer impact intrapersonal (in other words, an individual worker may receive remuneration in a different form).[441] Overall, the Department believes the net impact on total compensation should be small in either direction.

1. Employer Provided Benefits

To the extent that employers currently provide employees benefits such as health insurance, retirement contributions, and paid time off, these would likely decrease with an increase in the use of independent contractors because independent contractors generally do not receive these benefits directly (although independent contractors are able to purchase at least some of these benefits for themselves, and portable benefits are becoming more available). Employer-provided benefits are often a significant share of workers' compensation. According to the BLS's Employer Costs for Employee Compensation (ECEC), the value of employer benefits that directly benefit employees average 21 percent of total compensation.[442] The Department notes that this 21 percent figure is for employees at the 50th (median) wage percentile and may not be representative of the subset of employees whose classification may be impacted by this rule. Since the 21 percent figure includes paid leave (6.9 percentage points) and retirement benefits (3.8 percentage points), and workers may value these benefits at very different levels, applying these elements does not seem reasonable in the context of this analysis.

The Department used the CWS to compare prevalence of health insurance and retirement benefits across employees and independent contractors to produce a highly generalized picture. However, it should be noted that these two populations may differ in other ways than just their employment classification and the particular elements of their compensation packages discussed in the preceding paragraph which may impact benefit amounts. For instance, an employee shifting to independent contractor status who already receives health benefits through a partner's benefit plan would not be impacted by losing health benefit eligibility. Additionally, lower benefits may be offset by increased base pay to attract workers because workers consider the full package of pay and benefits when accepting a job.

According to the CWS's relatively narrow definition of independent contractor:

- 74.2 percent of independent contractors have health insurance.
- 84.3 percent of employees have health insurance. Most of these workers receive health insurance through their work (54.4 percent).

Multiple commenters stated that workers newly classified as independent contractors will lose eligibility for unemployment insurance and are less likely to receive employer-provided benefits such as health insurance and retirement benefits, as well as losing their job-protected leave under the FMLA. NELP cited government data indicating that ''independent contractors are more likely than employees to be uninsured and to rely on Medicaid.''

NABTU separately asserted that classification as an independent contractor ''strips [workers] of job protections and access to society's safety nets,'' including not only FLSA wage protections but access to unemployment insurance, workers' compensation, and OSHA coverage, and that ''these changes in coverage come at a huge cost'' particularly in construction given the industry's ''high rates of illnesses and injuries,'' as well as ''opioid deaths and suicides.'' NABTU further stated that ''making it easier for employers to treat part of their workforce as independent contractors can also have a negative impact on the remaining employees, since they stand to lose various workplace protections if their numbers fall below the coverage thresholds'' under statutes such as Title VII, the ADA, and the FMLA.

As discussed in section VI.D.2., the Department believes that in a competitive labor market, reduced benefits are generally offset, at least in part (especially once post-intervention equilibrium has been reached), by higher gross earnings for independent contractors, though the Department acknowledges this offset may not be complete for all workers or in all sectors. Regarding NABTU's point about coverage thresholds, the Department notes that this is a function of the referenced statutes' own employee-count thresholds rather than of this rule, which does not alter those thresholds or who is an employee under those statutes; the Department nonetheless acknowledges the point as a potential indirect effect worth noting qualitatively.

As explained earlier, the Department estimates a 1 to 3 percent increase in the total number of independent contractors as a result of this rule. The Department assumes that this 1 to 3 percent increase will come almost entirely from people who were otherwise not engaging in paid work and are entering the workforce as independent contractors, as this rule provides an analysis for assessing employee or independent contractor status which is clearer but not more permissive than the analysis applied under longstanding judicial precedent and the Department's pre-2021 guidance. This implies that: (1) most employees who receive the benefits listed above would remain employees and continue to receive those benefits; and (2) most of the workers who are newly independent contractors would not be receiving employer provided benefits in the absence of this rule.

2. Tax Liability

As self-employed workers, independent contractors are legally obligated to pay both the employee and employer shares of the Federal Insurance Contributions Act (FICA) taxes.[443] For example, the social security component of payroll taxes are split evenly between employers and employees at a rate of 6.2 percent

[441] *See generally* Stephen Fishman, *Working for Yourself: Law & Taxes for Independent Contractors, Freelancers & Consultants* (6th ed. 2006). Scholarly literature relevant to substitution among forms of remuneration includes: A. Mas and A. Pallais, ''Alternative Work Arrangements,'' *Annual Review of Economics* 12, pp. 631–58 (2020); S.J. Hong, J.M. Bauer, K. Lee and N.F. Granados, ''Drivers of Supplier Participation in Ride-Hailing Platforms,'' *Journal of Management Information Systems* 37(3), pp. 602–30 (2020); Hagiu and J. Wright, ''The Status of Workers and Platforms in the Sharing Economy,'' *Journal of Economics & Management Strategy* 28(1), pp. 97–108 (2019); M.J. Bidwell and F. Briscoe, ''Who Contracts? Determinants of the Decision to Work as an Independent Contractor Among Information Technology Workers,'' *Academy of Management Journal* 52(6), pp. 1148–68 (2009); R. Gibbons, ''Incentives in Organizations,'' *Journal of Economic Perspectives* 12(4), pp. 115–32 (1998); B. Holmstrom and P. Milgrom, ''The Firm as an Incentive System,'' *American Economic Review* 84(4), pp. 972–91 (1994).

[442] U.S. Bureau of Labor Statistics, *Employer Costs for Employee Compensation—March 2026* (June 12, 2026), *https://www.bls.gov/news.release/ecec.nr0.htm.* For Civilian Workers, this includes paid leave ($2.56), insurance ($3.81), and retirement and savings benefits ($1.39). It does not include overtime and premium pay, shift differential pay, nonproduction bonuses, or legally required benefits. Calculated as ($2.56 + $3.81 + $1.39)/$37.01.

[443] Generally, economic models indicate that payroll taxes heavily impact hiring, wages, and business growth, and that regardless of liability, the economic burden of payroll taxes fall primarily on employees. *See* Audrey Guo, *Payroll Tax Incidence: Evidence from Unemployment Insurance* (U.S. Census Bureau, CES 24–35, June 2024), *https://www2.census.gov/library/working-papers/2024/adrm/ces/CES-WP-24-35.pdf.*

each.[444] Similarly, Medicare tax is paid at a rate of 1.45 percent each for employees and employers.[445] Independent contractors are classified as self-employed workers, and are legally obligated to pay both the employee and employer share of these taxes, an additional 7.65 percent of their earnings. Thus, if workers' classifications change from employees to independent contractors, there may be a transfer in federal tax liabilities from employers to workers.

Some commenters were concerned that workers newly classified as independent contractors would assume the full financial cost of Social Security and Medicare contributions rather than sharing that cost burden with their employers. For example, National Urban League stated that ''the unnecessary economic burden on workers, who are often responsible for costs such as individual health insurance and the full cost of Social Security and Medicare contributions rather than sharing them with an employer, creates broader economic harm.'' AFL–CIO expressed concern that widespread worker misclassification under this rule could result in the full burden of social insurance contributions being shifted onto workers while overall system contributions decline, externalizing costs onto workers and the public. As explained elsewhere, the Department disagrees that this rule will result in any wide-scale misclassification or reclassification of workers, and that instances of worker reclassification which do occur would involve individuals who are economically independent. Additionally, the Department expects that any tax-related transfers from employers to workers would likely be offset by higher wages employers pay independent contractors. Employers will not pay payroll taxes for work transferred to workers classified as independent contractors and market forces could compel them to pass the full wage (wage + payroll tax) to the independent contractors.

Companies also cover unemployment insurance and workers' compensation taxes for their employees. Independent contractors may choose to pay for comparable insurance protection offered in the private market, but are not obligated to. The resulting regulatory effect (experienced as savings, either by companies or employees, depending on who ultimately bears the cost of the tax) combines societal cost savings (the lessened administrative cost of incrementally lower participation in unemployment insurance and workers' compensation programs) and transfers (from individuals whose unemployment insurance or workers' compensation payments decline, to entities paying less in taxes). Independent contractors may recoup some or all of the employer portion of these taxes and insurance premiums in the form of increased wages. This rule could decrease employers' tax liabilities and increase independent contractors' take-home compensation. However, there are costs to independent contractors if they are out of work or injured or ill on the job because they no longer are protected, unless they purchase their own private insurance. Many of these impacts will depend on the individual risk tolerances of the workers. It is likely that workers who are more comfortable taking risks will be attracted to the potentially higher take-home compensation of independent contractor status, while workers who are risk averse will likely prefer the predictability of traditional employee relationships. It is uncertain how the universe of workers is dispersed, beyond theoretical generalizations. It is further unclear how workers' risk preferences will be distributed across the market for insurance products.

3. Earnings

Potential transfers could also occur through changes to earnings as a result of an increase in independent contracting. These transfers could occur if workers who were employees experience a change in earnings by becoming independent contractors, or if workers who are out of the labor market enter as independent contractors. Although the minimum wage and overtime pay requirements of the FLSA would no longer apply to workers who shift from employee status to independent contractor status, as discussed below, this does not sufficiently explain the potential transfers that could occur as a result of such a shift. As discussed above in section VI.E.3, the Department anticipates an increase in labor force activity, and that each new full-time worker will have the opportunity to earn $51,690 annually.

Several commenters stated that the proposed rule did not take into account the possibility that the proposal would spur widespread job reclassification which would lead to a decrease in wages for reclassified workers. CLASP cited an Economic Policy Institute study showing that ''the earnings of independent contractors in poorly-paid occupations lag behind their employee counterparts.'' [446] National Domestic Workers Alliance also commented that independent contractors in low-paid occupations make less than employees, stating: ''Misclassification has real-world consequences . . . [S]ome of these so-called independent contractors do not even earn the federal minimum wage.'' UBC suggested that ''the Proposed Rule fails to address the downward pressure on wages and working conditions that the growing use of dubious independent contractor arrangements is causing in the construction industry.''

Coalition of State Officials challenged the Department's ''earnings offset'' assumption directly, asserting that the Department's statement that ''independent contractors . . . tend to receive higher gross earnings than employees'' is unsupported and ''contradicts up-to-date findings that independent contractors often earn less than they would have earned if classified as employees.'' GFI raised a related concern, citing Economic Policy Institute survey data indicating that ''14 percent of gig workers earned less than the federal minimum wage and 29 percent earned less than the applicable state minimum wage,'' and that gig workers use the Supplemental Nutrition Assistance Program (SNAP) at roughly ''twice the rate of employee-designated service sector workers,'' further citing survey findings that ''one in five gig workers could not afford enough to eat and 31 percent could not afford to pay the full amount of their utility bills in the month prior to the survey.'' [447] National Women's Law Center similarly challenged the Department's earnings-offset assumption, citing a study of New York's personal services sector showing that ''minimum wage increases helped to raise inflation-adjusted annual earnings of employees by 24.5 percent between 2013 and 2018, compared to *a decline* in earnings of 3.9 percent for independent contractors in the sector.''

If currently unemployed workers or individuals who are out of the labor market enter the market as independent contractors due to this rule, their earnings will increase as they currently have no work-related earnings other than possibly unemployment benefits. The impact on earnings is more ambiguous if employees' classifications

[444] The social security tax has a wage base limit of $184,500 in 2026.

[445] There is no wage base limit for Medicare Tax.

[446] John Schmitt et al., *The Economic Costs of Worker Misclassification,* Economic Policy Institute (Jan. 25, 2023), *https://www.epi.org/publication/cost-of-misclassification/.*

[447] Ben Zipperer et al., *National Survey of Gig Workers Paints a Picture of Poor Working Conditions, Low Pay,* Economic Policy Institute (Jun. 1, 2022), *https://www.epi.org/publication/gig-worker-survey/.*

change to independent contractors. In theory, because independent contractors likely prefer to have at least similar levels of total compensation as they would earn if they were employees, companies would likely have to pay more per hour to independent contractors than to employees because independent contractors generally do not receive company-provided benefits and have higher tax liabilities. Data shows an hourly wage premium for independent contractors when comparing unadjusted mean averages. But as the analysis below illustrates, when controlling for certain differences in worker characteristics, this expected wage premium may not always be observable at a statistically significant level. It should be noted, however, that these estimates do not attempt to incorporate the value of flexibility and satisfaction that many independent contractors cite as key factors in their preference of independent contracting arrangements over being employees.

Furthermore, to attract qualified workers, companies must offer competitive compensation whether they are employees or independent contractors. Therefore, in a competitive labor market, any reduction in benefits and increase in taxes is likely to be offset by higher gross earnings. An Upjohn Institute study of CWS data from 1995 to 2017 finds that independent contractors and contract workers who report being self-employed have weekly earnings of 3 percent and 8 percent more, on average, than wage and salary workers with the same observable job characteristics.[448] By contrast, some sources warn employers that classifying a worker as an employee can cost between 25 and 40 percent more in hourly terms.[449] The Department believes this apparent gap reflects at least two dynamics: within a firm, when comparing truly equivalent positions, shifting an employee to independent contractor status is costly because the firm must compensate for lost benefits, payroll taxes, and other expenses. Across the broader economy, however, the Department assumes that the pool of independent contractors skews towards lower-tenure workers who perform qualitatively different tasks from employees, which can compress the measured earnings premium in survey data to only a few percentage points. Such differences in specific job tasks may not be observable in CWS data upon which the Upjohn study relied.

The Department acknowledges that the studies commenters cite for a countervailing earnings effect largely examine gig or platform-based workers, or workers in specific sectors such as New York personal services, populations that may not be representative of the broader independent contractor population from which the Upjohn Institute and Katz and Krueger regression estimates above are drawn. The Department's central estimate is based on economy-wide CWS data controlling for observable worker characteristics, rather than sector-specific survey data; the Department believes this remains the most appropriate basis for an economy-wide analysis but acknowledges that earnings effects may vary meaningfully by industry and that low-wage sectors with high concentrations of independent contractors could see different outcomes than the economy-wide average suggests.

4. Misclassification

Many commenters expressed concern that this rulemaking would exacerbate the misclassification of employees as independent contractors, which occurs when an individual who is economically dependent on an employer for work is wrongly classified by that employer as an independent contractor. FLSA misclassification may be inadvertent or intentional, and its direct effects could include a transfer from the worker to the employer if the employer fails to pay minimum wage and overtime pay to which the worker is entitled. Conversely, reducing misclassification could result in a transfer from employers to workers.

AFSCME and Allegheny County et al. each submitted detailed data on the prevalence of misclassification. For example, AFSCME described a NELP review of state-level task force and audit findings estimating that ''10% to 30% of employers (or more) misclassify at least some of their employees as independent contractors,'' and a 2000 Department-commissioned study finding that ''9% to 42% of employers audited by State Unemployment Insurance Departments misclassified employees as independent contractors with the vast majority of contested claims in some states (up to 95% in some cases) resulting in reclassification of independent contractors as employees.'' Allegheny County et al. similarly cited data indicating that ''widespread occupational segregation means that workers of color are overrepresented in industries that are especially susceptible to increased misclassification, including construction, trucking, transportation, janitorial services, home care, retail, delivery services, and appl-based work''—and that Black and Latino workers are ''already segregated into underpaid jobs''—such that ''increased misclassification'' would ''exacerbate . . . racial income and wealth inequality.'' Legal Aid at Work likewise commented that the effects of increased misclassification ''will disproportionately harm workers of color who predominate low-paying jobs where misclassification rates are more common.''

The Department has addressed the evidentiary basis for its labor-force-entry assumption at length in section VI.E.3. The Department agrees that misclassification under the applicable legal standard is a proper subject of enforcement and notes that this rule's clarifying purpose is intended to reduce the ambiguity that itself can contribute to inadvertent misclassification. Regarding the misclassification-rate estimates that AFSCME and Allegheny County et al. cite, the Department notes, as it has elsewhere in this analysis, that these figures describe the baseline prevalence of misclassification under existing law rather than a rate attributable to this rule, which does not alter the underlying economic reality test but instead merely clarifies how it should be applied. The Department has not identified data that is attributable to ambiguity in the legal standard that this rule is intended to clarify, as opposed to unlawful conduct that occurs irrespective of the standard's clarity. The Department believes that the enhanced clarity provided by this rule will support the Department's ability to prioritize its enforcement in this area.

5. Job Reclassification

The comments discussed in section VI.D.2 regarding construction industry misclassification and firms' interest in retaining independent contractors are also relevant to potential earnings and job-conversion transfers. GFI commented that the Department's discussion of potential reclassification effects fails to adequately weigh the reliance interests of workers who would lose employee status, citing an Economic Policy Institute estimate that a construction worker reclassified from employee to independent contractor could lose as much as $20,399 annually in income and benefits, and that a truck driver could lose up to $23,266, relative

[448] *See* Katharine G. Abraham & Susan N. Houseman, *Contingent and Alternative Employment: Lessons From the Contingent Worker Supplement, 1995–2017,* W.E. Upjohn Inst. (2020), *https://research.upjohn.org/cgi/viewcontent.cgi?article=1274&context=reports.*

[449] *See* Barbara Weltman, *How Much Does an Employee Cost You?,* U.S. Small Business Administration (2019), *https://www.sba.gov/blog/how-much-does-employee-cost-you.*

to what each would have earned as an employee. GFI further cited the same Economic Policy Institute estimate discussed above in section VI.D.2.a that state and local social insurance systems can lose up to approximately 30 percent of per-worker revenue as a result of misclassification, and stated that this revenue loss compounds the harm to reclassified workers by weakening the social insurance systems on which they might otherwise rely.

The Department has weighed these comments alongside the labor-force-entry evidence discussed in section VI.E.3 and continues to believe the rule's net job-conversion effects would be limited. With respect to GFI's reliance-interest figures specifically, the Department notes that the cited per-worker loss estimates describe the difference between employee and independent contractor compensation generally, rather than an estimate of losses specific to workers who would be reclassified as a result of this particular rule; as discussed in section VI.B above. The Department's central estimate is that reclassification of existing employees attributable to this rule would be minimal, with most growth in independent contracting instead reflecting new labor force entry. To the extent some reclassification does occur, the Department acknowledges that affected individual workers could experience the kind of compensation effects GFI describes, and the Department does not dispute that such effects would be serious for an affected worker.

Additionally as mentioned previously in section VI.B, the Department's position is that businesses would be expected to reclassify workers currently classified as employees into independent contractors only if they determine that the clarity provided by this rule materially shifts the balance of tradeoffs, including legal risk, or to correct a prior classification of a worker's employment status that was mistaken or unnecessary.

G. Alternatives Considered

The Department considered three alternatives to the analysis adopted in this rule, listed below from least to most restrictive of independent contracting: [450]

(1) adoption of the common law control test, which applies in distinguishing between employees and independent contractors under various other federal laws;

(2) adoption of WHD's pre-2021 enforcement policy, which is comprised of sub-regulatory guidance and provides a multifactor ''economic reality'' balancing test; and

(3) adoption of an ''ABC'' test (which a number of states have adopted).

The Department previously considered and rejected the first and third alternatives—*i.e.,* a common law control test or an ABC test—on legal viability grounds in the 2021 and 2024 rules.[451] The Department continues to believe that legal limitations prevent the Department from adopting either of those alternatives, but has included them in this analysis to the extent that it might be helpful in providing greater context on the merits of legislative proposals in Congress.[452]

1. Adopting a Common Law Control Test

The least restrictive (of independent contracting) alternative considered to this rule's streamlined ''economic reality'' test would be to adopt a common law control test, as is generally used to determine employee or independent contractor classification questions arising under the Internal Revenue Code and various other federal laws.[453] The overarching focus of the common law control test is ''the hiring party's right to control the manner and means by which [work] is accomplished,'' *Reid,* 490 U.S. at 751, but the Supreme Court has explained that ''other factors relevant to the inquiry [include] the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.'' *Id.* at 751–52 (footnotes omitted).

Although the common law control test considers many of the same factors as those identified in the proposed rule's ''economic reality'' test (*e.g.,* skill, duration of the working relationship, investments in equipment and hiring helpers, *etc.*), courts generally recognize that, because of its focus on control, the common law test is more permissive of independent contracting arrangements than the economic reality test, which more broadly examines the economic dependence of the worker. *See, e.g., Diggs* v. *Harris Hospital-Methodist, Inc.,* 847 F.2d 270, 272 n.1 (5th Cir. 1988) (observing that ''[t]he 'economic realities' test is a more expansive standard for determining employee status'' than the common law control test). Thus, if a common law control test determined independent contractor status under the FLSA, it is possible that some workers presently classified as employees could be reclassified as independent contractors, increasing the overall number of independent contractors and reducing the overall number of employees. The Department is unable to estimate the exact magnitude of such a reclassification effect, but believes that the vast majority of FLSA employees would remain FLSA employees under a common law control test.

Adopting a common law control test would create a simpler legal regime for regulated entities interested in receiving services from an independent contractor, thereby reducing confusion, compliance costs, and legal risk for entities interested in doing business with independent contractors. Entities would not, for example, have to understand and apply one employment classification analysis for tax purposes and a different employment classification analysis for FLSA purposes. Thus, adopting the common law control test would likely increase perpetual cost savings for regulated entities attributable to improved clarity and reduced litigation as compared to

[450] OMB guidance advises that, where possible, agencies should analyze at least one ''more stringent option'' and one ''less stringent option'' to the proposed approach. OMB Circular A–4 at 16.

[451] *See* 86 FR 1238–43; 89 FR 1660–63.

[452] OMB Circular A–4 advises that agencies should ''discuss the statutory requirements that affect the selection of regulatory approach. If legal constraints prevent the selection of a regulatory action that best satisfies the philosophy and principles of Executive Order 12866, [agencies] should identify these constraints and estimate their opportunity cost. Such information may be useful to Congress under the Regulatory Right-to-Know Act.''

[453] *See* 26 U.S.C. 3121(d)(2) (generally defining the term ''employee'' under the Internal Revenue Code as ''any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee''); 42 U.S.C. 410(j)(2) (similarly defining ''employee'' under the Social Security Act). The Supreme Court has explained that the common law standard of employment applies by default under Federal law ''unless [Congress] clearly indicates otherwise.'' *Darden,* 503 U.S. at 325 (holding that ''a common-law test'' should resolve employee/independent contractor disputes under Employee Retirement Income Security Act); *see also Reid,* 490 U.S. at 739–40, 751 (explaining that ''when Congress has used the term 'employee' without defining it, we have concluded that Congress intended to describe the conventional master-servant relationship as understood by common-law agency doctrine'' and applying ''principles of general common law of agency'' to determine ''whether . . . work was prepared by an employee or an independent contractor'' under the Copyright Act of 1976).

the proposed rule. It could, on the other hand, impose burdens on workers who might prefer to be employees subject to FLSA protections.

The Department notes that the Supreme Court has interpreted the ''suffer or permit'' language in section 3(g) of the FLSA as demanding a broader definition of employment than that which exists under the common law. *See, e.g., Darden,* 503 U.S. at 326; *Portland Terminal Co.,* 330 U.S. at 150–51. Accordingly, the Department believes it is legally constrained from adopting the common law control test unless the Supreme Court revisits its precedent or Congress passes legislation that alters the applicable analysis under the FLSA.

Commenters disagreed on the policy merits of a common law control test. For example, PayrollOrg expressed concern about ''the conflicting definitions of employee and independent contractor between the WHD's proposed rule and the common law definition used by the Internal Revenue Service (IRS),'' asserting that the application of different tests will confuse employers and could yield different results for the same individuals. Similarly, while expressing support for the Department's proposed analysis, FedEx remarked that ''the optimal solution is federal legislation that establishes a simple, reliable, and objective test for employment status, replacing amorphous, multi-factor tests based on economic dependence.'' By contrast, AFSCME asserted that the Congress that enacted the FLSA believed that ''[t]o effectively regulate both the longstanding evil of child labor as well as substandard conditions in modern homework, a much broader definition of employment would be required than the narrow common-law test.'' *See also* Allegheny County et al. (''By design, the FLSA covers work relationships that exceed the traditional common-law definition of employment—instead including the broad concepts of 'suffering' or 'permitting' someone to work.'').

Whatever their views on the merits of a common law control test, almost all of the commenters who addressed the alternative agreed with the Department's determination that controlling Supreme Court precedent forecloses its application in FLSA cases. For example, speculating that ''[i]t may well be that on a blank slate the best reading of the FLSA's definition 'employee' . . . transplants the common law control test from agency law from that old soil to new,'' Americans for Prosperity Foundation observed that the Department ''is not writing on a blank slate,'' concluding that ''[t]o minimize litigation risk and maximize the benefits to worker flexibility and innovation, the safest course is the synthesis of existing precedent under the 'economic reality' framework DOL has proposed[.]'' *See also* Washington Legal Foundation (''The [Department] can't jettison the caselaw requiring a multifactor standard—and it hasn't.''). The Department appreciates that commenters understand the external constraints on its interpretive authority and emphasizes that this rule adopts an analysis which is meaningfully different than the common law control test.

2. Adopting WHD's Pre-2021 Enforcement Policy

On May 1, 2025, WHD issued Field Assistance Bulletin (FAB) No. 2025–1,[454] directing WHD field staff to no longer apply the analysis from the 2024 Rule when determining employee or independent contractor status in FLSA investigations. Instead, FAB 2025–1 instructed WHD field staff to use the analysis from the July 2008 version of Fact Sheet #13, as further informed by Opinion Letter FLSA2025–2, in WHD enforcement matters. Because Opinion Letter FLSA2025–2 reinstated an opinion letter that was rescinded in early 2021, FAB 2025–1 effectively instructed WHD to enforce its pre-2021 interpretive guidance on FLSA independent contractor or employee status. In relevant part, Opinion Letter FLSA2025–2 applied a six-factor economic reality analysis derived from the July 2008 version of Fact Sheet #13 that focuses on how the factors relate to the worker's economic dependence or independence and emphasizes the degree to which the worker could choose between work opportunities, work for others including competitors, and pursue external economic opportunities. The Department believes that the multifactor balancing test reflected in Fact Sheet #13 (July 2008) and Opinion Letter FLSA2025–2 is neither materially more nor less permissive of independent contractor relationships as compared to the streamlined, core factors analysis adopted in this rule.[455] Both tests describe the ''economic dependence'' of the worker at issue as the essential inquiry; both emphasize the ''economic reality'' of the work arrangement; and both evaluate the same set of underlying factors, notwithstanding an emphasis and consolidation of certain factors under the streamlined test.

While Opinion Letter FLSA2025–2 sought to refine each factor in a focused way, it did not expressly recognize any ''core'' factors and instead stated that ''the appropriate weight to give to each factor depends on the facts.'' [456] In other words, this alternative would not provide specific guidance on how to weigh the factors when applying the multifactor economic reality analysis and would leave stakeholders without clearer guidance to determine independent contractor or employee status under the FLSA, especially in today's modern economy. For these reasons, the Department is not adopting its pre-2021 enforcement policy on independent contractor or employee status.

No commenters specifically addressed the regulatory alternative of replacing the 2024 Rule with the analysis that the Department applied before 2021.[457] Noting that the Department had already stopped applying the 2024 Rule in its enforcement actions after FAB 2025–1, Flex Association asserted that the proposed rule ''therefore codifies the Department's existing interpretive baseline, rather than imposing a disruptive change.'' The Department agrees that the analysis adopted in this rule is not a ''disruptive change'' from its pre-2021 analysis, but notes that there are some meaningful differences. For example, unlike the 2008 version of Fact Sheet #13 or Opinion Letter FLSA2025–2, the analysis adopted in this rule: (1) identifies ''control'' and ''opportunity for profit or loss'' as core factors; (2) consolidates ''investment'' as a consideration within the ''opportunity for profit or loss'' factor; and (3) advises that the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible. As explained in thorough detail in section IV of this rule, these features are refinements to the Department's pre-2021 analysis which the Department believes will bring added clarity and consistency.

3. Adopting an ''ABC'' Test

The third and most restrictive (of independent contracting) regulatory alternative considered would be to

[454] *https://www.dol.gov/sites/dolgov/files/WHD/fab/fab2025-1.pdf.*

[455] *See* 86 FR 1240 (explaining that the Department's pre-2021 guidance was ''neither more nor less permissive of independent contractor relationships as compared to'' the 2021 Rule).

[456] *See* WHD Op. Ltr. FLSA2025–2 at 5.

[457] Many commenters expressing support for the 2024 Rule asserted that it was consistent with the analysis that courts and the Department applied for decades before the 2021 Rule. *See, e.g.,* IBT; National Partnership for Women & Families et al.; SEIU. However, as discussed in section III.B. of this rule, the 2024 Rule's description of certain economic reality factors departed in meaningful ways from how the Department has traditionally applied the economic reality test.

adopt an ''ABC'' test like the ones enacted in a number of states to distinguish between employee and independent contractor status.[458] Generally, an ABC test presumes an individual is an employee unless the potential employer can satisfy all three requirements to classify the individual as an independent contractor. The three requirements of an ABC test typically are: (A) the individual is free from the potential employer's control or direction in performing his work, both under a contract for the performance of such work and in fact; (B) the work performed by the individual is outside the usual course of the potential employer's business; and (C) the individual is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the potential employer.[459]

On its face, an ABC test is more restrictive of independent contracting arrangements than any formulation of an ''economic reality'' test. Whereas no single factor necessarily disqualifies a worker from independent contractor status under an economic reality test, *each* of an ABC test's three factors may alone disqualify the worker from independent contractor status. The Department believes adopting an ABC test as the FLSA's generally applicable analysis for distinguishing employees from independent contractors would be too restrictive.

In any event, the Department believes it is legally constrained from adopting an ABC test because the Supreme Court has instituted the economic reality test as the relevant standard for determining workers' classification under the FLSA as an employee or independent contractor. *See Tony & Susan Alamo,* 471 U.S. at 301 (''The test of employment under the Act is one of 'economic reality.'''); *Whitaker House,* 366 U.S. at 33 (holding that '''economic reality' rather than 'technical concepts' is . . . the test of employment'' under the FLSA) (citing *Silk,* 331 U.S. at 713; *Rutherford Food,* 331 U.S. at 729).

Moreover, the Supreme Court has stated that the existence of employment relationships under the FLSA ''does not depend on such isolated factors'' as the three independently determinative factors in an ABC test would constitute, ''but rather upon the circumstances of the whole activity.'' *Rutherford Food,* 331 U.S. at 730. Because an ABC test is therefore inconsistent with Supreme Court precedent interpreting the FLSA, the Department concludes it cannot adopt an ABC test unless the Supreme Court revisits its precedent or Congress passes legislation that alters the applicable analysis under the FLSA.

Some labor unions and worker advocacy organizations expressed support for the adoption of an ABC test. *See* NABTU (asserting that the ABC test ''protects workers by making it harder for employers to misclassify and offload their responsibilities''); National Domestic Workers Alliance (asserting that a California-style ABC test would be ''best suited to address the unique working conditions of domestic workers and other low-pay industries''); SMART and SMACNA (''A clear and concise statement of worker classification through a presumption of employee status in [a construction] industry rife with worker misclassification would both reduce compliance costs borne by employers and ensure that workers receive the FLSA protections to which they are entitled.''). However, the majority of commenters addressing the ABC test were highly critical of it, asserting that its analysis to permit independent contractor arrangements is too rigid and difficult to satisfy. For example, Wisconsin Institute for Liberty commented that ''when California implemented the ABC test . . . businesses immediately terminated their contracts with freelancers across industries'' and ''ride-share companies like Uber and Lyft questioned whether they could continue to operate in the state.'' *See also* Truckers Integral to Our Economy (''AB5 swept in approximately 70,000 owner-operators operating in California who had not sought reclassification, who did not want it, and whose actual working relationships reflected genuine independence under any honest application of the economic reality test.''). Researcher Liya Palagashvili commented that ''ABC test adoption reduced traditional W–2 employment by 4.73 percent, self-employment by 6.43 percent, and overall employment by 4.79 percent.''[460] *See also* Flex Association (citing Dr. Palagashvili's research); Littler WPI (same). Several commenters noted that the California legislature subsequently enacted numerous occupation-specific exemptions to its ABC test,[461] which they characterized as evidence that the test is not an appropriate or administrable standard. *See* Institute for the American Worker; Manhattan Institute for Policy Research; TechNet; The Transportation Alliance. Finally, CWI and U.S. Chamber of Commerce noted that Supreme Court precedent forecloses the adoption of an ABC test to assess independent contractor status under the FLSA, while a diverse array of commenters emphasized that ''no single factor'' can determine employee or independent contractor status under the FLSA. *See, e.g.,* Coalition of State Officials; Competitive Enterprise Institute; National Retail Federation; Southern Poverty Law Center.

Having considered the comments, the Department continues to believe that an ABC test would be inconsistent with Supreme Court and federal appellate precedent interpreting and applying the FLSA. As noted above, the Supreme Court has repeatedly explained that ''economic reality'' is the applicable standard for determining whether a worker is an employee or not under the FLSA. Specific to the distinction between employees and independent contractors, the Supreme Court has explained that ''[n]o one [factor] is controlling'' of the outcome,[462] but instead it turns upon ''the circumstances of the whole activity.''[463] Because each of the ABC test's three factors could alone disqualify a worker from independent contractor status, the test would contravene binding Supreme Court precedent. However, even if the ABC test were only a balancing test (instead of a three-pronged checklist), it would still be inappropriate as a regulatory alternative because of its presumption of employee status. As the Department explained in the 2024 Rule, a rebuttable presumption of employee status ''would not be consistent with Supreme Court precedent and federal appellate case law interpreting and applying that precedent[.]''[464]

VII. Final Regulatory Flexibility Act Analysis (FRFA)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory

[458] *See e.g.,* Cal. Lab. Code sec. 2775(b)(1)(A)–(C) (2025); Mass. Gen. Laws ch. 149, sec. 148B(a)(1)–(3) (2025); N.J. Stat. 43:21–19(i)(6)(A)–(C) (2025); Vt. Stat. Ann. Tit. 21, sec. 341(1) (2025); *see also* Keith Cunningham-Parmeter, *Gig-Dependence: Finding the Real Independent Contractors of Platform Work,* 39 N. Ill. U. L. Rev. 379, 408–11 (2019) (discussing the origins and expansion of the ABC test).

[459] Jon O. Shimabukuro, Cong. Rsch. Serv., R46765, *Worker Classification: Employee Status Under the National Labor Relations Act, the Fair Labor Standards Act, and the ABC Test* (2021).

[460] Liya Palagashvili et al., ''ABC Tests and Labor Market Outcomes,'' (Mercatus Working Paper, forthcoming 2025); Liya Palagashvili & Revana Sharfuddin, ''New Study: From Gig to Gone? ABC Tests and the Case of the Missing Workers,'' Labor Market Matters (Jan. 10, 2025), *https://www.labormarketmatters.com/p/new-study-from-gig-to-gone-abc-tests.*

[461] *See* 86 FR 1242–43.

[462] *Silk,* 331 U.S. at 716.

[463] *Rutherford Food,* 331 U.S. at 730; *see also Bartels,* 332 U.S. at 130 (''It is the total situation that controls.'').

[464] 89 FR 1662.

Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their rules on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities.

This final rule: (1) rescinds a 2024 rule addressing employee or independent contractor status under the FLSA that was published on January 10, 2024; (2) replaces the 2024 Rule with a streamlined analysis very similar to what the Department previously adopted in a 2021 rule published on January 7, 2021; and (3) amends the Department's FMLA and MSPA regulations to clarify that the analysis used to determine employee or independent contractor status under the FLSA should be applied to make that determination under the FMLA and MSPA, which both incorporate the FLSA's scope of employment. By rescinding the 2024 Rule and replacing it with regulations that provide greater clarity and predictable outcomes, the Department believes this rule will likely improve the welfare of both workers and businesses on the whole, including those who wish to work as independent contractors.

Although this rule is not expected to have a significant economic impact on a substantial number of small entities, the Department provided an Initial Regulatory Flexibility Analysis (IRFA) in the NPRM to explain that determination.[465] In this FRFA, the Department updates the analysis that it provided in the IRFA and responds to commenter feedback on this rule's potential impact on small entities.

A. Reasons Why Action by the Agency is Being Considered and Statement of Objectives and Legal Basis for the Final Rule

As explained more fully in section III of this rule, the Department is concerned that the 2024 Rule failed to provide an analysis for distinguishing between independent contractors and employees under the FLSA that was sufficiently clear and led to predictable outcomes. The Department is separately concerned that the 2024 Rule's description of several economic reality factors could be viewed as setting a higher bar to find independent contractor status than the law requires. Among other harms, an analysis which is ambiguous or perceived as too restrictive of independent contracting can deter businesses from engaging with bona fide independent contractors or induce them to unnecessarily classify such individuals as employees—concerns emphasized by many self-identified independent contractors who have participated in the Department's recent rulemakings on this topic.

Accordingly, in this rulemaking, the Department is rescinding the 2024 Rule and largely readopting the 2021 Rule,[466] which provided a sharpened economic reality analysis and did not impede successful enforcement actions by the Department to pursue and remedy misclassification of FLSA-covered employees as independent contractors.[467] Additionally, the Department is revising the regulations addressing employee or independent contractor status under MSPA and the FMLA so that the analysis in part 795 will apply when determining employee or independent contractor status under those statutes too.

The Department's authority to interpret the FLSA comes with its authority to administer and enforce it. *See* 29 U.S.C. 204; *Fabri-Centers of Am.,* 308 F.3d at 592–93 & n.8 (noting that ''[t]he Wage and Hour Division of the Department of Labor was created to administer the Act'' while agreeing with the Department's interpretation of one of the FLSA's provisions); *Browning-Ferris,* 207 F.3d at 267 (''By granting the Secretary of Labor the power to administer the FLSA, Congress implicitly granted him the power to interpret.''); *Sysco Corp.,* 1 F.3d at 603 (same). The Department's authority to interpret the FMLA and MSPA is expressly delegated by statute. 29 U.S.C. 2654 (FMLA); 29 U.S.C. 1861 (MSPA).

B. Significant Issues Raised in Public Comments, Including by the Small Business Administration (SBA) Office of Advocacy

Numerous self-identified independent contractors, small businesses, and organizations representing independent contractors or small businesses submitted substantive comments in support of the NPRM. National Association of Insurance and Financial Advisors commented that the 2024 Rule's guidance ''increased the tendency to misclassify independent insurance agents and financial advisors as employees rather than contractors—resulting in significant financial exposure, penalties and fines to independent insurance professionals and small business owners.'' National Association of Small Trucking Companies commented that this rule's ''analysis of economic dependence/independence and the economic reality of a given situation effectively illustrates and substantiates the economic reality of most independent contractors.''

Several commenters applauded the rule's efforts to clarify worker classification standards. NFIB expressed support for the rule, commenting that the Department's ''proposed rule on independent contractor classification . . . would make worker classification more straightforward, predictable, and easier for employers, and in particular, small businesses.'' National Small Business Association also conveyed support for the rule in its comment, praising the ''effort to establish a clearer, more administrable standard for worker classification grounded in economic reality and actual workplace practice.'' Small Business & Entrepreneurship Council shared similar support for the rule commenting that it ''appropriately restores clarity and balance by returning to a framework grounded in long-standing judicial precedent while recognizing the realities of modern commerce and work.'' U.S. Hispanic Business Council also expressed support for the rule, alleging that the 2024 Rule was ''overly-broad and complex.''

The Department also received comments in support of the rule from self-identified independent contractors. Brittany VanDerBill supported the rule's effort not to restrict independent contractors who own and operate their own businesses, particularly lauding that the rule ''offers a simplified, more objective way to determine who is a legitimate independent contractor.'' In her comment, Christine Byrne stated that ''one of the most important components of this proposal is its emphasis on the core factors of control and opportunity for profit or loss. These factors accurately capture the reality of my work and provide a clear, understandable framework for determining that I indeed am an independent contractor.'' Connie Kirkpatrick commented that the 2024

[465] *See* 91 FR 9970–72.

[466] As explained in section IV, the Department is finalizing this rule with certain modifications and enhancements to the 2021 Rule's FLSA guidance, including additional explanatory text in § 795.105(b), § 795.105(d)(i) and (d)(ii), and one non-substantive edit to § 795.105(d)(2)(iii), as well as modifications to three of the illustrative examples and the addition of eight new illustrative examples in § 795.115.

[467] *See supra,* nn.170 & 175 and their accompanying text.

Rule failed to provide effective guidance on how the different factors should apply together, which led to ambiguity that was compounded at the state-level. This commenter also asserted that the 2024 Rule created compliance costs, legal risk, and the loss of independent contractor opportunities due to uncertainty.

Several commenters asserted that small businesses would reap unique or disproportionate benefits from this rule. For example, many commenters emphasized that independent contractors are small businesses, while other commenters asserted that start-ups and small businesses are more likely to rely on independent contractors to meet their needs than larger businesses. For example, CPAC Foundation Center for Regulatory Freedom commented that ''[s]mall businesses are especially vulnerable to the effects of regulatory ambiguity'' and may have limited access to legal resources compared to larger organizations. In its comment expressing support for the rule, Institute for the American Worker noted that the Department's estimated cost savings due to legal clarity will primarily benefit small businesses and independent contractors, ''who bear the greatest burden of regulatory uncertainty.'' Trevar Kolodny commented that ''[t]his articulated, national standard could be especially helpful for small businesses, and self-employed contractors, who frequently do not have the resources to hire sophisticated counsel, or the institutional experience to understand when independent contract work turns into an employment relationship.'' Center for Practical Federalism commented that the proposed rule ''helps mitigate the risk of regulatory capture, where large, established firms are better positioned to navigate complex rules than smaller competitors.'' Similarly, FSI contended that risk-averse companies, which typically include small businesses, may shy away from entering nontraditional work arrangements due to an inability to afford compliance advice and litigation fees, ''whereas large corporations will continue to innovate and reap considerable profits when successful, possibly driving their smaller competitors out of the market.'' From these commenters' perspective, this rule helps level the playing field between large and small businesses. Finally, invoking the RFA, National Association of Convenience Stores et al. asserted that ''the 2024 Rule imposed substantial and disproportionate costs on small entities,'' elaborating that ''the restored framework mitigates those costs . . . [so] any subsequent reversal would need to confront that record directly.''

In its comment, SBA Office of Advocacy identified the 2024 Rule as among its ''Most Wanted . . . rules for rescission, withdrawal, or modification to reduce the regulatory burden on small businesses.'' Asserting that ''[m]illions of small businesses and independent contractors rely on the independent worker classification,'' Advocacy relayed that small businesses felt that the 2024 Rule was ''too confusing, because they could not be certain if they were classifying their independent contractors correctly.'' By contrast, Advocacy commented that ''the proposed rule simplifies and clarifies the independent contractor definition,'' using data provided in the IRFA to estimate that the proposed rule would save $2.0 billion in present value for small employers and independent contractors combined over the next 10 years when using a 7% discount rate, or $282 million per year. Advocacy relayed that small business stakeholders were particularly supportive of the proposal that ''[r]equiring [an] individual to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses'' does not constitute control that makes the individual more or less likely to be an employee under the FLSA, noting that many independent contractors operate in highly regulated industries. The Department appreciates the SBA Office of Advocacy's comment, which reinforces many of the policy considerations motivating this rulemaking.[468]

Some commenters—including several truck drivers and digital platform workers—were neutral or generally supportive of the NPRM but requested that the Department address certain business practices they believe to be coercive or exploitative.[469] For example, several individual commenters objected that platform companies use acceptance rate metrics to compel gig workers to accept unprofitable assignments, while OOIDA requested that the Department ''protect truckers by . . . address[ing] lease-purchase agreements [between truckers and motor carriers] in a final rule,'' which OOIDA characterized as a ''blatant example of misclassification'' which resembles ''indentured servitude.'' *See also* SBA Office of Advocacy (reporting that multiple participants at a small business roundtable on the NPRM requested ''final regulations or guidance [to] address fraud or abuse in lease-purchase programs, employer-driven debt and tuition repayment arrangements for new entrants, and exploitation of immigrant, women, and vulnerable drivers''). In response to these and other comments, the Department has added two pairs of illustrative examples to the final rule addressing facts germane to digital platform workers and lease-purchase agreements in the trucking industry.[470]

Two labor union commenters, AFL–CIO and IBT, asserted that the proposed rule could harm small businesses. IBT commented that ''[l]arge corporations that misclassify their workers can underbid their smaller competitors, creating a race to the bottom where jobs do not pay living wages and smaller companies are compelled to also skirt payroll and unemployment insurance taxes that workers and public coffers rely on.'' Describing this race to the bottom as ''the documented reality in trucking, logistics, construction, and warehouse industries where the Teamsters' members compete every day against misclassifying employers,'' IBT objected that this rule ''would provide those companies with a legal framework that validates rather than scrutinizes these arrangements.'' Similarly, AFL–CIO asserted that the IRFA ''fail[ed] to account for the [proposed rule's] competitive effects on small, law-abiding businesses,'' which would continue to ''incur significant costs associated with wage-and-hour compliance, payroll taxes, unemployment insurance contributions, and workers' compensation coverage'' that may no longer apply to competitors which might be empowered to ''classify similar workers as independent contractors under a more permissive standard.''

The Department acknowledges the economic harm experienced by law-abiding employers when competing businesses misclassify employees as independent contractors. However, the Department disagrees that this rule will increase misclassification, as this rule does not establish a ''more permissive standard'' for independent contracting compared to longstanding judicial precedent and the Department's

[468] The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by the SBA Office of Advocacy. Small Business Jobs Act of 2010, Public Law 111–240, 1601, 214 Stat. 2551 (codified at 5 U.S.C. 604).

[469] *See* section II.H. (describing comments).

[470] The regulatory text for these new examples appears at § 795.115(b)(2)–(3) (addressing digital platform workers) and § 795.115(b)(8)–(9) (addressing truck drivers subject to a lease-purchase agreement). *See also* sections IV.F.1. & 2 (explaining the new examples).

guidance before 2021.[471] To the extent that a clearer analysis (because a worker's correct status under the law will be more apparent) makes it easier as a practical matter for businesses to engage with independent contractors, every small entity will have the opportunity to reconsider whether its workforce is optimally structured. Whether any entity (regardless of size) chooses to employ workers, engage independent contractors, or do both is an operational choice which is beyond the Department's authority to regulate. While the FLSA was passed in part to prevent ''*unfair* method[s] of competition in commerce,'' [472] it was ''obviously not intended to stamp all persons as employees,'' [473] including independent contractors in business for themselves.

AFL–CIO had two other criticisms of Department's IRFA, which, in its view, rendered the IRFA legally deficient. First, AFL–CIO asserted that the IRFA failed to ''meaningfully assess the compliance costs and operational burdens that reclassification imposes on [employees] newly classified [as] 'independent contractors,' '' who would ''assume new responsibilities for tax compliance, insurance, recordkeeping, and business expenses,'' which they often do not have ''the resources or expertise'' to handle efficiently. Second, AFL–CIO asserted that the IRFA failed to provide ''a meaningful alternatives analysis'' by failing to consider ''significant alternatives that would accomplish [the Department's] objectives while minimizing economic impact on small entities.'' AFL–CIO proposed as less burdensome alternatives ''maintaining a fully holistic economic reality standard without factor weighting, or clarifying existing doctrine in a manner consistent with judicial precedent.''

The Department does not find AFL–CIO's additional IRFA critiques persuasive. Although this rule is expected to result in the reclassification of some small number of individuals from an employee classification to an independent contractor classification, this is only anticipated to affect individuals who are economically independent as a matter of economic reality—*i.e.,* independent contractors who are nonetheless classified as employees by businesses in the absence of this rule due to legal uncertainty.[474] Thus, the Department does not anticipate that the rule will result widespread reclassification of employees who are economically dependent on their employers. . While classification as an employee does confer certain rights, benefits, and tax advantages which independent contractors generally do not enjoy, the Department expects that any worker reclassification attributable to this rule will be small because this rule does not change the overarching legal standard for distinguishing between employees and independent contractors under the FLSA, FMLA, and MSPA (*i.e.,* the economic reality test)—it merely clarifies it.

In response to AFL–CIO's criticism that the IRFA failed to consider regulatory alternatives ''such as maintaining a fully holistic economic reality standard without factor weighting,'' the Department notes that the IRFA did consider such an alternative, concluding that the economic reality test reflected in the Department's pre-2021 enforcement policy would not provide clear enough guidance regarding how to weigh the economic reality factors, especially in the modern economy.[475] The Department views the core factor analysis as the most clarifying feature of the proposed rule—a sentiment shared by many small entity commenters.

C. Description of the Number of Small Entities Potentially Affected by the Final Rule

The Department used the Small Business Administration size standards, which determine whether a business qualifies for small-business status, to estimate the number of small entities.[476] The Department then applied these thresholds to the U.S. Census Bureau's 2022 Economic Census to obtain the number of firms with employment or sales/receipts below the small business threshold in the industry.[477] [478] Next, the Department estimated the number of small governments, defined as having population less than 50,000, from the 2022 Census of Governments.[479] In total, the Department estimates there are 6.4 million small establishments or governments.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

As explained more fully above in section VI.D., the only direct costs to affected entities would be rule familiarization costs. This rule lays out the framework for assessing employee or independent contractor status under the FLSA; it does not create any new reporting or recordkeeping requirements for businesses.

The Department assumes that a Compensation, Benefits, and Job Analysis Specialist (SOC 13–1141) (or a staff member in a similar position) would review this rule.[480] According to the OEWS, these workers had a mean wage of $40.54 per hour. Given the clarification to the Department's interpretation of who is an employee and who is an independent contractor, the Department assumes that it would take on average about 1 hour to review the rule. The Department believes that an hour, on average, is appropriate, because while some establishments may spend longer than 1 hour to review the rule, many establishments may rely on third-party summaries of the changes or spend little or no time reviewing the rule. Assuming benefits are paid at a rate of 42 percent of the base wage, and overhead costs are 17 percent of the base wage, the reviewer's effective hourly rate is $64.46. Thus, the average cost per establishment conducting regulatory familiarization is $64.46. The per-entity rule familiarization cost for independent contractors, some of whom would be small businesses, is $12.43, median hourly wage of independent contractors in the CWS ($24.85) multiplied by 0.5 hour. The Department believes that 30 minutes, on average, is appropriate, because while some independent contractors will spend longer than 30 minutes to review the rule, many will spend little or no time reviewing it.

As discussed in section VI.D.3, the Department calculated cost savings for 8.3 million establishments that will experience cost savings due to increased clarity from the rule. Among those establishments, 6.37 million were

[471] *See supra* section VI.G.

[472] 29 U.S.C. 202(a) (emphasis added).

[473] *Portland Terminal Co.,* 330 U.S. at 152.

[474] *See supra* sections III.D. & VI.E.

[475] *See* 91 FR 9972; *see also id.* at 9969.

[476] SBA, Summary of Size Standards by Industry Sector, 2022, *https://www.sba.gov/document/support-table-size-standards.*

[477] The 2022 data are the most recently available with revenue data.

[478] For this analysis, the Department excluded independent contractors who are not registered as small businesses, and who are generally not captured in the Economic Census, from the calculation of small establishments.

[479] U.S. Census Bureau, *2022 Census of Governments, https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html.*

[480] A Compensation/Benefits Specialist ensures company compliance with Federal and state laws, including reporting requirements; evaluates job positions, determining classification, exempt or non-exempt status, and salary; plans, develops, evaluates, improves, and communicates methods and techniques for selecting, promoting, compensating, evaluating, and training workers. See BLS, *Occupational Employment and Wage Statistics Query System, https://data.bls.gov/oes/#/industry/000000* (last updated May 2024).

identified as small businesses with under 500 employees.[481] Annual payroll estimates for these small business establishments totaled $3.46 billion which is approximately 39 percent of total payroll across all businesses regardless of size.[482] The Department applied this percentage to the estimated total cost savings for all employers to derive an estimated 10-year undiscounted cost savings of $2,208 million for small business employers (0.39 × $5,712 million). Over the 10-year analysis period, this yields a cost savings of $1.55 billion at a 7 percent discount rate. Dividing this estimate by the approximately 6.37 million small business firms yields an estimated 10-year cost savings of $243.29 per small employer at a 7 percent discount rate, and an annualized cost savings of $34.64 per small employer at a 7 percent discount rate. The undiscounted cost savings due to increased clarity for each independent contractor, some of whom would be a small business, is $4.44. The Department calculated this cost savings by dividing the total annualized cost savings for independent contractors ($110,128,261) by the number of independent contractors (24,791,667). Over a 10-year period the cost savings per independent contractor is $31.20 at a 7 percent discount rate, or $4.44 annualized at a 7 percent discount rate. Based on this evaluation, presented below in table 4, the Department estimates that the total 10-year cost savings for small business employers and independent contractors is $2.32 billion at a 7 percent discount rate, or $330.94 million annualized at a 7 percent discount rate.

TABLE 4—COST SAVINGS FOR SMALL BUSINESSES AND INDEPENDENT CONTRACTORS

Type of entity	Total cost savings with 7% discount	Per entity	Annualized with 7% discount	Per entity
Sm. Employers	$1,550,881,841	$243.29	$220,810,684	$34.64
Contractors	773,494,822	31.20	110,128,261	4.44
Combined	2,324,376,663	.....	330,938,945	.....

Because regulatory familiarization is a one-time cost and the cost savings from clarity recur each year, the Department expects cost savings to outweigh regulatory familiarization costs in the long run. The annualized cost savings of $36.94 will be far less than 1 percent of the revenue for the smallest of small entities. For example, firms in the residential remodeling and the plumbing, heating, and air-conditioning contracting industries (NAICS 236118 and 238220) with fewer than 5 employees have average annual revenues of $413,317 and $386,166 respectively.[483] $34.64 is about 0.008 percent of the average revenue of the residential remodeling industry and approximately 0.01 percent of the average annual revenue of firms in the plumbing, heating, and air-conditioning contracting industry.[484] The Department therefore certifies that this rule will not have a significant economic impact on a substantial number of small entities.[485]

Potential transfers may be attributed to the reclassification from employee status to independent contractor status due to reduced payroll taxes and benefit costs as independent contractors assume increased tax liabilities and the loss of employer-provided benefits. The Department believes that these transfers are largely offsetting since independent contractors are expected to receive higher gross earnings that compensate for the lost benefits and increased taxes. Small firms may benefit disproportionately since they use independent contractors more than large firms.[486] Additional transfers may occur between competing small businesses, where independent contractor model firms gain advantages over traditional employers, and their service providers. Market imperfections may generate deadweight losses through incomplete wage compensation, higher costs for individually-purchased benefits, and increased tax compliance burdens. Because the overall, net impact on worker compensation is expected to be small, the Department does not expect that the rule should create undue hardship for small businesses since benefits and cost savings outweigh costs.

E. Relevant Federal Rules Duplicating, Overlapping, or Conflicting With the Final Rule

The Department is unaware of any Federal rules which duplicate, overlap, or conflict with the rule.

F. Regulatory Alternatives and Steps Taken To Minimize Economic Impacts on Small Entities

The RFA requires agencies to discuss ''any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.'' [487] In evaluating regulatory alternatives, the department considered whether alternative approaches would minimize economic burdens on small entities.

As discussed in section VI.G., the Department does not believe that it has the legal authority to adopt either a common law or ''ABC'' test to determine employee or independent contractor status under the FLSA, foreclosing the consideration of these alternatives for purposes of the RFA.

The Department also considered adopting WHD's prior enforcement policy as a regulatory alternative. As noted in section VI.G.2., beginning May 1, 2025, WHD applied the analysis from the July 2008 version of Fact Sheet #13, as further informed by Opinion Letter FLSA2025–2, in its enforcement matters.[488] The Department believes that the multifactor balancing test under FAB 2025–1 is neither materially more nor less permissive of independent contractor relationships as compared to the streamlined, core factors analysis set forth in the 2021 Rule,[489] which the Department is largely readopting. However, FAB 2025–1 lacked specific guidance on how to weigh the factors

[481] *See* SUSB,*supra* n.404.

[482] 2022 SUSB total payroll across all establishments is $8,965,035,263. Across establishments with fewer than 500 employees the total payroll was $3,465,049,519 [8,965,035,263 × 0.3865 = $3,465,049,519].

[483] 2022 Statistics of U.S. Businesses (SUSB) Annual Data Tables by Establishment Industry, *https://www.census.gov/data/tables/2022/econ/susb/2022-susb-annual.html.*

[484] ($36.94/$413,317) = 0.0089 and ($36.94/$386,166) = 0.0096

[485] The Department used a total cost estimate of 3 percent of revenue as the threshold for a significant individual impact and set a total of 20 percent of small entities incurring a significant impact as the threshold for a substantial impact on small entities.

[486] Lim et al., supra n.386, at 51.

[487] 5 U.S.C. 603(c).

[488] *See* FAB No. 2025–1 (May 1, 2025).

[489] *See* 86 FR 1240.

when applying the multifactor economic reality analysis and may have left stakeholders without clearer guidance to determine employee or independent contractor status under the FLSA, especially in today's modern economy.[490] For these reasons, the Department decided against retaining FAB 2025–1 for determining employee or independent contractor status.

In addition to the alternatives discussed above, section 603(c) of the RFA describes four categories of regulatory alternatives that might be appropriate for consideration in a FRFA analysis. The Department does not believe that the FLSA is best interpreted to encompass these categories of regulatory alternatives or that they are necessarily applicable to this rulemaking.

1. Differing Compliance or Reporting Requirements That Take Into Account the Resources Available to Small Entities

Nothing in the FLSA or the decades of court decisions interpreting it suggest that a worker's status as an employee or independent contractor should turn on the size of the entity that benefits from their labor. As described earlier, one of the primary goals of the FLSA is to curtail ''unfair method[s] of competition in commerce'' by establishing minimum labor standards that all covered employers must observe.[491] Providing differing compliance or reporting requirements for small businesses would undermine this important purpose of the FLSA. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance and has prepared a small entity compliance guide to accompany this rule, as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA).[492] Therefore, the Department has not adopted differing compliance or reporting requirements for small businesses.

2. The Clarification, Consolidation, or Simplification of Compliance and Reporting Requirements for Small Entities

This rule does not impose any new reporting requirements, and the Department makes available a variety of resources to employers for understanding their obligations and achieving compliance.

3. The Use of Performance Rather Than Design Standards

This rule provides guidance regarding the factors that should be considered regarding a worker's employment status under the FLSA, FMLA, and MSPA, consistent with Supreme Court precedent interpreting statutory language which is common to all three laws. It is unclear whether any performance standards could appropriately determine a worker's status as an employee or independent contractor, and such an approach is foreclosed in any event by judicial precedent.

4. An Exemption From Coverage of the Rule, or Any Part Thereof, For Such Small Entities

Creating an exemption from coverage of this rule for businesses with as many as 500 employees, those defined as small businesses under SBA's size standards, would be inconsistent with the FLSA, which, by its statutory terms, applies to all employers that satisfy the enterprise coverage threshold or employ individually covered employees, regardless of the employer's number of employees. Further, as described above, case law interpreting the distinction between employees and independent contractors under the FLSA does not support such an exemption.

VIII. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately $206 million. State and local government commenters did not quantify alleged unfunded mandate costs. The Department continues to believe that this rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

IX. Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects

29 CFR Part 500

Administrative practice and procedure, Aliens, Employment, Housing, Insurance, Intergovernmental relations, Investigations, Licensing and registration, Migrant labor, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages, Whistleblowing.

29 CFR Part 795

Employment, Wages.

29 CFR Part 825

Administrative practice and procedure, Airmen, Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Penalties, Pensions, Reporting and recordkeeping requirements, Teachers.

For the reasons set out in the preamble, the Department of Labor amends 29 CFR parts 500, 795, and 825 as follows:

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 1. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74, 129 Stat. 584.

■ 2. Amend § 500.20 by revising paragraph (h)(4) to read as follows:

§ 500.20 Definitions.

* * * * *

(h) * * *

(4) The definition of the term *employ* may include consideration of whether an *independent contractor* or *employment* relationship exists under the Fair Labor Standards Act. Under MSPA, questions will arise whether a farm labor contractor engaged by an agricultural employer/association is a bona fide independent contractor or an employee. Questions also arise whether the worker is a bona fide independent contractor or an employee of the farm labor contractor, the agricultural employer/association, or both. These questions should be resolved in accordance with the criteria set forth in

[490] *See* WHD Op. Ltr. FLSA2025–2 at 5 (advising that ''the appropriate weight to give to each factor depends on the facts'').

[491] 29 U.S.C. 202(a)(3).

[492] Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 212, 110 Stat. 858.

§§ 795.105 through 795.110 of this chapter. If it is determined that the farm labor contractor is an *employee* of the agricultural employer/association, the agricultural workers in the farm labor contractor's crew who perform work for the agricultural employer/association are deemed to be employees of the agricultural employer/association and an inquiry into joint employment is not necessary or appropriate. In determining if the farm labor contractor or worker is an employee or an independent contractor, the ultimate question is the economic reality of the relationship—whether there is economic dependence upon the agricultural employer/association or farm labor contractor, as appropriate.

* * * * *

■ 3. Revise part 795 to read as follows:

PART 795—EMPLOYEE OR INDEPENDENT CONTRACTOR CLASSIFICATION UNDER THE FAIR LABOR STANDARDS ACT

Sec.

795.100 Introductory statement.
795.105 Determining employee and independent contractor classification under the FLSA.
795.110 Primacy of actual practice.
795.115 Examples of analyzing economic reality factors.
795.120 Severability.

Authority: 52 Stat. 1060, as amended; 29 U.S.C. 201–219.

§ 795.100 Introductory statement.

This part contains the Wage and Hour Division's general interpretations of the text governing individuals' classification as employees or independent contractors under the Fair Labor Standards Act (FLSA or Act). *See* 29 U.S.C. 201–19. The Administrator of the Wage and Hour Division will use these interpretations to guide the performance of his or her duties under the Act, and intends the interpretations to be used by employers, employees, and courts to understand employers' obligations and employees' rights under the Act. To the extent that prior administrative rulings, interpretations, practices, or enforcement policies relating to classification as an employee or independent contractor under the Act are inconsistent or in conflict with the interpretations stated in this part, they are hereby rescinded. The interpretations stated in this part may be relied upon in accordance with section 10 of the Portal-to-Portal Act, 29 U.S.C. 251–262, notwithstanding that after any such act or omission in the course of such reliance, any such interpretation in this part is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect. *See* 29 U.S.C. 259.

§ 795.105 Determining employee and independent contractor classification under the FLSA.

(a) *Independent contractors are not employees under the Act.* An individual who renders services to a potential employer—*i.e.,* a putative employer or alleged employer—as an independent contractor is not that potential employer's employee under the Act. As such, sections 6, 7, and 11 of the Act, which impose obligations on employers regarding their employees, are inapplicable. Accordingly, the Act does not require a potential employer to pay an independent contractor either the minimum wage or overtime pay under sections 6 or 7. Nor does section 11 of the Act require a potential employer to keep records regarding an independent contractor's activities.

(b) *Economic dependence as the ultimate inquiry.* An ''employee'' under the Act is an individual whom an employer suffers, permits, or otherwise employs to work. 29 U.S.C. 203(e)(1), (g). An employer suffers or permits an individual to work as an employee if, as a matter of economic reality, the individual is economically dependent on that employer for work. *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 727 (1947); *Bartels* v. *Birmingham,* 332 U.S. 126, 130 (1947). An individual is an independent contractor, as distinguished from an ''employee'' under the Act, if the individual is, as a matter of economic reality, in business for him- or herself. Though both employees and independent contractors are dependent on others in some sense, economic dependence in this context means the dependence that a typical employee has on an employer for work, as opposed to an individual who has more of the nature and character of a business owner who has a separate business. Economic dependence does not focus on the amount of income the worker earns, or whether the worker has other sources of income.

(c) *Determining economic dependence.* The economic reality factors in paragraph (d) of this section guide the determination of whether the relationship between an individual and a potential employer is one of economic dependence and therefore whether an individual is properly classified as an employee or independent contractor. These factors are not exhaustive, and no single factor is dispositive. However, the two core factors listed in paragraph (d)(1) of this section are the most probative as to whether an individual is an economically dependent ''employee,'' 29 U.S.C. 203(e)(1), and each therefore typically carries greater weight in the analysis than any other factor. Given these two core factors' greater probative value, if they both point towards the same classification, whether employee or independent contractor, there is a substantial likelihood that is the individual's accurate classification. This is because other factors are less probative and, in some cases, may not be probative at all, and thus are highly unlikely, either individually or collectively, to outweigh the combined probative value of the two core factors.

(d) *Economic reality factors*—(1) *Core factors*—(i) *The nature and degree of control over the work.* This factor weighs towards the individual being an independent contractor to the extent the individual, as opposed to the potential employer, exercises substantial control over key aspects of the performance of the work, such as by setting his or her own schedule, by selecting his or her projects, or through the ability to work for others, which might include the potential employer's competitors. In contrast, this factor weighs in favor of the individual being an employee under the Act to the extent the potential employer, as opposed to the individual, exercises substantial control over key aspects of the performance of the work, such as by controlling the individual's schedule or workload or by directly or indirectly requiring the individual to work exclusively for the potential employer. Requiring the individual to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships) does not constitute control that makes the individual more or less likely to be an employee under the Act. The nature of a particular requirement turns on its substance and practical operation, not the characterization of its purpose. For example, detailed instructions governing how, when, or where the worker must perform the work may indicate control typical of an employment relationship even if described as promoting health or safety or maintaining quality control standards.

(ii) *The individual's opportunity for profit or loss.* This factor weighs towards the individual being an independent contractor to the extent the individual has an opportunity to earn profits or incur losses based on his or her exercise of initiative (such as

managerial skill or business acumen or judgment) or management of his or her investment in or capital expenditure on, for example, helpers or equipment or material to further his or her work, or both. While the effects of the individual's exercise of initiative and management of investment are both considered under this factor, the individual does not need to have an opportunity for profit or loss based on both for this factor to weigh towards the individual being an independent contractor. However, evidence under one consideration pointing to either independent contractor or employee status could be outweighed by more persuasive evidence under the other consideration pointing in a different direction. This factor weighs towards the individual being an employee to the extent the individual is unable to affect his or her earnings or is only able to do so by working more hours or faster.

(2) *Other factors*—(i) *The amount of skill required for the work.* This factor weighs in favor of the individual being an independent contractor to the extent the work at issue requires specialized training or skill that the potential employer does not provide. This factor weighs in favor of the individual being an employee to the extent the work at issue requires no specialized training or skill or the individual is dependent upon the potential employer to equip him or her with any skills or training necessary to perform the job.

(ii) *The degree of permanence of the working relationship between the individual and the potential employer.* This factor weighs in favor of the individual being an independent contractor to the extent the work relationship is by design definite in duration or sporadic, which may include regularly occurring fixed periods of work, although the seasonal nature of work by itself would not necessarily indicate independent contractor classification. This factor weighs in favor of the individual being an employee to the extent the work relationship is instead by design indefinite in duration or continuous.

(iii) *Whether the work is part of an integrated unit of production.* This factor weighs in favor of an individual being an independent contractor to the extent his or her work is segregable from the potential employer's production process. This factor weighs in favor of the individual being an employee to the extent his or her work is a component of the potential employer's integrated production process for a good or service. This factor is different from the concept of the importance or centrality of the individual's work to the potential employer's business.

(iv) *Additional factors.* Additional factors may be relevant in determining whether an individual is an employee or independent contractor for purposes of the FLSA, but only if the factors in some way indicate whether the individual is in business for him- or herself, as opposed to being economically dependent on the potential employer for work.

§ 795.110 Primacy of actual practice.

In evaluating the individual's economic dependence on the potential employer, the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible. For example, an individual's theoretical abilities to negotiate prices or to work for competing businesses are less meaningful if, as a practical matter, the individual is prevented from exercising such rights. Likewise, a business' contractual authority to supervise or discipline an individual may be of little relevance if in practice the business never exercises such authority.

§ 795.115 Examples of analyzing economic reality factors.

(a) *General.* The following illustrative examples demonstrate how the factors listed in § 795.105(d) may be analyzed under the facts presented and are limited to substantially similar factual situations.

(b) *Examples applying core factors.* (1)(i) *Example.* An individual is the owner and operator of a tractor-trailer and performs transportation services for a logistics company. The owner-operator substantially controls the key aspects of the work. However, the logistics company requires the owner-operator to comply with federally-mandated transportation safety rules requiring drug and alcohol testing. The company also requires the owner-operator to meet certain contractually agreed-upon delivery deadlines, and her contract includes agreed-upon incentives for meeting, and penalties for missing, the deadlines.

(ii) *Application.* The owner-operator exercises substantial control over key aspects of her work, indicating independent contractor status. The fact that the company requires the owner-operator to complete certain drug and alcohol testing does not change the above conclusion. This measure is implemented in order to comply with specific legal obligations and to ensure safety, and thus under § 795.105(d)(1)(i) would not constitute control that makes the owner-operator more or less likely to be an employee under the Act. The contractually agreed-upon delivery deadlines, incentives, and penalties are typical of contractual relationships between businesses and likewise would not constitute control that makes the owner-operator more or less likely to be an employee under the Act.

(2)(i) *Example.* An individual earns money by making food deliveries to customers from restaurants and grocery stores. The individual obtains her delivery orders through an application operated by a digital platform company. The company's application gives the individual seconds to accept each delivery order with no information about the time it will likely take to complete the order, the quantity of the food that needs to be delivered, or the minimum guaranteed payment that the company will make to the individual after the delivery order is complete. Moreover, the individual is penalized if she fails to accept a certain percentage of offered delivery orders through demotion in a tiered rewards program tied to each worker's recorded acceptance rate, and such demotion results in the loss of preferred delivery orders. Although there is no prohibition on ''multi-apping,'' the individual has found that it is not possible to maintain a high enough acceptance rate to avoid demotion on the application if she is simultaneously accepting deliveries with other applications.

(ii) *Application.* In this example, the digital platform company is exercising substantial control over the individual by depriving her of meaningful choices, indicating employee status. By withholding relevant information about each order, pressuring her to accept deliveries using a coercive rewards program, and requiring a minimum amount of work with regularity, thus making it practically impossible to ''multi-app,'' the company is exercising substantial control over key aspects of the performance of the work, including the individual's ability to select her own projects, manage the workload, and work for others.

(3)(i) *Example.* An individual earns money by making food deliveries to customers from restaurants and grocery stores. The individual obtains his delivery orders through an application operated by a digital platform company. The company's application allows the individual to decline delivery opportunities without consequence and ''multi-app'' with competing businesses, but the company will terminate the individual's account if he cancels too many accepted deliveries. The company's application dynamically adjusts its pricing for customers

depending on supply and demand and is transparent with the individual about pay for each delivery. The company's application remotely monitors the individual's locations while the application is engaged to efficiently match him to delivery opportunities.

(ii) *Application.* In this example, the individual is exercising substantial control over key aspects of the work, indicating independent contractor status. Specifically, the individual has the discretion to set his own schedule, accept or decline deliveries without penalty, and work for others (including competitors). That the company monitors the location of the individual while the application is engaged, dynamically adjusts prices in response to supply and demand, and terminates the account of individuals with excessive cancellation rates are not indicative of an employment relationship under these facts. Using technology to facilitate business operations does not indicate control over the individual; in fact, in this example, it also serves as an aid for the individual to make informed decisions about delivery opportunities. And termination of an individual's account due to excessive cancellation of accepted deliveries is a quality control measure to ensure food safety and edibility, and timeliness requirements are typical of contractual relationships between businesses.

(4)(i) *Example.* An individual engaged as a farm labor contractor and his crew work for a strawberry grower. The grower requires the individual to work exclusively for the grower for the duration of the harvest season for a payment amount determined by the grower. The individual receives instructions from the grower several times per day, receives a schedule about when the individual and his crew are expected to arrive at and depart from the fields throughout the season, and disciplines crew workers at the grower's request.

(ii) *Application.* In this example, the grower is exercising substantial control over the individual's work, indicating employee status. By requiring the individual to work exclusively for the grower, dictating the wages of the individual and his crew, and managing how the individual and his crew perform the work, the grower is exercising substantial control over key aspects of the performance of the work.

(5)(i) *Example.* An individual engaged as a farm labor contractor and his crew work for a lettuce grower. The individual performs agricultural work for multiple farms besides the grower and determines when he and his crew work for a particular grower. Although the individual closely supervises his crew, the individual operates largely free of supervision from the grower. However, the individual must comply with environmental and quality control requirements specified in his contractual agreement with the grower, such as refraining from the use of certain pesticides and promptly refrigerating harvested produce.

(ii) *Application.* In this example, the individual is exercising substantial control over key aspects of the work, indicating independent contractor status. The individual is both allowed to work for other businesses and actually does so, determines his and his crew's schedule, and works with minimal supervision. That the individual must abide by environmental and quality control requirements specified in his contractual agreement with the grower is not indicative of an employment relationship.

(6)(i) *Example.* An individual accepts assignments from a company that provides an application-based service linking those who need home-repair work with those who perform home-repair work. The individual is able to meaningfully increase his earnings by exercising initiative and business acumen and by investing in his own equipment. The company, however, has invested millions of dollars in developing and maintaining the application, marketing itself, maintaining the security of information submitted by actual and prospective customers and workers, and monitoring customer satisfaction with the work performed.

(ii) *Application.* The opportunity for profit or loss factor favors independent contractor status for the individual, despite the substantial difference in the monetary value of the investments made by each party. While the company may have invested substantially more in its business, the value of that investment is not relevant in determining whether the individual has a meaningful opportunity for profit or loss through his initiative, investment, or both.

(7)(i) *Example.* An individual works full time performing home renovation and repair services for a residential construction company. She is also the part owner of a food truck, which she operates on weekends. In performing the construction work, the worker is paid a fixed hourly rate, and the company determines how many and which tasks she performs. Her food truck recently became very popular and has generated substantial profits for her.

(ii) *Application.* With regard to the construction work, the worker does not have a meaningful opportunity for profit or loss based on her exercise of initiative or investment, indicating employee status. She is unable to profit, *i.e.,* increase her earnings, by exercising initiative or managing investments because she is paid a fixed hourly rate and the company determines the assignment of work. While she earns substantial profits through her food truck, that is a separate business from her work in the construction industry, and therefore is not relevant to the question of whether she is an employee of the construction company or in business for herself in the construction industry.

(8)(i) *Example.* A worker leases a truck from and hauls freight for a motor carrier company. The company determines the rates that it pays the worker for each shipment, does not negotiate those rates, and assigns shipments to the worker without informing him of the rates before he must commit to the shipment. The worker's monthly lease payments to the company may theoretically allow him to purchase the vehicle one day, but the reality of the economic terms of the lease agreement most likely prevents the worker from ever actually reaching that point.

(ii) *Application.* The worker does not have an opportunity to earn profits or incur losses based on the exercise of initiative or management of investment or capital expenditure, indicating employee status. The worker does not exercise initiative in negotiating or establishing the economic terms of the lease or the pay rates because the company sets them. And the worker cannot manage the vehicle as an investment. The worker has no information regarding the pay rate for a shipment when the company offers it to him. Finally, although the lease payments are nominally directed toward eventual ownership, the economic terms of the agreement do not provide a realistic path to owning the truck. The payments therefore function as a recurring cost of obtaining work from the company rather than as a capital investment in an asset the worker can own and manage.

(9)(i) *Example.* A worker leases a truck from and hauls freight for a motor carrier company. The company offers the worker shipments at proposed rates, and the worker is able to negotiate those rates before committing to shipments. When possible, the worker seeks to negotiate a separate shipment for the return leg (*i.e.,* a ''backhaul'') to avoid driving an empty vehicle. The economic terms of the lease agreement actually

provide an opportunity for the worker to own the vehicle in the future.

(ii) *Application.* The worker has an opportunity to earn profits or incur losses based on the exercise of initiative or management of investment or capital expenditure, indicating independent contractor status. The fact that the worker has information regarding the pay rate for a shipment when the company offers it and can negotiate the rate shows initiative and is also relevant to managing the vehicle as an investment. Moreover, the fact that the worker is able at times to secure backhauls for return legs, and thus uses the vehicle to generate additional earnings, is further evidence that the worker manages the vehicle as an investment. Finally, because the economic terms of the lease agreement provide a realistic path to owning the truck, the lease payments indicate a capital investment in an asset the worker can manage, rather than merely a recurring cost of obtaining work from the company.

(c) *Examples applying other factors.* (1)(i) *Example.* An individual works for a commercial construction company and is assigned to the crew that installs roofs on buildings. The company required no roofing skills when he started working for it, and he had no roofing skills when he started. Over his time working for the company, the individual has developed skills through on-the-job experience and training provided by the company.

(ii) *Application.* The work performed by this individual requires no specialized training or skill, and the individual relies on the construction company to provide any training necessary to perform the work. Accordingly, the skill factor weighs in favor of the individual being an employee. The fact that the individual has developed skills over his time at the company does not change that outcome because those skills resulted from on-the-job experience and training provided by the company.

(2)(i) *Example.* An individual performs roofing work for a commercial construction company. He has specialized training in roofing and relies on his own skills to perform the work. The construction company provides him with no training and hired him based on his roofing skills and expertise. The individual touted his roofing skills when securing roofing work from the company and similarly relies on those skills when seeking work from other companies.

(ii) *Application.* This individual brings his own skills to the work and does not rely on the construction company to provide training. Accordingly, the skill factor weighs in favor of the individual being an independent contractor. The fact that the individual used his specialized skills to secure the work would not be considered under this factor, although it could be indicative of initiative to consider under the opportunity for profit or loss factor.

(3)(i) *Example.* A housekeeper works for a ski resort every winter. At the end of each winter, he stops working for the ski resort because the resort shuts down. At the beginning of each of the past several winters, the housekeeper returned to his prior position at the ski resort without formally applying or interviewing.

(ii) *Application.* The housekeeper has a long-term and indefinite work relationship with the ski resort under the permanence factor, which weighs in favor of classification as an employee. That his periods of working for the ski resort end at the end of each winter is a result of the seasonal nature of the ski industry and is thus not indicative of a sporadic relationship. The fact that the housekeeper returns to his prior position each new season indicates that his relationship with the ski resort does not end and is indefinite as a matter of economic reality.

(4)(i) *Example.* An editor works part-time for a digital news outlet. The editor works from home and is responsible for assigning and reviewing many articles published on the outlet's website. Sometimes she also writes or revises articles. The editor is responsible for determining when articles appear on the website and setting deadlines accordingly. She makes assignment and timing decisions in coordination with several full-time editors who make similar decisions with respect to different articles on the same website and who are employees of the outlet.

(ii) *Application.* The editor is part of an integrated unit of production of the digital news outlet because she is involved in the entire production process of the outlet's website, including assigning, reviewing, drafting, and publishing articles. This factor points in the direction of her being an employee of the digital news outlet. This conclusion is further supported by the fact that the editor performs the same work as employees of the outlet in coordination with those employees. The fact that she does not physically work at the outlet's office does not outweigh these more probative considerations of the integrated unit factor.

(5)(i) *Example.* A journalist writes articles for a digital news outlet on a freelance basis. The journalist does not have an office and generally works from home. He submits articles to the outlet periodically, which the outlet may accept or reject. The journalist corresponds with the outlet's editors regarding what to write about or regarding revisions to the articles that he submits, but he is not otherwise involved in deciding the overall editorial content of the website. The journalist never assigns articles to others nor does he review or revise articles that others submit. He is not responsible for determining when his article or any other articles appear on the website.

(ii) *Application.* The journalist is not part of an integrated unit of production of the digital news outlet, indicating independent contractor status. His work is limited to the specific articles that he submits and is completely segregated from other parts of the outlet's processes that serve its specific, unified purpose of producing a news website. It is not relevant in analyzing this factor that the writing of articles is an important part of producing the website. Likewise, the fact that he works at home does not strongly indicate either status, because the nature of the journalist's work is such that the physical location where it is performed is largely irrelevant.

§ 795.120 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 shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof.

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

■ 4. The authority citation for part 825 continues to read as follows:

Authority: 29 U.S.C. 2654; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at sec. 701.

■ 5. Amend § 825.102 by revising paragraph (1) of the definition of ''Employee'' to read as follows:

§ 825.102 Definitions.

* * * * *

Employee * * *

(1) The term *employee* means any individual employed by an employer, and the criteria set forth in §§ 795.105 through 795.110 of this chapter apply to any determination of whether an

individual is an employee or independent contractor;

* * * * *

■ 6. Amend § 825.105 by revising paragraph (a) to read as follows:

§ 825.105 Counting employees for determining coverage.

(a) The definition of ''employ'' for purposes of FMLA is taken from the Fair Labor Standards Act, sec. 3(g), 29 U.S.C. 203(g). The courts have made it clear that the employment relationship under the FLSA is broader than the traditional common law concept of master and servant. The difference between the employment relationship under the FLSA and that under the common law arises from the fact that the term ''employ'' as defined in the Act includes ''to suffer or permit to work.'' The courts have indicated that, while ''to permit'' requires a more positive action than ''to suffer,'' both terms imply much less positive action than required by the common law. The courts have said that there is no definition that solves all problems as to the limitations of the employer-employee relationship under the Act; and that determination of the relation cannot be based on isolated factors or upon a single characteristic or technical concepts, but depends ''upon the circumstances of the whole activity'' including the underlying ''economic reality.'' In general an employee, as distinguished from an independent contractor who is engaged in a business of his or her own, is one who ''follows the usual path of an employee'' and is dependent on the business which he or she serves. The criteria set forth in §§ 795.105 through 795.110 of this chapter apply to any determination of whether an individual is an employee or independent contractor.

* * * * *

Dated: November 17, 2026.

Andrew B. Rogers,

Administrator, Wage and Hour Division.

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