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DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 139

[Docket ID No. DHS-2024-0033]

RIN 1601-AB17

Protection of Federal Property

AGENCY: Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS), in consultation with the U.S. General Services Administration (GSA), proposes to promulgate regulations for the protection of Federal property. Within DHS, Federal Protective Service (FPS) maintains responsibility for the protection of buildings, grounds, and property owned, occupied, or secured by the Federal government. The proposed rule would adopt and revise the language of related-GSA regulations, consistent with DHS' statutory authority, to provide charging options for violations occurring on and adjacent to Federal property, update prohibited conduct to incorporate advancing technology, provide clearer public notice, and apply the regulations uniformly to all Federal property.

DATES: Written comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The electronic Federal Docket Management System will accept comments before midnight eastern time at the end of that day.

ADDRESSES: You may send comments on this notice, identified by Docket Number DHS-2024-0033, through the Federal e-Rulemaking portal at <https://www.regulations.gov>. Follow the website instructions for submitting comments. Comments submitted in a manner other than those discussed in this proposal will not be considered by DHS. Please note that DHS cannot accept any comments that are hand-delivered or couriered. In addition, DHS cannot accept any comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. DHS is also not accepting mailed comments. If you cannot submit your comment using <https://www.regulations.gov>, please contact David Hess by email at FPSNPRM@fps.dhs.gov. For additional instructions regarding submitting comments, see Section I of this notice, “Public Participation” in the SUPPLEMENTARY INFORMATION Section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. David Hess, Deputy Director, FPS Policy, Communications and Engagement, 202-447-0800, FPSNPRM@fps.dhs.gov.

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CFR Code of Federal Regulations

DHS Department of Homeland Security

FSC Facility Security Committee

FMR Federal Management Regulations

FPS Federal Protective Service

FPS LEOs Federal Protective Service Law Enforcement Officers

FR *Federal Register*

GSA U.S. General Services Administration

HSA Homeland Security Act

ISC Interagency Security Committee

MOU Memorandum of Understanding

NARA National Archives and Records Administration

NPRM Notice of Proposed Rulemaking

PSO Protective Security Officer

UMRA Unfunded Mandates Reform Act

U.S.C. United States Code

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written comments, data, or views. DHS also invites comments relating to the economic, environmental, energy, or federalism considerations that might result from this proposed rulemaking action. Comments that will provide the most assistance to DHS in developing this proposed rule will refer to a specific provision of the NPRM, explain the reason for any comments, and include other information or authority that supports such comments.

Instructions: If you submit a comment, you must submit it to DHS Docket Number *DHS-2024-0033*. All submissions may be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at <https://www.regulations.gov>.

Docket: For access to the docket and to read background documents or comments received, go to <https://www.regulations.gov>, referencing the docket number listed above. You may also sign up for email alerts on the online docket to be notified when comments are posted or another *Federal Register* document is published.

II. Background

A. Statutory Authority

In response to the terrorist attacks on September 11, 2001, Congress enacted the Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat 2135 (Nov. 25, 2002) (the Act) to better protect the assets and critical infrastructure of the United States. The Act expressly transfers the authority for law enforcement and related security functions for Federal properties from the GSA to the Secretary of DHS.¹

The Act requires the Secretary to “protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.” 40 U.S.C. 1315(a). The Act further authorizes the Secretary to designate officers and agents “for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.” 40 U.S.C. 1315(b)(1). Thus, in addition to moving the protective mission into DHS, the statute further expanded DHS’s protective coverage to

¹ Section 403(3) of the Homeland Security Act, Pub. L. 107-296, 116 Stat. 2315 (2002), codified at 6 U.S.C. 203(3) (transferred all law enforcement and related security functions of the Federal Protective Service from the Administrator of General Services to the Secretary of Homeland Security).

include duties in areas outside federal property to the extent necessary to protect federal property and persons thereon, as well as authorizing off-property investigations related to the protection of federal property and the individuals on that property. 40 U.S.C. 1315(b)(2)(E).²

In addition, as directly related to this proposed rule, the statute authorizes the Secretary, in consultation with the Administrator of GSA, to “prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property.” 40 U.S.C. 1315(c)(1).

B. History of Federal Facility Protection

1. Federal Works Agency

On June 1, 1948, Congress authorized the Administrator of the Federal Works Agency to appoint uniformed guards to police federal buildings and other areas within the jurisdiction of the Federal Works Agency. Pub. L. 80-566, 62 Stat. 281. The special police were given the same responsibility on federal property as sheriffs and constables to enforce the laws enacted for the protection of persons and property, to prevent breaches of peace, and to address disturbances and unlawful assemblies. The Federal Works Agency published the original rules governing personal conduct at federal facilities in the *Federal Register* on May 26, 1949. *See* 14 FR 2799 (May 27, 1949).

2. U.S. General Services Administration

² *See* 40 U.S.C. 318 (2000) (authorizing appointment of special policeman for GSA in connection with the policing of federal property with authority as sheriffs and constables upon that property.)

One year after the establishment of the Federal Works Agency, Congress abolished it and transferred all its functions, including the protection of federal buildings, to GSA. Pub. L. 81-152, 63 Stat. 377. In September 1961, Congress authorized the GSA Administrator to appoint non-uniformed special police to conduct investigations to protect property under the control of GSA, enforce federal law to protect persons and property, and make arrests without a warrant for any offense committed upon Federal property if a police officer had reason to believe the offense was a felony and the person to be arrested was guilty of the felony. Pub. L. 87-275, 75 Stat. 574.

Pursuant to Pub. L. 87-275, the GSA Administrator formally established the FPS in January 1971 through GSA Administrative Order 5440.46.³ FPS, as a component of GSA, continued to protect federal property and buildings with both uniformed and non-uniformed officers.

3. U.S. Department of Homeland Security

As mentioned above, in 2002 Congress transferred FPS from GSA to DHS with enactment of the Homeland Security Act of 2002 (Pub. L. 107-296). 6 U.S.C. 203. It further authorized the Secretary to designate officers and agents “for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.” 40 U.S.C. 1315(b)(1).

³ See SHAWN REESE, CONG. RSCH. SERV., RS22706, THE FEDERAL PROTECTIVE SERVICE AND CONTRACT SECURITY GUARDS: A STATUTORY HISTORY AND CURRENT STATUS (2009)

Thereafter, in 2009, the DHS Secretary transferred FPS from Immigration and Customs Enforcement to the National Protection and Programs Directorate.⁴ In 2018, Congress passed the Cybersecurity and Infrastructure Security Agency Act, Pub. L. 115-278, renaming the National Protection and Programs Directorate to the Cybersecurity and Infrastructure Security Agency and authorizing the Secretary of Homeland Security to coordinate a transfer or realignment of FPS within DHS.⁵ In 2019, FPS was transferred to the DHS Management Directorate.

C. Federal Protective Service Today

Over the past decade, DHS has encountered a myriad of criminal misconduct directed at and occurring on federal property, including violent acts committed by active shooters, assaults and disturbances committed by competing and conflicting individuals or groups, and increased threats, harassment, and hazards perpetrated or presented by bad-faith actors.⁶ DHS acts to mitigate these threats through the authority of 40 U.S.C. 1315 to protect Federal property owned, occupied, or secured by the Federal government and the persons thereon, and conducts enforcement operations commensurate with threats

⁴ See Press Release, Secretary Napolitano Announces Transfer of Federal Protective Service to National Protection and Programs Directorate (<https://www.dhs.gov/news/2009/10/29/transfer-federal-protective-service-national-protection-and-programs-directorate>) (Oct. 29, 2009) (last accessed July 15, 2024).

⁵ See 6 U.S.C. 452, note (directing reassignment of FPS within DHS). Effective October 1, 2019, the Secretary internally realigned FPS under the Department's Management Directorate.

⁶ See e.g. Rosana Hughes, *Guilty plea after Molotov cocktail damages federal building in Atlanta in 2020*, THE ATLANTA JOURNAL-CONSTITUTION (Oct. 27, 2022), <https://www.ajc.com/news/crime/guilty-plea-after-molotov-cocktail-damages-federal-building-in-atlanta-in-2020/IJQEHRPXX5FD5MUPSOGPISXB24/> (last accessed Sept. 10, 2024); see also, e.g., Aaron Katersky, Josh Margolin, and Meredith Deliso, *Standoff ends after armed man allegedly tried to break into Cincinnati FBI office*, ABC NEWS (Aug. 12, 2022), <https://abcnews.go.com/US/suspect-chased-break-fbis-cincinnati-office-police/story?id=88246982> (last accessed Sept. 10, 2024).

to this mission. Additionally, DHS partners with other federal, state, local, and tribal law enforcement agencies. FPS provides guidance to building owners and tenant agencies on physical security measures to promote public safety at Federal facilities, such as FPS's involvement in the development of a facility's Occupancy Emergency Plan and active shooter trainings. FPS also provides crime prevention education for agencies and individuals and recommends strategies to promote safety.⁷

Specifically, to accomplish the federal property protection mandate prescribed by Congress, the Secretary, through the delegation of 40 U.S.C. 1315 authorities and police powers, relies upon the law enforcement and protective security services provided primarily by FPS.⁸ FPS employs nearly 900 Federal law enforcement officers designated under the Secretary's authority to protect over 8,500 Federal non-military properties and the roughly 1.4 million people who work, visit, or conduct business on those properties across the United States and its territories. FPS officers utilize the police powers prescribed at 40 U.S.C. 1315(b)(2), including enforcement of federal law and regulations, for the protection of property and persons on the property.⁹

As noted, in accomplishing this security mission, FPS currently has authority to enforce GSA regulations at protected GSA facilities. The enforcement activities related to GSA regulations include but are not limited to: inspecting items subject to inspection;

⁷ See Cline Testimony, *supra*.

⁸ See DHS Delegations 0002, Rev. No. 00.4, approved on 10/11/2022, and 02500, Rev. No. 00.1, approved on 11/23/2022. Additionally, pursuant to DHS Delegation 12000, Rev. No. 00.1, law enforcement officers of DHS's Office of the Chief Security Officer, the Federal Law Enforcement Training Center, and the Federal Emergency Management Agency Mt. Weather Police Department may also be delegated enforcement under 40 U.S.C 1315.

⁹ See *Hearing on Examining the Security of Federal Facilities* (Nov. 29, 2023) (Testimony of Richard K. Cline, Director, FPS, Management Directorate, DHS), <https://www.hsgac.senate.gov/hearings/examining-the-security-of-federal-facilities/> (last accessed July 18, 2024).

admitting persons to property; preserving property; controlling vehicular and pedestrian traffic in accordance with signs and directions; and enforcing regulations that prohibit disturbances, possession and use of narcotics and other drugs, use of alcoholic beverages, soliciting, vending, debt collection, posting and distributing materials, taking photographs for news, advertising or commercial purposes; bringing dogs and other animals on Federal property; and possession of weapons and explosives on Federal property. *See generally* 41 CFR part 102-74, Subpart C.

FPS executes its mission by providing integrated security, law enforcement, and protective intelligence capabilities to ensure the Federal Government functions securely. For example, during Fiscal Year (FY) 2022, FPS:

- Responded to, investigated, and mitigated more than 1,292 threats and assaults directed towards federal facilities and their occupants.
- Conducted 58,084 Protective Security Officer (PSO) post inspections, including 47,086 facility security checks.
- Stopped more than 189,462 weapons/prohibited items including knives, brass knuckles, pepper spray, and other items that could be used as weapons or are contraband such as illegal drugs, from entering federal facility entrances during routine checks.
- Made 505 arrests.
- Responded to 17,168 incidents involving people or property.

In addition to enforcing GSA regulations, FPS has criminal jurisdiction that varies based on the jurisdiction of the facility. The Federal government obtains jurisdiction over Federal property through various methods resulting in three types of legislative

jurisdiction discussed below: exclusive, concurrent, or proprietary. When a criminal incident occurs, the response and the applicable criminal laws depend on the facility's legislative jurisdiction: (1) Exclusive Jurisdiction – Federal government has sole law enforcement authority over these lands and only Federal criminal law applies; (2) Concurrent Jurisdiction – Both Federal and state governments have law enforcement authority over the area and both may prosecute those who violate their respective laws; and (3) Proprietary Jurisdiction – States have primary jurisdiction, but Federal laws of general application and agency regulations still apply. For criminal acts, FPS may enforce all Federal laws and regulations and the type of Federal charge is dependent on the type of legislative jurisdiction where the offense occurred. For example, although FPS may enforce all Federal criminal statutory laws, FPS most frequently enforces Title 18 of the U.S. Code, which covers “Crimes and Criminal Procedure.” Title 18 of the U.S. Code covers both general crimes, such as murder and narcotics use, and restrictions particular to Federal facilities, such as prohibitions on weapons and explosives. FPS enforces these laws across all three jurisdictions, with the exception of Title 18 offenses pertinent to special maritime and territorial jurisdiction of the United States. These offenses can only be charged in exclusive and concurrent legislative jurisdictions and cannot be charged in proprietary jurisdictions. The proposed rule would not affect this statutory jurisdiction.

In some circumstances, FPS may enforce state law under the Assimilative Crimes Act (ACA). 18 U.S.C. 13. The ACA applies state law to conduct occurring on Federal lands when the following three criteria are met: (1) the United States has exclusive or concurrent jurisdiction, (2) there is no Federal law covering the conduct, and (3) there is

an applicable state law under the jurisdiction in which the lands are located. However, fewer than 10 percent of GSA facilities are under known concurrent or exclusive jurisdictions, limiting the applicability of the ACA in supporting FPS's mission. FPS may also enforce State and/or Local law via a Memorandum of Understanding or Agreement (MOU or MOA) where such agreements have been entered into with the jurisdictions. In summary, FPS enforces the GSA regulations and Federal law and regulations across jurisdictions. FPS enforces certain state law through the ACA in exclusive and concurrent jurisdictions, or through relevant MOUs or MOAs in concurrent or proprietary jurisdictions.

In further executing this vital mission, FPS LEOs exercise their jurisdictional authority off Federal property to the extent necessary to protect federal property and persons on the property. This off-property enforcement is spatially limited by the requirement of a nexus between the off-property enforcement action and the nature of the criminal offense directed at the federal property or persons on that property. In other words, FPS LEOs are authorized to take enforcement action for off-property conduct that affects the federal property. For example, FPS LEOs may take enforcement action where a person, located off of federal property, fires a weapon at a federal building. 40 U.S.C. 1315(b)(1). Relatedly, FPS LEOs may act without geographical limitation where conducting investigations of off-property offenses that may have nevertheless been committed against property owned or occupied by the Federal government or persons on the property. For example, FPS LEOs may investigate a threat against a government employee without regard to whether the threat occurred on federal property. 40 U.S.C.

1315(b)(2)(E). In sum, FPS is authorized, and does, make arrests for off-property federal offenses committed against federal property or persons located thereon.

The charging options available to FPS LEOs, however, vary for off-property conduct. Specifically, as noted above, the GSA regulations cannot be used as they only apply when the prohibited activity is on the GSA property, in which case persons who commit low-level offenses on federal property may be cited and released under the GSA regulations (also referred to as the “Federal Management Regulation (FMR)”). To illustrate the difference in charging options between off-property and on-property conduct, consider the case of two individuals who both throw a brick at a Federal building causing damage to the Federal property. The charging options will differ based on where the individuals were standing. If one of the individuals is standing on Federal (GSA) property, the government has the option to charge that individual under the FMR or under 18 U.S.C. 1361. In comparison, an individual who commits the same conduct one foot off Federal property cannot be cited under the FMR; instead, charging options are limited to 18 U.S.C. 1361 (or under state law where appropriate).¹⁰

In sum, through its protection mission, DHS ensures the continuity and resilience of important government capabilities and functions. FPS law enforcement officers and contract security personnel support the enforcement of laws and regulations governing Federal buildings, maintain law and order, and protect life and property in workplaces controlled by the Federal Government.

¹⁰ Non-federal charges are either a result of FPS enforcing local laws through a Memorandum of Understanding (MOU), or by local authorities bring charges. *See* 40 U.S.C. 1315(e).

III. Comparison to GSA’s Federal Management Regulations

The General Service Administration (GSA)’s Federal Management Regulations (FMR) currently include provisions in Title 41 of the Code of Federal Regulations (CFR) Part 102-74, Subpart C, Conduct on Federal Property, that function as Class C Misdemeanor crimes subject to maximum penalties of 30-days’ imprisonment, \$5,000 fine, or both, consistent with 40 U.S.C. 1315(c)(2), 18 U.S.C. 3559(a)(8) (term of imprisonment), and 18 U.S.C. 3571(b)(6) (fines). FPS charges these FMR provisions by issuing a written citation akin to a traffic ticket. The FMR provisions provide FPS officers low-level charging authority for the types of criminal misconduct routinely encountered while protecting federal property and occupants on the property across the Nation, as discussed in section II.C.

DHS is proposing to mirror the requirements in part 102-74, *Federal Management Regulations*, in a new Part 139, *Conduct on Federal Property*, in Title 6 to ensure the protection of federal property under the Secretary’s purview and the responsibility for such protection is clearly communicated to employees and visitors at Federal property. DHS welcomes comments on all the proposed changes set out in this proposed rule.

For purposes of comparison and ease of reference, DHS provides the following distribution table listing the proposed rule and, as relevant, the current GSA FMR governing conduct for the protection of federal property as located in Title 41 of the Code of Federal Regulations (CFR).

<u>DHS Title 6 section</u>	<u>FMR section</u>
6 CFR 139.1 (Purpose)	N/A

6 CFR 139.5(a)	41 CFR 102-74.5
6 CFR 139.5(a)	41 CFR 102-74.365
6 CFR 139.5(b)	41 CFR 102-74.455
6 CFR 139.5(c)	41 CFR 102-74.15
6 CFR 139.5(d)	41 CFR 102-74.365
6 CFR 139.10 (Assessments)	N/A
6 CFR 139.15	41 CFR 102-71.20
6 CFR 139.20	41 CFR 102-74.370
6 CFR 139.20	41 CFR 102-74.375
6 CFR 139.25	41 CFR 102-74.380
6 CFR 139.30	41 CFR 102-74.385
6 CFR 139.35	41 CFR 102-74.390
6 CFR 139.40	41 CFR 102-74.395
6 CFR 139.45	41 CFR 102-74.400
6 CFR 139.50	41 CFR 102-74.405
6 CFR 139.55	41 CFR 102-74.410
6 CFR 139.60	41 CFR 102-74.415
6 CFR 139.65	41 CFR 102-74.420
6 CFR 139.70	41 CFR 102-74.430
6 CFR 139.75(a)	41 CFR 102-74.440
6 CFR 139.75(b)	41 CFR 102-74.435
6 CFR 139.80	41 CFR 102-74.425
6 CFR 139.85	41 CFR 102-74.450

IV. Proposed Rule

To better execute the Secretary's statutory mission to protect federal property and persons on and off the property pursuant to 40 U.S.C. 1315, the proposed rule would create new DHS regulations that conform with the Secretary's statutory authority at 40 U.S.C. 1315. DHS developed this proposed rule in consultation with GSA and by using the current criminal regulations governing personal conduct on federal property found in 41 CFR Part 102-74, Subpart C, of the FMR as a guidepost.¹¹ The current FMR, however, is applicable only to GSA property (rather than all property protected by FPS), and applies only when the conduct is committed on the property itself and not adjacent thereto. Accordingly, the current regulations are not as comprehensive as contemplated by 40 U.S.C. 1315 in accomplishing DHS's statutory mission to protect federal buildings. The proposed rulemaking is meant to close these enforcement gaps. Informed by lessons learned from terrorist attacks and other criminal misconduct, the proposed rule is also intended to address the day-to-day criminal activity encountered by DHS on Federal property by proposing responsive updates to the personal conduct regulations that provide a more current, flexible, and consistent law enforcement tool.

The primary changes brought about by the proposed rule would bring the criminal regulations out from GSA and under DHS; expand charging options for offenses

¹¹ DHS's proposed rule would not include non-criminal rules; specifically, 41 CFR 102-74.426 (permitting breastfeeding on federal property) and 41 CF.R. 102-74.445 ("Federal agencies must not discriminate by segregation or otherwise against any person or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property."). As these two rules do not relate to DHS' mission of protecting federal property, and remain under GSA's mission of maintaining federal property, they are not included in the proposed rule.

committed on non-GSA property and promote charging consistency across federal facilities protected by DHS; modernize the personal conduct regulations to address current societal and technological advances, e.g., electronic cigarettes and unmanned aircraft systems (UAS); provide clearer guidance and notice of prohibited conduct to the public; and permit the charging of regulatory violations occurring near or adjacent to federal property.

By expanding the scope of the regulations to off-property conduct and non-GSA buildings, FPS is able to meet several enforcement needs while adhering to its statutory authority under 40 U.S.C. 1315.¹² First, DHS can more effectively effectuate crowd management by citing and releasing criminal actors rather than requiring an arrest and detention, thus permitting officers to respond to more serious criminal activity and preserve limited detention resources. Second, regulatory charges serve to fill the void where there is no applicable federal statutory charge applicable to the conduct and no MOU permitting DHS to charge state or local offenses. Further, regulatory charges serve as a lower-level charging option for subjects whose criminal conduct is less significant and does not warrant higher level charges under Title 18. These proposed revisions would also promote equity by allowing the same charging options for individuals committing the same conduct regardless of whether they are standing on or merely adjacent to the property.

¹² DHS is statutorily authorized to protect areas outside the federal property to the extent necessary to protect the property and persons on the property, 40 U.S.C 1315(b)(1), and the proposed rule would facilitate that protective mission by providing the charging authority to be commensurate with DHS's statutory enforcement authority.

Relatedly, the proposed regulations would provide updated criminal regulatory charging violations that are directly targeted, relevant, and applicable to the criminal misconduct encountered by FPS in the regular course of enforcement and operational efforts to protect the federal property and persons on the property.

Furthermore, while the rule also covers non-GSA facilities, the proposed rule is limited in that it would only apply to the federal property protected by DHS pursuant to the Secretary's authority under 40 U.S.C. 1315. Nothing in the proposed rule would alter the current landscape of authorities that permit federal agencies with their own realty authority to seek security and law enforcement services outside DHS. *See* 40 U.S.C. 1315(g). In particular, the provisions in this proposed rule would not be imposed upon federal agencies that do not otherwise procure security and law enforcement services from DHS. For example, under 38 U.S.C. 901, the Secretary of Veterans' Affairs has authority to prescribe regulations to provide for the maintenance of law and order and the protection of persons and property on VA property. These rules do not limit or alter the ability of VA or other agencies to maintain security not currently under FPS protection.

Subpart A—General

Proposed Subpart A would establish the purpose, applicability, assessments, and definitions relevant to FPS's proposed regulations. Proposed Subpart A corresponds to GSA regulations, as set out in the distribution table, which describe the purpose, applicability, assessments, and definitions related to the existing FMR governing personal conduct on GSA-operated Federal property.

Proposed Subpart A shifts the focus of these provisions from more general provisions outlining conduct on federal property to detailing the criminal nature of the

prohibited conduct as well as modernizing definitions to meet the expanded mission prescribed in 40 U.S.C. 1315, and corresponding operational needs. Congress expanded the DHS mission-set from the limited protection of property under the authority of GSA to directing the Secretary of Homeland Security to protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

The Secretary accomplishes this statutorily-mandated federal property protection mission, in large part, by and through the delegation of authorities and duties to designated officers and agents of the FPS. FPS protects approximately 8,500 federal facilities, including both GSA-operated facilities and other non-GSA federal property such as DHS and HHS Federal properties.¹³

Under the existing FMR, FPS is limited to charging the misconduct proscribed in the regulations only for conduct occurring in or on GSA-operated property even though FPS protects both non-GSA federal property and responds to criminal misconduct that occurs off-property but directly affects, threatens, or endangers the federal property and its occupants (i.e., persons standing across the street or sidewalk from federal property throwing objects at the property and its occupants, or persons blocking access to federal property while standing a few feet off the property line). *See* 41 CFR 102-74.365 (“The rules in this subpart apply to all property under the authority of GSA and to all persons

¹³ *See* Cline Testimony, *supra*.

entering in or on such property.”).¹⁴ Additionally, there are circumstances where, because the property is not leased or owned by GSA, the FMR rules are inapplicable despite being protected by FPS.

Subpart A would allow DHS to provide FPS protection to all property protected by FPS, not just GSA-operated property. 6 CFR 139.5 (proposed). The proposed regulations would also fill a critical enforcement gap by providing additional charging options when responding to criminal misconduct that occurs on the federal property *and* adjacent off-property misconduct that otherwise affects, threatens, or endangers the federal property and its occupants consistent with 40 U.S.C. 1315(b)(1) and 40 U.S.C. 1315(b)(2)(E). 6 CFR 139.5 (proposed). The above is consistent with the statute, which does not distinguish between GSA and non-GSA federal property; authorizes DHS enforcement in areas outside the property to the extent necessary to protect the property and persons on the property; and permits off-property investigations for offenses that may have been committed against federal property or persons on the property. 40 U.S.C. 1315(a)-(b), (b)(2)(E).

Section 139.1 Purpose

Section 139.1 would establish that the purpose of new part 139 is the protection of federal property and persons located on the property. It mirrors the statutory authorization from Congress in 40 U.S.C. 1315(a), which directs the Secretary, by and through designated law enforcement officers, to protect federal property and persons on

¹⁴ See *United States v. Holdsworth*, 990 F. Supp. 1274 (D. Col, Jan. 21, 1998) (GSA regulation prohibiting conduct that impeded or disrupted the performance official duties inapplicable to defendant who sent repetitive and threatening faxes from his home and off federal property.).

the property.

Section 139.5 Scope, Applicability, and Agency Cooperation

Section 139.5(a) would set forth the scope and applicability, establishing to whom and on what properties the regulations would apply. Specifically, it proposes to apply to all federal property under the protection responsibility of the Secretary and all persons on such property. As described above and pursuant to the authority granted in 40 U.S.C. 1315(b)(1), these proposed regulations would also apply to non-GSA properties and areas outside the Federal property to the extent necessary to protect the property and its occupants.

The existing FMR, located in 41 CFR, Subpart C, are, as stated in 41 CFR 102-74.365, limited in application to property under the authority of GSA and to persons entering in or on such property. The limited applicability of the existing FMR creates an inconsistency with the enabling statutory authority in 40 U.S.C. 1315 and leads to operational enforcement deficiencies. Specifically, as described previously, under the current regulations, DHS cannot readily utilize the FMR as charging authority either when protecting non-GSA Federal property, as authorized by 40 U.S.C. 1315(a), or when responding to misconduct that occurs off the federal property yet affects, threatens, or endangers the property and/or its occupants. Thus, the charging decisions under the current regulatory scheme may depend upon the nature of the property (GSA vs. non-GSA) or whether the individual is on the property, rather than the nature and effect of the criminal violation.

The existing FMR, violations of which function as comparatively low-level Class C Misdemeanor crimes that can be charged through issuance of a written citation or the

functional equivalent of issuing a traffic ticket, provides the most relevant charging authority for the types of misconduct FPS typically encounters during these incidents, including trespass, failure to follow lawful directions, and creating disturbances. The FMR's current limited application creates, at the very least, the potential for inconsistency in charging authority. For example, on GSA-operated property FPS may charge FMR violations as misdemeanor crimes; for non-GSA operated property, however, FPS must look to Title 18 of the U.S. Code or available state and local charging authority, including felony crimes, for the same or similar violations on non-GSA property.¹⁵ By contrast, the proposed regulations would allow FPS to charge under the regulations regardless of whether the individual committed the offense on non-GSA federal property protected by FPS, off the property, or on GSA property, lending to consistency for charging options.

For example, FPS has encountered situations where individuals gathered on the city street or sidewalk immediately adjacent to federal property protected by FPS and formed human barricades, strategically placed spike-boards (i.e., plywood with nails protruding), and thrown objects at the federal property and/or occupants. While FPS LEOs conducted investigations of this off-property criminal activity consistent with 40 U.S.C. 1315(b)(2)(E), available charging authority was an operational issue as the

¹⁵ In these instances, DHS can enforce state and local laws where there is an applicable MOU with local authorities allowing FPS to charge under state/local laws. *See* 40 U.S.C. 1315(e). Alternatively, DHS may contact local authorities, wait for an officer to respond to the scene, and request the local authorities charge the individuals.

misconduct did not occur “in or on” the federal property as required by 41 CFR 102-74.365.¹⁶

This proposed provision would address both the operational inconsistency between the scope of the Secretary’s statutory 40 U.S.C. 1315 authority and applicability of the corresponding regulatory authority, and the operational deficiencies caused by the limited applicability of the FMR. Section 139.5(a) would extend application of the proposed regulations to match the scope of the statutory authority provided by Congress in 40 U.S.C. 1315. The expanded applicability in proposed § 139.5(a) is both contemplated by the language of the statute and necessary for the protection and administration of all federal property under the Secretary’s protection responsibility. In addition, it would both ensure the most relevant charging authority is readily available for when crimes occur which affect Federal property.

As guidance for the application of this proposed rule to areas outside federal property, DHS looks to the Department of Agriculture’s Forest Service’s similar rulemaking that covers protection of forests. Just as 40 U.S.C. 1315(c) authorizes the Secretary of DHS to “prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property,” the Department of Agriculture’s Forest Service is authorized to “make such rules and regulations and establish such service as will insure the objects of such

¹⁶ See Arun Gupta, *How Portland Occupies Shut Down ICE*, IN THESE TIMES (Jul. 2, 2018), <https://inthesetimes.com/article/how-portland-occupiers-shut-down-ice> (last accessed July 18, 2024); see also Dirk VanderHart, *ICE Temporarily Shuttters Portland Facility Due to ‘Occupy’ Protest*, OPB (Jun. 20, 2018), <https://www.opb.org/news/article/portland-occupy-ice-building-closed/> (last accessed July 18, 2024).

reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction.” *See* 16 U.S.C. 551. In 36 CFR 261.1(a), the Forest Service’s implementing regulatory provisions, the Forest Service expressly extends the scope of application to both prohibited conduct that occurs in the or on the National Forest System, as well as misconduct that “affects, threatens, or endangers” Federal property administered by the Forest Service. In 2014, the U.S. Court of Appeals for the Ninth Circuit affirmed the constitutional validity of this analogous Forest Service regulation in *U.S. v. Parker*, 761 F.3d 986, 990-991 (9th Cir. 2014). The Court specifically recognized that regulations extending to activities that “affect, threaten, or endanger” property administered by the Forest Service fit within the agency’s statutory authority at 16 U.S.C. 551 to make needful rules and regulations for federal property protection. Here, the proposed rule would similarly extend FPS’s ability to charge conduct that affects, threatens, or endangers federal property protected by FPS consistent with 40 U.S.C. 1315(c).

Section 139.5(b) would establish the applicability of the proposed part by affirming that these regulations may not be interpreted to invalidate any other federal, state, or local law or regulation applicable to the property. To that end, § 139.5(b) specifically states that nothing in the proposed part restricts the authority of GSA or another relevant government entity to promulgate regulations related to federal property under its jurisdiction, custody, or control. Section 139.5(b) would be functionally identical to the existing provision in GSA’s FMR, codified at 41 CFR 102-74.455. The only textual changes that § 139.5(b) are to affirm GSA’s regulatory authority.

Section 139.5(c) would state the cooperation responsibilities of Federal agencies that operate or otherwise occupy space as tenants at Federal property under the Secretary's protection responsibility. Cooperation responsibilities include following all relevant provisions of the proposed rule, reporting all crimes and suspicious circumstances, providing training to employees regarding protection and emergency-situation responses, making recommendations for improved security, and posting all notices requested by DHS. Proposed § 139.5(c) is substantively identical to the existing provision in GSA's FMR at 41 CFR 102-74.15. Cooperation is important because federal tenant agencies and their employees, customers, and visitors provide vital, first-hand information and insight regarding activities that trigger security concerns or otherwise warrant law enforcement responses. For instance, federal employees regularly report incidents of suspicious loitering, harassment, or unattended items left on federal property, as well as express interest in active shooter and other emergency response training.

Section 139.5(d) would state the notice requirement in the proposed rule. It would require the Facility Security Committee (FSC) or the highest-ranking official of the sole federal agency occupant or designee to post a Notice of the rules governing personal conduct affecting federal property in a conspicuous place at each federal property under the Secretary's protection. A conspicuous place is any location on federal property where persons entering the property will likely see it. The notice would be approximately 11 inches by 14 inches and describe generally the rules and regulations governing personal conduct contained in new Part 139, and would be similar to the existing notice provision in GSA's FMR at 41 CFR 102-74.365. The notice would

ensure federal stakeholders and the general public are aware of the substantive content of this proposed part, including specific definitions, rules of behavior, prohibited conduct, and potential penalties for violations. The text of § 139.5(d) would reflect the realignment of the general applicability provisions and emphasize the responsibility of the FSC or the highest-ranking official of the sole federal agency occupant or designee to ensure written notice is posted.

Section 139.5(d) would also provide that DHS prescribe the notice on its website so that it can be updated to reflect the most user-friendly content for the public. DHS is considering the use of a QR code, weblink or other uses of technology to ensure the information is easily available to visitors of federal facilities. The notice requirement in § 139.5(d) is necessary for the protection and administration of federal property under the Secretary's protection to ensure the substance of the regulations, including prescribed penalties, in the proposed part is clearly communicated and otherwise imparted to employees and visitors at federal property.¹⁷ DHS notes that the burden to post such notice falls on the Federal agency.

Section 139.5(e) proposes that the operational implementation date for the regulations would occur six months after publication of the final rule in the *Federal Register*. During this period, GSA would conduct a review of its FMR in-light-of the newly published DHS regulations in this proposed rule, and GSA may consider eliminating, realigning, or otherwise modifying their FMR to avoid confusion or

¹⁷ In addition to this notice requirement found in 40 U.S.C. 1315(c)(1) that addresses rules governing personal conduct affecting federal property, see 41 C.F.R. Part 102-81 that assigns responsibility to an occupant agency, if it is the only Federal occupant agency in the building, or the Facility Security Committee, for determining and enacting countermeasures and other security-related actions.

duplication between the two sets of regulations. In addition, DHS would undertake officer training and publication of written signage specific to the requirements of the new part to ensure both DHS officers and agents designated under 40 U.S.C. 1315 are trained on enforcement of the newly published regulations, and written signage is provided for posting at federal property under DHS protection. DHS specifically requests comments on whether a six-month delay in effective date is appropriate.

Section 139.10 Assessments for Protective Services

Section 139.10 would state the Secretary's authority to charge federal agencies under the Secretary's protection for the law enforcement and protective security services provided to those agencies by FPS. The FPS security fees charged to federal tenant agencies are authorized in accordance with the Secretary's statutory authority, codified at 40 U.S.C. 586(c), which authorizes any federal executive-branch agency to charge for services provided to other agencies receiving the services. Section 139.10 would also be consistent with the Secretary's statutory authority, codified at 6 U.S.C. 203(3) and 232(a) and 40 U.S.C. 1315, to protect federal property and persons on the property utilizing FPS personnel and assets.

FPS is a fee-funded law enforcement entity, meaning FPS is entirely funded by the security fees collected from the federal tenant agencies FPS protects.¹⁸ FPS collected

¹⁸ Congress originally prescribed statutory authority, codified at 40 U.S.C. 121 (formerly cited as 40 U.S.C. 486), for the GSA Administrator to prescribe regulations necessary for the administration of GSA-operated Federal property, and authority at 40 U.S.C. 586 authorizing Federal agencies other than GSA to impose fees for services at such Federal property. Consistent with these statutory authorities, GSA prescribed a regulation in the FMR at 41 CFR 102-85.135 that authorizes DHS (and other Federal agencies besides GSA) to charge for services furnished to Federal tenant agencies, including law enforcement and protective security services furnished by FPS.

security fees through GSA while the two entities were organizationally aligned. In 2003, Congress expressly transferred GSA's law enforcement and protective security functions, including personnel, assets, and liabilities of FPS, to the Secretary of Homeland Security with the passage of sections 403 and 422 of the Homeland Security Act (6 U.S.C. 203(3) and 232(a)). Section 232(a) specifies that nothing in the statute shall affect GSA's functions or authorities, with the exception of law enforcement and related security functions which were transferred to the Secretary. Accordingly, Congress vested the Secretary with the authority to assess and collect fees for the law enforcement and protective security services provided by FPS in furtherance of the Secretary's statutory responsibility to protect federal property and its occupants.

FPS remains entirely fee funded; FPS relies upon the collection of security fees to execute the Secretary's statutory law enforcement mission under 40 U.S.C. 1315 by providing law enforcement and protective security services at approximately 8,500 federal facilities nationwide, including both GSA-operated and non-GSA Federal properties. Accordingly, the assessments provision in § 139.10 provides federal stakeholders a direct, unambiguous statement of the Secretary's authority to assess and collect security fees from the federal tenant agencies that utilize FPS law enforcement and protective security services.

Section 139.15 Definitions

Section 139.15 would state the definitions of key words and phrases used throughout the substantive provisions in the proposed part. In developing the definitions in the proposed rule, DHS sought guidance from other federal agency regulations,

comparable statutory definitions in the U.S. Code, existing definitions in the GSA FMR, or relevant policy guidance related to the protection of federal property.

GSA's FMR definitions section at 41 CFR 102-71.20 is largely specific to key words and phrases related to GSA's mission of administering the business and logistical aspects associated with Federal real estate, as opposed to key words and phrases related to the Secretary's law enforcement and protective security mission. For, example, the current FMR do not define the terms "facility security committee," "protective security officer," and "security personnel," all of which are defined in proposed § 139.15 and integral to understanding the protective security and law enforcement services provided at Federal property protected by the Secretary. The proposed rule also includes definitions for "crime of violence," "tobacco product," "unmanned aircraft," and "unmanned aircraft system" to add meaning and clarity to new substantive provisions in the prohibited conduct provisions described in § 139.35.

For a starting point in drafting the proposed rule, DHS utilized as guidance other statutory and regulatory definitions, or logical derivatives thereof, that relate to the same or substantially similar subject matter that is included in the proposed rule. To that end, proposed §139.15 defines the following terms using the same or substantially similar definitions from GSA's existing FMR at 41 CFR 102-71.20: "building manager/property manager/facility manager" (referred to as "Federal agency buildings manager" in FMR), "designated official," "emergency," and "public area." Section 139.15 also uses the same definition of "gambling per se" as found in the FMR at 102-74.395(b) and derives the definition of "nuisance" from the disturbances provision in the FMR at 41 CFR 102-74.390.

Section 139.15 would also include language from the authority in 40 U.S.C. 1315(a) to define “Secretary” as specific to the Department of Homeland Security Secretary and “Federal Government” as inclusive of any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof. DHS derived the definitions of “federal property,” “federal grounds,” and “federal facility” from 40 U.S.C. 1315 to clarify that Congress authorized the Secretary to protect federal property, which is an umbrella term that includes both federal facilities (buildings and physical structures) and federal grounds (the land operated by GSA or another Federal agency). DHS also derived the definition of “security personnel” from 40 U.S.C. 1315(b), which authorizes the Secretary to designate specific officers and agents, including FPS personnel, for duties in connection to the protection of federal property and persons on the property.

In addition, Section 139.15 would define the following terms with the same or substantially similar definition from an analogous statutory authority: “aircraft,” “unmanned aircraft,” and “unmanned aircraft system,” which appear in the prohibited conduct provisions in § 139.35(k), (l), with the same definitions used in Federal aviation law at 49 U.S.C. 40102(6) (defining aircraft) and 44801(12) (and the implementing regulation at 14 CFR 1.1 ((defining unmanned aircraft system))); “crime of violence,” which appears in the criminal threats prohibition in § 139.35(f), with the same definition in the elements clause at 18 U.S.C. 16(a); “dangerous weapon,” which appears in the prohibited carriage and possession provision at § 139.75(a), with the same definition in Federal firearms law codified at 18 U.S.C. 930(g)(2); “labor organization,” which appears in § 139.55(b) as one of the categories of persons exempt from the general prohibition on soliciting, with the same definition in the Civil Service Reform Act

codified at 5 U.S.C. 7103(a)(4); “service animal,” which appears in the animals provision in § 139.80, with the same definition as the Department of Justice regulation at 28 CFR 36.104 that implements the Americans with Disabilities Act, Pub. L. 101-336, 104 Stat. 327;¹⁹ and “tobacco product,” which appears in the prohibited conduct provision in § 139.35(j), with substantially the same definition as the Food, Drug, and Cosmetics Act codified at 21 U.S.C. 321.

DHS also reviewed regulations promulgated by other federal agencies with similarly aligned law enforcement entities or statutory law enforcement authority, such as the Department of Interior’s National Park Service, Department of Agriculture’s Forest Service, and Department of Defense’s Army Corps of Engineers as guidance. Section 139.15 derives the definitions of “camping” and “open container” from analogous provisions in the Park Service regulations at 36 CFR 1.4 (camping), and 4.14 (open container). Section 139.15 would use a substantially similar definition for “damaging” as found in the Forest Service regulation at 36 CFR 261.2. The proposed definitions of

¹⁹ Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, or comfort or companionship do not constitute work for purposes of this definition. Proposed § 139.80 is similar to the Department of Justice (DOJ) definition at 28 CFR 36.104 of service animal as limited to trained dogs. This modification to the definition of service animal is made to provide uniformity and ensure operational consistency with DOJ’s implementation of the Americans with Disabilities Act. It is noted that while the DOJ definition is limited to dogs, Titles II and III of the ADA include a requirement of modification of policies, practices or procedures to permit the *use* of miniature horses when certain requirements are met. *See* Legal Brief: Service Animals and Individuals with Disabilities Under the Americans with Disabilities Act (ACA) adala.org) (2019)(last accessed July 18, 2024).

“littering” and “vehicles” are similar to definitions in the Army Corps of Engineers regulations at 36 CFR 327.2 (vehicles) and 327.9 (sanitation).

Section 139.15 also would include definitions of “audio recording” and “image recording” that are similar to the “audiovisual” class of definitions found in the National Archives and Records Administration (NARA) regulation at 36 CFR 1237.4(b). The definition of “commercial purpose” is similar to the Rules for Filming, Photographing, or Videotaping on NARA Property or in NARA facilities at 36 CFR 1280.40. The term “tobacco product” would be defined in proposed § 139.15 as any item made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product. This definition of tobacco product in the proposed rule is consistent with the definition in Federal Food, Drug, and Cosmetic Act (FFDCA) at 21 U.S.C. 321(rr), which is incorporated into the FDA regulations at 21 CFR 1140.3 and 1140.2 and includes electronic nicotine delivery systems (ENDS), including e-cigarettes, e-hookah, e-cigars, e-pipes, personal vaporizers, and vape pens *See* 81 FR 28974 (May 10, 2016). However, the FFDCA definition of “tobacco product” includes “any product made or derived from tobacco, *or containing nicotine from any source*, that is intended for human consumption, including any component, part, or accessory of a tobacco product.” 21 U.S.C. 321(rr) (italics added). The definition of tobacco products proposed at § 139.15 would not include accessories that merely facilitate the use of tobacco products such as ashtrays, spittoons, and clips, as the mere possession of these items without use of nicotine does not impact the safety or security of the federal building or its occupants.

Finally, § 139.15 would utilize relevant federal property protection and security policy to define the following terms: “building,” “facility security committee,” “Federal tenant,” “personal property,” “protective security officer,” and “secure area.” Section 139.15 would use definitions for these terms from policy guidance and standards established either by FPS, or the DHS Interagency Security Committee. *See* Executive Orders 14111 and 13286²⁰; *see also* CISA, ISC Standard: Risk Management Process, <https://www.cisa.gov/resources-tools/resources/isc-standard-risk-management-process>, (2024)(last accessed April 15, 2024).²¹

Subpart B—Personal Conduct Affecting Federal Property

Proposed Subpart B would contain sections related to specific personal conduct affecting Federal property protected by the Secretary to be codified at 6 CFR 139.20-85. Proposed Subpart B corresponds to GSA regulations, currently codified at 41 CFR 102-74.370-450, which describe the rules, prohibitions, and exceptions associated with inspections, admissions, preservation of property, conformity with written and verbal instructions, disturbances, gambling, narcotics, alcoholic beverages, solicitation, distribution and posting, photography and recording, animals, vehicular traffic, weapons possession, and the associated penalties for violations.

²⁰ E.O. 14111, *Interagency Security Committee* (88 FR 83809 (Nov. 27, 2023)) and E.O. 13286, *Amendment of Executive Orders, and Other Actions, in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security* (68 FR 10617 (Mar. 5, 2003)).

²¹ Definition of Facility Security Committee: A committee that is responsible for addressing facility-specific security issues and approving the implementation of security measures and practices. The Facility Security Committee (FSC) consists of representatives of all Federal tenants in the facility, the security organization, and the owning or leasing department or agency. In the case of new construction or pending lease actions, the FSC will also include the project team and the planned tenant(s). The FSC was formerly known as the Building Security Committee “BSC.”

Based upon the jurisdictional authority outlined in 40 U.S.C. 1315, proposed Subpart B would contain more preservation of property and prohibited conduct sections, and more precise sections on admissions and animals, posting and distribution, recording, and weapons, than existing GSA regulations that have not been updated to include specific definitions for prohibited conduct. This is in recognition of both the evolving landscape of threats and security risks directed at Federal property and its occupants, and corresponding operational needs to detect, prevent, mitigate, and respond to threats at Federal property. The sections in Subpart B would also be revised to reflect updates in and consistency with relevant case law, federal statutes and regulations, and policy guidance related to federal property protection.

Accordingly, the proposed sections in Subpart B would provide updates, consistent with the authorizing statutory authority in 40 U.S.C. 1315(c), necessary for the protection and administration of federal property under the Secretary's protection. The sections in Subpart B would move away from ministerial real estate oversight equities and focus expressly on the law enforcement and protective security equities related to personal conduct affecting federal property protected by the Secretary.

Proposed Subpart B would fill critical enforcement gaps by addressing prohibitions on emerging areas of criminal threats (for example, electronic threats to commit a crime of violence (§ 139.35(f)), drone activity (§ 139.35(k)-(l)), and impersonation of security personnel (§ 139.35(n))). Compared to the current GSA regulations, Subpart B would also better inform and protect Federal stakeholders and the general public who work on and visit federal property by expressly and plainly stating the parameters associated with admitting, inspecting, and otherwise policing persons on

federal property in accordance with and in recognition of First and Fourth Amendment considerations. For instance, the distribution (§ 139.60) and recording (§ 139.65) provisions are revised to reflect updates in relevant case law and policy regarding First Amendment equities related to assembly, expression, and speech. Likewise, the admissions and inspection provision (proposed § 139.20) is revised to more precisely state the operational prerequisites and parameters in light of Fourth Amendment equities related to searches and seizures. The sections in proposed Subpart B are described and otherwise explained in detail below.

Section 139.20, Admissions and Inspections Related to Federal Property

Proposed § 139.20 would state the requirements for admissions and inspections related to Federal property under the Secretary's protection responsibility. Section 139.20 would provide a statement of the inspection requirements and consequences for non-compliance with the screening procedures.

The current FMR at 41 CFR 102-74.370 states that Federal agencies have discretionary authority to inspect items in the immediate possession of persons arriving on, working at, visiting, or departing from Federal property, and agencies may conduct a full search of a person and his/her vehicle upon arrest. Section 139.20 of the proposed rule would update this inspection authority in 41 CFR 102-74.370 by making substantive textual changes to more precisely state the parameters of inspections occurring on federal property protected by the Secretary.

Specifically, proposed § 139.20 would state the FSC or the highest-ranking official of the sole federal agency occupant or designee may determine who must be screened. Once the FSC requires inspections, § 139.20 states that designated security

personnel would screen and inspect individuals and all accessible personal property and vehicles for dangerous items that would pose a security and safety risk, i.e., for firearms, explosives, dangerous weapons, and the component parts thereof. Section 139.20 also clarifies that once an inspection of a person, article of personal property, or associated vehicle starts, the inspection process would not terminate until completed by designated security personnel, i.e., the visitor may not leave the screening process once it has begun.

Consistent with Fourth Amendment protections against unreasonable searches and seizures, § 139.20 would balance the Secretary's security mission in ensuring the security of federal property and the persons thereon, with the Fourth Amendment privacy interests by limiting inspections to examinations for firearms, explosives, dangerous weapons, and component parts. Security personnel may not use administrative inspections with the principal purpose of detecting contraband or evidence of crimes unrelated to the protection of federal property. However, as currently conducted in accordance with Fourth Amendment constraints, security personnel may report and take appropriate law enforcement action if unlawful items, such as contraband, are detected during an otherwise lawful inspection for firearms, explosives, dangerous weapons, and component parts. Moreover, nothing in § 139.20 would alter the established legal precedent on Fourth Amendment requirements and exceptions relating to administrative inspections.

The current FMR at 41 CFR 102-74.375 states the policy on admitting persons to GSA-operated Federal property. The substance of 41 CFR 102-74.375 is focused on the administrative rules regarding hours of operation, registration upon entry, and presenting identification. Section 139.20 of the proposed rule would make substantive textual changes to focus on the law enforcement and protective security aspect of admitting

persons on federal property as opposed to the existing emphasis on administration. Section 139.20 would streamline the existing admissions provision in 41 CFR 102-74.375 by merging it with the administrative inspection authority in 41 CFR 102-74.370 to emphasize the precise security requirements, such as administrative inspection, for persons entering a secure area on federal property protected by the Secretary. Nothing in § 139.20 impedes the authority of GSA or other federal tenant agencies to retain or establish administrative policies regarding hours of operation, sign-in, or identification requirements specific to their property.

Section 139.25 Preservation of Federal Property

Proposed § 139.25 includes seven categories of conduct that would be prohibited to preserve federal property under the Secretary's protection. Section 139.25 would incorporate the six existing categories of prohibited conduct related to preserving GSA-operated property in the current FMR at 41 CFR 102-74.380: littering, destruction, theft, hazards, throwing articles, and climbing, and add a seventh category to prohibit the unauthorized use, operation, parking, locking, or storage of vehicles or other personal transportation devices on federal property. Overall, the proposed categories of prohibited conduct are consistent with and derived from either the existing prohibitions in GSA's FMR, or the operational and security challenges presented in relation to preserving federal property in-light-of technology and threat developments across the modern landscape.

Section 139.25(a), in comparison to the existing FMR at 41 CFR 102-74.380(a), would prohibit "littering" as defined in § 139.15, to include the same prohibited behavior currently described as "improperly disposing of rubbish on property" in 41 CFR 102-

74.380(a). Section 139.25(b) would prohibit damaging or unauthorized changing of the appearance of federal property, which mirrors the prohibition in 41 CFR 102-74.380(b) against destroying or damaging property. Section 139.25(b) would omit “willfully,” a reference to the required intent or state-of-mind, in recognition of the fact that all violations of the regulations in the proposed rule require some degree of intent – as opposed to accidental or mistaken incidents – and the degree of intent is best interpreted by a Federal court of jurisdiction consistent with other Class C Misdemeanor crimes in the jurisdiction.

Section 139.25(c) would prohibit the unauthorized removal of federal property, which is functionally identical to the prohibition in 41 CFR 102-74.380(c) against stealing property. Section 139.25(d) would build on the prohibition in 41 CFR 102-74.380(d) against creating any hazard to persons or things on federal property by also prohibiting the creation of any threat of such a hazard. Consistent with the Secretary’s statutory authority to protect federal property and the persons thereon, § 139.25 would add the provision for creating a threat of hazard to address operational and security concerns that arise when individuals or groups of individuals erect temporary structures or displays, such as ladders and elevated platforms, that may damage or impede property or harm persons on the property. Section 139.25(e) and (f), respectively, would prohibit the same behavior of either throwing articles of any kind at/from federal property, or climbing structures (fountains, statues, etc.) on federal property as currently prohibited in 41 CFR 102-74.380(e).

Proposed § 139.25(g) would add a seventh and final category of prohibited conduct concerning the preservation of property with a prohibition on unauthorized use,

operation, parking, locking, or storage of any vehicle or other personal transportation device, with exceptions allowed for personal transportation devices used as required by individuals with mobility impairments or when specifically allowed in designated areas. FPS has proposed this prohibition due to the security threat that vehicles and other transportation devices can pose. For example, such devices/vehicles may be used to block entrance and exit to federal facilities, and individuals may use them to ram or crash into federal facilities or immediately adjacent courtyards or plazas. They can also be outfitted with improvised explosive devices or other dangerous weapons to vehicles and personal transportation devices as means of damaging and harming federal property and its occupants. Accordingly, DHS believes that including this prohibition in the proposed rule is an important tool to ensure the Secretary fulfills his mission of securing federal property.

DHS has also observed the threat of vehicles and transportation devices left unattended for extended periods of time while parked or stored on or immediately adjacent to federal property.²² For instance, much of the federal property protected by the Secretary through FPS security personnel is geographically located in large, urban city-centers where there is an increase in the use of personal transportation devices for mobility purposes as technology and enterprise continue to develop. In addition, parking, whether on Federal property or adjacent thereto, is typically situated in-the-midst of these densely populated city-centers. Consequently, DHS remains vigilant for the threat posed

²² See *Oklahoma City Bombing*, HISTORY.COM (Apr. 19, 2023), <https://www.history.com/topics/1990s/oklahoma-city-bombing> (last accessed July 18, 2024).

by attaching improvised explosive devices or other dangerous weapons to vehicles and personal transportation devices as means of damaging and harming federal property and its occupants. FPS has therefore proposed including § 139.25(g) in the proposed rule to reasonably ensure the use, operation, parking, locking, and storage of vehicles and transportation devices does not harm, destroy, or otherwise compromise the security of federal property and its occupants.

Section 139.30 Conformance with signs and directions

Section 139.30 would require individuals on federal property protected by the Secretary to comply with official signage that is prohibitory, regulatory, or directive in nature and with the lawful verbal directions of security personnel. This proposed provision would ensure the orderly passage of federal stakeholders and the general public while traversing federal property, to include passing through any security or screening stations, and would ensure the ability of security personnel to direct persons on federal property regarding conduct that impacts the security of the property and its occupants. For example, security personnel regularly direct persons through the security screening checkpoints and direct visitors as to closed or restricted access areas on federal property.

Proposed § 139.30 would be both functionally identical and textually similar to the existing provision in GSA's FMR at 41 CFR 102-74.385

Section 139.35 Prohibited conduct

Section 139.35 would prohibit certain types of conduct that adversely affect or compromise the safety and security of federal property protected by the Secretary, people working at or visiting the property, and Government functions occurring on the property. Proposed § 139.35 is functionally similar to, and largely derived from, the existing

disturbances provision in GSA's FMR at 41 CFR 102-74.390 with notable additions to enhance federal property and occupant protection and security.

Consistent with the discussion earlier in the preamble, proposed § 139.5(a) would state that the section applies to all federal property protected by the Secretary, as well as all areas outside such property to the extent necessary to protect the property and its occupants. The introductory paragraph would explain that persons are prohibited from engaging in the specified forms of conduct both on federal property itself as well in areas outside federal property.

Enforcement in areas outside federal property, as contemplated by 40 U.S.C. 1315 for prohibited conduct that affects, threatens, or endangers federal property and occupants, would be similar to the approach taken by other federal land management agencies, e.g., United State Forest Service, and is operationally necessary to implement the security mission envisioned in section 1315. This proposed change is necessary to address situations where individuals commit criminal acts off property that affect the federal property, such as obstructing access to federal property with the placement of spike-boards or throwing objects at federal property while physically standing off, but immediately adjacent to, federal property. This limitation compromises the immediate safety of federal employees and efficient operations of the Federal Government as well as consistency by limiting the use of otherwise applicable charging authority when criminal acts are physically committed off federal property, but directed at and otherwise meant to endanger federal property and occupants. In such instances, absent an applicable statutory Federal charge, the Secretary's ability to execute the statutorily prescribed law enforcement duties in 40 U.S.C. 1315 is unnecessarily hampered by a lack of readily

available charging authority, and federal property and occupant protection becomes reliant on the availability and willingness of applicable state/local authorities, e.g., spike boards placed off of GSA property but blocking entrances to the building.

In total, § 139.35 would include 14 categories of prohibited conduct, including five categories of disturbances currently prohibited by 41 CFR 102-74.390, as described in greater detail below.

Section 139.35(a) would prohibit disorderly conduct, which would expressly include assaulting, fighting, harassing, intimidating, threatening or other violent behavior, lewd acts, or the inappropriate disposal of feces, urine, and other bodily fluids. Section 139.35(a) would be functionally identical to but substantively more precise than the existing prohibition on “exhibiting disorderly conduct” stated in the opening line of the FMR at 41 CFR 102-74.390. Notably, § 139.35(a) would make textual changes to the disorderly conduct prohibition by specifically identifying the types of behavior subject to the prohibition to better notify Federal stakeholders and the general public as to what behavior constitutes prohibited disorderly conduct.

Federal property and persons on the property remain high-profile targets of criminal activity, such as fights, harassment, and intimidation. FPS and other relevant security personnel continue to use the disorderly conduct prohibition in the FMR regulations to address instances of violent and lewd behavior while protecting federal property and its occupants. Accordingly, the disorderly conduct prohibition is necessary for the protection and administration of property under the Secretary’s protection and to continue addressing operational needs in responding to actual, real-life threats posed by persons causing harm to/on federal property and its occupants.

Section 139.35(b) would introduce a new category of prohibited conduct that prohibits wearing masks and other articles to avoid detection when committing crimes to address instances where criminal actors intentionally hide their identity through face masks or facial attire when committing a crime against federal property or persons on the property. The concealed identity prohibition in § 139.35(b) is modeled after existing municipality codes, e.g., Code of the District of Columbia Section 22-3312.03, *Wearing hoods or masks*, and would be expressly limited to instances when a person is concealing his/her identity to avoid detection while violating an applicable law.²³ Nothing in § 139.35(b) would prohibit a law-abiding citizen from wearing a mask or concealing his/her identity as part of a peaceful assembly, demonstration, disease prevention, religious observance, or other exercise of speech absent some indicia of criminal activity. Instead, the concealed identity prohibition in § 139.35(b) would address operational needs to protect against the actual, real-life crimes committed by criminal actors seeking to avoid detection.

Section 139.35(c) would prohibit creating loud or unusual noises, noxious odors, or other nuisances that affect the safety of persons on Federal property, or otherwise disrupts Government functions on the property. Section 139.35(c) would be functionally identical and textually similar to the existing provision in 41 CFR 102-74.390(a). However, proposed § 139.35(c) would differ from 41 CFR 102-74.390(a) because it

²³ There are many jurisdictions that contain analogous prohibitions, including, among others, California, Connecticut, and Delaware. *See generally* Cal. Penal Code sect. 185; Conn. Gen. Stat. Ann. sect. 53-37a; Del. Code Ann. tit. 11, sect. 1239; Fla. Stat. Ann. sect. 876.12; Ga. Code Ann. sect. 16-11-38; La. Stat. Ann. sect. 14:313; Mich. Comp. Laws Ann. sect. 750.396; Minn. Stat. Ann. sect. 609.735; N.M. Stat. Ann. sect. 30-22-3.

includes a prohibition of noxious odors as a specific type of prohibited nuisance. The inclusion of odors is a result of real-world, operational incidents whereby individuals place or release stink-bombs or other odor-emitting devices in such a manner as to adversely impact Federal property and its occupants.²⁴ The existing prohibition against loud or unusual noises remains necessary to ensure persons, particularly through use of bullhorns, megaphones, or other audio equipment, do not disturb or otherwise interfere with the performance of official Government functions, particularly the provision of services to the general public.

Proposed § 139.35(d) would prohibit obstructing the usual use, enjoyment, or access to a federal facility, including entrances, exits, offices, courtyards, parking garages, other common areas, and areas closed during an emergency. Section 139.35(d) would be functionally identical and textually similar to the existing disturbances provision at 41 CFR 102-74.390(b). Proposed § 139.35(d) would include additional examples of common areas subject to the obstruction prohibition, such as exterior areas, plazas, and areas designated as closed during an emergency to reflect a more precise and accurate accounting of the physical spaces on federal property where obstruction would be prohibited. This would ensure the safety and security of persons on the property, especially during emergency situations including fires, active shooters, or other natural or man-made disasters. For example, federal property is often structured to accommodate multiple federal tenant entities, and obstruction in common areas directed at one federal

²⁴ See “Irritating Substance”; York, Peel and Toronto Police Investigating After 3 Movie Theaters Evacuated Following Release of “Unknown” Spray Into Air, www.toronto.com (Dec. 6, 2023) (last accessed July 24, 2024).

tenant may, if unchecked, quickly devolve into obstruction of and safety hazards for another federal tenant. This prohibition would also apply to blocking stairwells, elevators, and escalators. Accordingly, the obstruction provision in § 139.35(d) would ensure both the free flow of vehicular and pedestrian traffic on and through federal property for orderly operations and the unimpeded ability to exit or otherwise navigate federal property during any emergency circumstances.

Section 139.35(e) proposes to prohibit impeding or disrupting the security inspection process administered by security personnel, the performance of official duties by federal employees, or the ability of the general public to obtain government services. Section 139.35(e) would be functionally identical and textually similar to the existing provisions at 41 CFR 102-74.390(c) and (d). To that end, § 139.35(e) would streamline and consolidate the existing prohibitions on impeding the performance of official duties by government employees in 41 CFR 102-74.390(c) and preventing the public from obtaining administrative services in 41 CFR 102-74.390(d) into a single provision. Proposed § 139.35(e) would also add a prohibition on the impediment or disruption of the security inspection process, which is detailed above in § 139.20 regarding admission and inspections related to federal property.

The added prohibition on impeding/disrupting the security inspection process in § 139.35(e) is operationally necessary to ensure the integrity and effectiveness of security screening performed in furtherance of detecting firearms, explosives, dangerous weapons, and component parts before these items enter or cause harm to Federal property and persons on the property. As noted, § 139.20 administrative inspection or screening is a security countermeasure that federal agencies use to better ensure safety at/on federal

property. While the current FMR at 41 CFR 102-74.370 authorizes administrative inspections, there is no express prohibition under 41 CFR 102-74.390 for impeding or disrupting the inspection process. Rather, security personnel must rely on the more generic charging authority under 41 CFR 102-74.385 for failure to follow directions. Reliance on generic charging authority in the context of executing a critical security countermeasure is counterproductive as the generic charge fails to clearly notify the public that impeding or disrupting the inspection process is prohibited.

Moreover, executing effective inspections necessarily involves some degree of waiting or delay on the part of persons subject to inspection. When an individual disrupts or impedes the inspection process by failing to comply with instructions, providing unclear or evasive answers to security personnel questions, or otherwise attempting to evade detection of unlawful items, the security risks and wait-time or delays increase, which disrupts the overall safety and orderly operations on the federal property. Accordingly, the prohibited impediment and disruption provision at § 139.35(e) is necessary to ensure the Federal Government functions properly and without unnecessary risk to safety or delay to operations through the unimpeded performance of security inspections, execution of government duties, and receipt of government services.

While FPS has the authority to investigate and charge, e.g., 18 U.S.C. 115, individuals who threaten government employees regardless of where the threat is made, § 139.35(f) would allow another charging option by prohibiting threatening by any means, including mail, facsimile, telephone, or electronic communication, to commit any crime of violence. The companion term “crime of violence” would be defined in § 139.15, and mirror the definition found in 18 U.S.C. 16(a), to wit, as an offense that has

as an element the use, attempted use, or threatened use of physical force against the person or property of another, such as assaultive acts. Proposed § 139.35(f) is a prohibition added to address operational incidents of individuals off federal property who deliver, transmit, or otherwise direct violent threats towards federal employees and other visitors or customers on federal property. This provision would allow DHS to fully perform the protection duties authorized by 40 U.S.C. 1315(b)(2)(e) by allowing regulatory charging authority for off property commission of crimes against federal property or persons on federal property. The proposed violent threats prohibition is analogous to statutory provisions such as the criminal threats provision at 18 U.S.C. 115 (specific to federal officials and their family members), 18 U.S.C. 875 (threats by interstate communications), and 42 U.S.C. 1320a-8b (threats of force specific to designated Social Security Administration personnel). Enforcement of these analogous statutory provisions often involves competing resource constraints and other prosecutorial considerations, whereas under the proposed rule the offender can be cited with a comparatively lesser offense (Class C Misdemeanor) that is charged through issuance of a written citation, penalized through payment of a fine or imprisonment of not more than 30 days (or both), and, all the while, remains subject to judicial review and other due process protections without implicating more time consuming processes associated with felony or higher-grade misdemeanor charges.

Proposed § 139.35(f) is necessary because in the modern landscape of federal property protection, there is greater ease and opportunity with relatively accessible technology, such as email, social media, and text/direct messaging, for individuals to make violent threats that intimidate and harass federal employees and visitors or

customers at federal property. For example, FPS has observed increased threats over the last several years at federal property where monetary Government services or benefits are provided or processed, or where the federal entity performs official functions associated which may be subject to public controversy or heightened public interest. Violent threats, at the very least, cause panic or insecurity that destabilizes and disrupts the Federal Government, and, at the very worst, escalates into assault or other harmful acts that cause injury, loss of life, or significant property damage or destruction. Accordingly, the violent threats provision at § 139.35(f) is necessary to ensure readily available charging authority exists to address violent threats that directly undermine the safe and effective administration of the Federal Government.

Proposed § 139.35(g) would prohibit unauthorized bathing, wading, or swimming in or polluting any water areas, to include fountains, basins, or reservoirs. This new prohibition is necessary because the presence of water areas may attract unauthorized use of the area and require additional security considerations for the general safety of federal property and its occupants. Such unauthorized use includes bathing, wading, or swimming in water areas on federal property. Additionally, prohibiting unauthorized use would address public safety concerns related to polluting or damaging the water area, e.g., urinating or defecating in the pools or fountains on federal property. The existing disturbances provision at 41 CFR 102-74.390 does not expressly prohibit unauthorized use of water areas, which leaves security personnel with the comparatively generic failure to follow directions provision at 41 CFR 102-74.385 for enforcement purposes. Accordingly, the prohibition against the unauthorized use of water areas puts the public

on notice and ensures readily available charging authority exists to address such unauthorized use for the safety of federal property and occupants.

Section 139.35(h) would prohibit unauthorized camping on federal property. The companion term “camping” would be defined in § 139.15, in pertinent part, as the use of federal property for living accommodations, to include sleeping activities, storing personal property, or altering the federal property for shelter. Section 139.35(h) would be added to address operational incidents of unauthorized camping that occurs at federal property on both interior and exterior spaces. Such unauthorized camping degrades the preservation of federal property, impedes public access for lawful business on federal property, and presents unnecessary security risks in the form of potentially hidden or obstructed persons and items that may be used to disrupt or harm Federal property and occupants.

Section 139.35(h) is consistent with other federal land management agency regulations, such as the National Park Service (36 CFR 2.10) and U.S. Forest Service (36 CFR 261.16, and 261.58), that similarly prohibit unauthorized camping in non-designated areas. The unauthorized camping provision better informs federal stakeholders and the general public of the express prohibition on camping without authorization on federal property, including interior and exterior areas, and ensures a readily available charging authority exists to address such unauthorized camping for the safety of federal property and occupants.

Section 139.35(i) would prohibit trespassing, entering, or remaining in or on areas of Federal property closed to the public. Section 139.35(i) is a new prohibition directly derived from the hours of operation language in the existing admissions provision at 41

CFR 102-74.375. Persons who engage in trespassing pose a security risk to federal property and occupants, and as such, DHS proposes to expressly prohibit such conduct, instead of the current and comparatively cumbersome reference to the general hours of operation and admissions to Federal property in 41 CFR 102-74.375. Accordingly, the trespassing provision in § 139.35(i) would better inform federal stakeholders and the general public of the express prohibition on trespassing, entering, or remaining in or on closed areas of federal property, and would ensure readily available charging authority exists to address such unauthorized trespassing for the safety of federal property and occupants.

Section 139.35(j) would prohibit consuming a tobacco product in all interior space owned, rented, or leased by the Federal Government, as well as all courtyards, terraces, and plazas within 25 feet of doorways and air intake ducts under the custody, control, or jurisdiction of the Federal Government. This new paragraph would add a new category of expressly prohibited conduct that is directly derived from existing federal authorities. While there is signage stating that no smoking is allowed, and violators might be cited for failing to follow the written signage, there is no specific criminal charge related to smoking on Federal property. Instead, DHS must rely on other charges to address smoking on Federal property. Specifically, E.O. 13058, Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace,²⁵ establishes a smoke-free environment for federal employees and members of the public

²⁵ Executive Order, 13058, Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace, 62 FR 43451 (Aug. 13, 1997).

visiting or using Federal facilities by expressly prohibiting the smoking of tobacco products. The 1997 Executive Order also authorizes agencies to establish more protective policies. GSA subsequently implemented the Order with promulgation of the FMR provisions at 41 CFR 102-74.315-351, including the addition of “within 25 feet of doorways and air intake ducts” in 41 CFR 102-74.330. Then, in 2016, the FDA promulgated a rule to deem ENDS as covered within the definition of tobacco products.²⁶ Given this sequence of events, the existing landscape of applicable authorities supports the proposed rule definition for tobacco products, as well as the prohibition on the use or consumption of these products while on or near federal property protected by the Secretary as stated in § 139.35(j).

While the category of prohibited conduct in § 139.35(j) would be new, the prohibition on tobacco products is not. Smoking tobacco products is currently prohibited through the posting of written signage stating the prohibition, consistent with 41 CFR 102-74.315-351, and follow-on enforcement by security personnel, consistent with 41 CFR 102-74.385, for failure to comply with lawful signage of a prohibitory nature. Accordingly, the consumption of tobacco products prohibition in § 139.35(j) is necessary for the protection and administration of federal property protected by the Secretary. This prohibition would both better inform federal stakeholders and the general public of the express prohibition and parameters associated with the prohibition on consuming tobacco products on or near federal property, inclusive of all forms of smoking and the use of

²⁶ FDA, Final Rule: Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 81 FR 28974 (May 10, 2016).

ENDS and ensure readily available charging authority exists to address unauthorized consumption of tobacco products for the safety of federal property and occupants.

Section 139.35(k) would prohibit causing an unmanned aircraft to take off or land on federal property without authorization from designated officials. The provision explicitly prohibits take-offs and landings on or from federal property without permission from the Facility Security Committee, Designated Official, or another federal agency responsible for the property. The proposed rule does not regulate lawful overflights of unmanned aircraft over federal property. Overflights are exclusively regulated by the Federal Aviation Administration (FAA). *See* 14 CFR part 107.

Section 139.35(k) is necessary to address operational concerns because DHS has observed an increase in unmanned aircraft activity on, near, and around federal property, and there is no existing authority in the FMR that expressly prohibits unauthorized unmanned aircraft take-offs and landings, which leaves security personnel with the comparatively generic preservation of property or creating a hazard provision at 41 CFR 102-74.380 for enforcement purposes. Accordingly, the unauthorized unmanned aircraft take-offs and landing provision in § 139.35(k) is necessary for the protection and administration of Federal property protected by the Secretary to both better inform federal stakeholders and the general public of the express prohibition and parameters associated with the take-offs and landings of unmanned aircraft on federal property, and ensure readily available charging authority exists to address such unauthorized use of unmanned aircraft for the safety of federal property and occupants.

This regulation would address the launch or retrieval of unmanned aircrafts while on federal property. Securing air domain awareness and defense from unmanned aircraft

system (UAS) threats at federal facilities is addressed by 6 U.S.C. 124n and through civil enforcement authority retained by FAA. However, this statutory construct does not provide criminal charging options for UAS activity that threatens the safety and security of federal property and persons on the property. The proposed rule would not infringe upon the FAA's regulatory authority, as the prohibition only addresses the impact unlawful UAS conduct has on federal real property. The regulation does not address the prohibitions on operating UAS in certain airspace or other prohibited areas which remain in the bailiwick of FAA. *See, e.g.*, 14 CFR 107.41 and 107.45.

Section 139.35(l) would prohibit using an unmanned aircraft to cause damage, destruction, harm, or a hazard to Federal property or persons on the property. Similar to § 139.35(k), the prohibition in § 139.35(l) would be added to address operational instances of unsafe usage of unmanned aircrafts on Federal property. For example, DHS has observed instances of unmanned aircraft operated in such a manner as to fly low enough to the ground to come into contact with persons or objects on federal property. Such usage of unmanned aircraft presents a direct threat to the safety of persons and preservation of structures and objects on federal property. There is no existing prohibition on the unsafe usage or operation of unmanned aircraft on federal property, which leaves security personnel with the comparatively generic causing a disturbance provision at 41 CFR 102-74.390 for enforcement purposes. Accordingly, the unauthorized unmanned aircraft usage provision in § 139.35(l) is necessary for the protection and administration of Federal property protected by the Secretary to both better inform Federal stakeholders and the general public of the express prohibition associated with using unmanned aircraft to cause damage, destruction, harm, or a hazard

to Federal property or persons thereon, and ensure readily available charging authority exists to address such prohibited use of unmanned aircraft for the safety of Federal property and occupants.

Section 139.35(m) would prohibit tampering with, accessing, damaging, or interfering with the operation of a computer, digital network, industrial control system or Supervisory Control and Data Acquisition (SCADA) system without proper authorization. Section 139.35(m) would be added to address emerging operational needs to thwart unauthorized use or interference with functional electronic systems on Federal property. Many HVAC and electrical systems that operate on internet connectivity and control the electricity, heating, air conditioning, and overall air flow within federal facilities and also power security alarms, door locking mechanisms, elevators, and escalators.

The emerging operational need for § 139.35(m) is supported by the findings in the U.S. Government Accountability Office July 2019 Report to Congressional Requesters, *Cybersecurity, Agencies Need to Fully Establish Risk Management Programs and Address Challenges*,²⁷ which put Congress on notice that “federal agencies face cyber threats that continue to grow in number and sophistication.” There is no existing provision in GSA’s FMR that expressly prohibits the unauthorized use or interference with electronic operating systems on federal property, which leaves security personnel with the comparatively less descriptive, and potentially inapplicable, prohibitions on destroying or damaging property or creating a hazard on property under 41 CFR 102-

²⁷ <https://www.gao.gov/assets/gao-19-384.pdf>.

74.380(b), (d). Section 139.35(m) would provide a more precise and targeted means to respond to emerging cyber threats that affect the security and functionality of Federal facilities protected by DHS.

Proposed § 139.35(n) would prohibit impersonating security personnel. Section 139.35(n) would be a new prohibition added to address the use of fake or unauthorized security badges, insignia, identification cards, etc., to gain unauthorized entry into Federal facilities and workspace.

Section 139.35(n) is necessary to address an ongoing issue, the use of fake law enforcement badges and credentials to gain entry into federal facilities. First identified in a 2002 Senate Report, *Phony Identification and Credentials Via the Internet*, Report 107-133, 107th Congress (2d Session),²⁸ the report highlighted the ability of investigators in the General Accounting Office to breach numerous Federal agency facilities utilizing fake law enforcement badges and credentials. Additionally, in 2015, DHS reiterated the threat of individuals impersonating first responders such as law enforcement in public messaging to emergency services sections.²⁹ Most states recognize this threat through criminalizing the use of fake law enforcement badges and credentials.³⁰ However, there is currently a gap in GSA's FMR and there is no express prohibition of the impersonation

²⁸ www.congress.gov/congressional-report/107th-congress/senate-report/133/1.

²⁹ U.S. DEP'T OF HOMELAND SEC., IMPERSONATION OF FIRST RESPONDERS (2015), available at <https://www.hsdl.org/c/view?docid=800800>.

³⁰ . See, e.g., FLA. STAT. sect. 843.08 (2024) (False Personation); see also, e.g., S.C. CODE ANN. sect. 16-17-720 (Impersonating law enforcement officer) (2023); see also, e.g., IOWA CODE sect. 718.2 (2024) (Impersonating a public official).

of security personnel. This deficiency is challenging where an individual attempts to pose as security personnel to access federal property with weapons or other tools with the intent to cause damage or do harm to occupants. Section 139.35(n) is thus necessary to ensure readily available charging authority exists to address the impersonation of security personnel and to better inform Federal stakeholders and the general public of the express prohibition.

Section 139.40 Gambling

Section 139.40 proposes, with limited exceptions, a prohibition on gambling activities on federal property. This section would be similar to the current prohibition on gambling in the GSA regulations, codified at 41 CFR 102-74.395. Notably, § 139.40 would not alter the statutory exceptions provided in the Randolph-Sheppard Act, as codified at 20 U.S.C. 107 et. seq., or prize drawings for personal property at otherwise permitted functions on federal property. Rather, this proposed section would continue the existing general prohibitions on games for money or other personal property, operating gambling devices, conducting a lottery or pool, and purchasing/selling gambling tickets on Federal property.

Section 139.45 Narcotics, Other Drugs, and Drug Paraphernalia

Section 139.45 would establish the prohibition on using, possessing, operating a vehicle while under the influence of, or being under the influence of narcotics, or possessing illegal drug paraphernalia on Federal property. This section would be functionally identical and textually similar to the existing provision in the GSA regulations, codified at 41 CFR 102-74.400

The unlawful use of narcotics continues to present security risks associated with elevated, delayed, or otherwise impaired behavior of visitors to federal property. Section 139.45 is reasonable and necessary to address the illegal use or possession of controlled substances on federal property as federal misdemeanor offenses instead of defaulting to prosecution under the Controlled Substances Act found in Title 21, United States Code. Specifically, this proposed provision would provide that an individual in violation of this section is temporarily detained, issued a citation, and released on his/her own recognizance rather than experiencing a formal arrest. Without the option of charging a narcotics offense as a Class C misdemeanor, DHS would have to look to the statutory counterpart and charge the individual with either a higher-level misdemeanor or felony under the code.

Section 139.50 Alcoholic Beverages

Section 139.50 would prohibit individuals from consuming or being under the influence of alcoholic beverages, except where authorized by the head of an agency or the agency head's designee. This provision would not alter the written exemption or related procedures for obtaining an exemption to the prohibition against the consumption of alcoholic beverages on federal property in the current regulation.³¹

This proposed section would also prohibit the possession of an "open container" on property owned, occupied, or secured by the federal government. "Open container" would be defined in proposed § 139.15 as a bottle, can, or any other receptacle containing

³¹ 41 CFR 102-74.405.

an alcoholic beverage that is open, has a broken seal, or from which the contents are partially removed. The prohibition on possessing open containers would address operational concerns with security risks posed by instances of elevated or otherwise altered behavior by intoxicated persons. Finally, the proposed section would prohibit the operation of a motor vehicle under the influence of alcohol. Accordingly, the alcoholic beverage provision in § 139.50 is necessary for the protection and administration of federal property protected by the Secretary to continue prohibiting the unauthorized use of alcohol for the security and safety of federal property and occupants.

Section 139.55 Soliciting, vending, and debt collection

Section 139.55 would prohibit soliciting, vending merchandise, displaying or distributing commercial advertising, and engaging in debt collection activities on federal property, except under certain conditions. This section would be functionally identical and textually similar to the existing FMR provision at 41 CFR 102-74.410. Notably, all six categories of permissible activity currently listed in 41 CFR 102-74.410 would be included in the exceptions for § 139.55, to include Government sponsored or approved activities.³² Accordingly, FPS believes this proposed section prohibiting solicitation, vending, and debt collection strikes the appropriate balance between activities that could disrupt or distract the orderly administration of government functions and approved activities that do not compromise or otherwise degrade the administration of government.

Section 139.60 Posting and distributing materials

³² 41 CFR 102.74.410(c)-(d) have been merged and are now reflected in proposed rule § 139.55(b)(3).

Proposed § 139.60 would prohibit the posting and distribution of printed materials on federal property, except as specifically authorized. Although this proposed section is functionally identical to the GSA regulations, codified at 41 CFR 102-74.415, it would provide better clarity and notice to the public of the precise nature of prohibited conduct for the preservation and safety of property and occupants through more precise terminology. Proposed § 139.60 would not disturb the current exceptions for the lawful exercise of distributing materials during permitted events on public areas of federal property in furtherance of free speech and assembly.

The unauthorized distribution of materials can create significant problems for the maintenance and security of federal property. For example, in the Fall of 2019, an individual in Portland, Oregon, threw hundreds of pamphlets on the grounds of a federal plaza in protest. The pamphlets covered the entire plaza affecting the plaza water drainage system. The individual did so without a permit. It was then left to FPS as the security provider and GSA as the federal landlord to secure the area and remove the pamphlets. This effort diverted both FPS law enforcement personnel and GSA employees over 8 hours from their normal duties.

The prohibition in proposed § 139.60 would also help prevent individuals or groups from interfering with the judicial process and the jurors by precluding the unauthorized distribution of materials that may be the subject of litigation to jurors on the Federal property, which undermines the fair administration of justice during trials at Federal courthouse facilities.

Section 139.65 Photography and recording

Proposed § 139.65(a) would establish that image and audio recording of federal facilities and grounds is prohibited if conducted in a manner that either impedes or disrupts access to or operations on federal property, or if it is prohibited by any federal security regulation, rule, order, or directive. For example, if the image or audio recording prevents or disrupts security screening, or the provision of services by the federal government.

Proposed § 139.65(b) would provide exceptions to prohibitions on photographing and video or audio recording in proposed § 139.65(a). Specifically, proposed § 139.65(b) would allow image and audio recording of the publicly accessible exterior of federal properties from outdoor public areas when not impeding or disrupting access to or operations on federal property. Recording still and motion images and audio would also be allowed in the entrance and common areas of federal facilities open to the public, provided the recording does not disrupt access to or operations on the federal property. Image and audio recording within interior areas occupied by federal agencies would be prohibited except with the express permission of the tenant agency, and written permission would be required for any photography or recording done for a commercial purpose.

This section would mirror, though not replicate, a similar provision in the GSA regulations, codified at 41 CFR 102-74.420. By comparison to the existing provision, § 139.65 would be restructured stylistically to state the general rule and three applicable exceptions. The proposed substantive language would provide better clarity and notice to the public of the precise nature of prohibited and permitted recording conduct and ensure

consistency with corresponding First Amendment case law related to photography and recording at/on Federal property.³³

Section 139.70 Vehicle Operations and Removal

Section 139.70 would require persons to operate vehicles in a safe manner, possess a valid operator's license, comply with signs and directions by security personnel and obey traffic and safety signals and posted signage. The section additionally prohibits certain conduct such as blocking driveways and sidewalks and parking on federal property without a permit or authorization in restricted parking areas. This section would also state that vehicles determined to be in violation of this section are subject to seizure and removal with the owner of the vehicle responsible for associated costs in removal.

This section is derived from similar provisions in the GSA regulations, codified at 41 CFR 102-74.370 and 430, but, significantly, this proposed section would allow LEOs to enforce these traffic concerns adjacent to the federal property where the conduct, while off federal property, affects the security of the property or the persons on the property as envisioned by 40 U.S.C. 1315. Overall, the vehicle operation and removal provision in § 139.70 would provide clarity and notice to the public of the precise nature of prohibited conduct with plainly stated parameters for safe operation, prohibited operations, specific responsibilities, and authority for enforcement, removal, and seizure.

Section 139.75 Firearms, dangerous weapons, and explosives

³³ The public has the right to photograph/videotape officials carrying out public duties. *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir.2011). However, content neutral restrictions on photography regulating time/manner or in non-public fora (e.g., polling place or courtroom) for privacy or to maintain order are consistent with the First Amendment. *Silberberg v. Board of Election of New York*, 272 F. Supp. 3d (S.D. N.Y. 2017).

Section 139.75 would prohibit the possession and carrying of firearms, dangerous weapons and explosives. This section would streamline and combine the existing GSA regulations on weapons and explosives in Federal facilities, codified at 41 CFR 102-74.435, 440. Notably, § 139.75 would cross-reference both the definitions of the companion term “firearm” and “dangerous weapon” found in federal firearms laws in 18 U.S.C. 921 and 930(g), respectively, and the same three categories of persons eligible to possess weapons on Federal property as stated in 18 U.S.C. 930(d). Section 139.75 would also cross-reference the definition of explosives found in 18 U.S.C. 841. The real-world threats posed by active shooters, improvised explosive devices, and other dangerous weapons remains a top concern for the security of federal property and occupants. Accordingly, proposed § 139.75 would ensure readily available charging authority for instances of unlawful possession of firearms, dangerous weapons, and explosives.

Section 139.80 Animals

Section 139.80 would prohibit any person from bringing animals in or on federal property for other than official purposes with the limited exception of service animals for persons with disabilities. The companion term “service animal” would be defined in proposed § 139.15 to mean any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

The substance of § 139.80 would be like the existing provision in the FMR at 41 CFR 102-74.425 with the notable exclusion of “other animals” as qualifying service animals. This is consistent with the Department of Justice’s definition of “service

animal”. 28 CFR 35.104. Accordingly, proposed § 139.80 regarding the prohibition of animals on federal property, with one limited exception, is proposed to ensure the definition of a service animal is consistent with other agencies’ definitions of “service animal,” in compliance with the Americans with Disability Act of 1990, and ensure proper order and security is maintained on federal property while allowing the lawful presence of service animals.

Section 139.85 Penalties

Proposed § 139.85 would establish the penalties for violating the rules and regulations in the proposed rule in accordance with the maximum penalties set forth in 40 U.S.C. 1315(c)(2). Section 139.85 would establish that violations of proposed subpart B may be punished by a fine in accordance with title 18 U.S.C. 3571, imprisonment for not more than 30 days, or both. DHS has updated the language of proposed § 139.85 slightly but has maintained the same penalties as established in GSA’s FMR at 41 CFR 102-74.450. In other words, the rule would maintain that a conviction for a violation of the proposed rule’s provisions would be a Class C misdemeanor. *See* 18 U.S.C. 3559(a)(8). This proposed section would ensure that the appropriate penalties and sanctions are available to address minor criminal misconduct not warranting prosecution under Title 18, United States Code, and provides a degree of deterrence for minor criminal violations that cause damage or harm to Federal property and occupants.

V. Regulatory Analyses

A. Executive Order 12866, Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving

Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this proposed rule.

Below is FPS's assessment of the benefits and costs of this regulatory action. A detailed discussion of FPS's approach and assumptions is provided separately in the regulatory impact analysis (RIA) included in the docket for this proposed rule.

OMB's Circular A-4 provides guidance to Federal agencies on the development of regulatory analyses estimating the benefits and costs of regulatory actions. It asks Federal agencies to analyze alternative regulatory approaches for achieving the desired outcome. At a minimum, agencies should evaluate the preferred alternative, a more stringent option, and a less stringent option. FPS evaluates the following regulatory alternatives:

Proposed Rule: This proposed rule implements the authority of the Federal Protective Services for the protection of buildings, grounds, and property that are owned, occupied, or secured by the federal Government with the specific revisions discussed in this preamble. 40 U.S.C. 1315, specifically authorizes the Secretary of DHS to protect

property owned, leased, or secured by the Federal government and the persons on that property. This authority also authorizes off property enforcement to the extent necessary to protect the Federal property or the persons thereon and for DHS LEOs to conduct investigations off property of offenses that may have been committed against property owned or occupied by the Federal government or persons on the property. Additionally, 40 U.S.C. 1315 permits the Secretary of DHS, in consultation with GSA, to prescribe regulations necessary for the protection and administration of Federal property and to include reasonable penalties.

Alternative 1 (less stringent): Under the less stringent alternative, in order to accomplish its goal of aligning regulations under DHS authority, DHS would incorporate the existing GSA regulations governing personal conduct on federal property from Title 41 with no changes in the language or content of those regulations. Specifically, DHS would copy each GSA provision to the proposed rule and re-issue the posted rules and regulations relating to and governing conduct on Federal property identifying DHS as the regulatory authority. Thus, the posted rules and regulations would display the DHS seal instead of the GSA logo. Incorporating the existing GSA rules and regulations to DHS would not result in any other changes in current law enforcement practices at Federal facilities. Alternative 1 would not expand upon the prohibited conduct outlined in existing GSA provisions nor modify the charging options for non-GSA property.

Alternative 2 (more stringent): Under the more stringent alternative, DHS would incorporate and update the existing GSA rules and regulations to DHS as in the proposed rule. In addition, Alternative 2 would further improve protection of Federal facilities and persons thereon through enforcement of state and local laws by authorizing FPS to apply

state and local laws relating to the security of Federal property or the people thereon where there is no applicable Federal law or regulation. Unlike the application of the Assimilative Crimes Act, 18 U.S.C. 13, which allows prosecution of state law criminal violations in federal court under certain circumstances, this alternative would incorporate state laws into the federal regulation by reference. In other words, state laws would be incorporated into federal law. DHS LEOS would not be enforcing state laws. Instead, federal LEOs would thereby apply Federal law that incorporates State law by reference. The approach would be similar to that of the National Park Service regulation that incorporates state boat safety laws into the federal regulation.³⁴

For each alternative, a cost/benefit analysis would ideally compare the monetized costs of implementing the regulations to the monetized estimates of the resulting reduction in security risk at Federal facilities. However, data limitations make it challenging to quantify the incremental change in risks likely to result from the proposed rule. Instead, DHS provides a qualitative discussion of the likely benefits of the proposed rule.

The economic costs associated with the proposed rule include one-time and ongoing costs incurred by FPS to implement the proposed rule, one-time costs incurred by GSA to comply with the requirements of the proposed rule, and ongoing costs

³⁴ See *U.S. v. Bohn*, 622 F.3d 1129 (9th Cir. 2010)(upholding conviction under NPS regulation that adopts substantive provisions of state law; Property Clause power of Constitution extends to conduct threatening designated purpose of federal lands whether than conduct occurs on or off federal land); see also U.S. CONST. art. IV, sec. 3, cl.2 (The Property Clause)(“Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”); 40 U.S.C. 1315(c) (DHS required by Congress to create regulations necessary for the protection and administration of property owned or occupied by the Federal government and the persons thereon).

incurred by U.S. district courts to implement and comply with the requirements of the proposed rule.

These economic costs represent the incremental costs above and beyond those that would already be incurred absent the proposed regulation in order to protect Federal property and persons located on or within those properties. The incremental costs of the proposed rule are estimated over a 5-year analysis period (2024 to 2028) and calculated on a present value basis.

Under the analytic baseline, FPS issues citations for regulatory violations under 41 CFR 102-74 Subpart C and charges for statutory violations under Title 18 of the U.S. Code. In 2021 and 2022, FPS issued approximately 900 citations annually on average that were processed by the Central Violation Bureau (CVB). A number of citations within the baseline are issued under “All Other Charges,” which represent FPS enforcement of criminal charges under statutory Federal law, primarily Title 18 of the U.S. Code. Many of the GSA regulations do not apply to incidences that occur adjacent to Federal property, including regulations pertaining to throwing objects, wearing disguises, obstructing federal property, and operating unmanned aircrafts without authorization. FPS responds to threatening incidents and conducts full investigations, which may result in issuing a citation for criminal misconduct, detaining, or arresting individuals making such threats. However, FPS LEOs do not have regulatory authority to issue citations for off-property incidents that do not rise to the level of a U.S. Code violation. Building managers are also required to maintain and replace signage as needed under 41 CFR 102-74.365. The RIA in the docket provides additional discussion and analysis of potential changes to

enforcement and the issuance of citations under the proposed rule compared to the baseline.

Table 1 summarizes the estimated costs of the proposed rule. As shown in the exhibit, the present value costs of the proposed rule are estimated to be approximately \$1,186,310 during the next 5 years, or approximately \$251,686 annualized (discounted at two percent). The majority of the incremental costs of the proposed rule are associated with replacing signage at all Federal facilities protected by FPS (§ 139.5(d)); the associated costs of which would be shared roughly equally between FPS and GSA. FPS would also incur initial training costs for LEOs to become familiar with the proposed regulatory changes. Furthermore, FPS and U.S. district courts may experience an increase in labor and administrative costs, respectively, associated with an increase in the number of citations issued by FPS (§§ 139.25 and 139.35).

Table 1: Summary of Costs of the Proposed Rule by Section (2023 dollars)

Year	Training Costs	§ 139.5 (d) Notice requirement Costs	§ 139.25 Preservation of Federal property Costs	§ 139.35 Prohibited conduct Costs	Un-discounted Total	Present value Total (2% discount rate)
2024	\$364,198	\$722,570	\$1,084	\$24,555	\$1,112,408	\$1,090,596
2025	\$0	\$0	\$1,084	\$24,555	\$25,640	\$24,644
2026	\$0	\$0	\$1,084	\$24,555	\$25,640	\$24,161
2027	\$0	\$0	\$1,084	\$24,555	\$25,640	\$23,687
2028	\$0	\$0	\$1,084	\$24,555	\$25,640	\$23,223
Total	\$364,198	\$722,570	\$5,421	\$122,777	\$1,214,966	\$1,186,310
Annualized						\$251,686

Table Note: Totals may not sum due to rounded values in the table.

Under Alternative 1, DHS would replicate the rules relating to and governing personal conduct on Federal property from GSA, and would leave in place the existing GSA language and requirements. FPS would print new signs and coordinate with GSA

to have them posted at Federal facilities to comply with the proposed regulations. However, replicating the existing GSA rules and regulations to DHS would not result in any other changes in current law enforcement practices at Federal facilities. Thus, the costs of the less stringent alternative would only include the one-time costs of replacing existing signage at Federal facilities, \$708,402, annualized discounted at two percent.

Under Alternative 2, DHS would be the same as the proposed rule with modifications to improve protection of Federal facilities and persons thereon through enforcement of state and local laws by authorizing FPS to apply state and local laws relating to the security of Federal property or the people thereon where there is no applicable Federal statutory law or regulation. Table 2 compares the costs of the two quantified regulatory alternatives. While the costs of Alternative 2 are not quantified, FPS anticipates the costs to be substantially higher than the proposed rule.

Table 2: Cost of Regulatory Alternatives for Proposed FPS Rule (2023 dollars)

Alternative	5-year total cost (2 percent discount rate)
Proposed Rule	\$1,186,310
Alternative 1 (less stringent)	\$708,402

With respect to benefits, the primary purpose of the proposed rule is to improve security at Federal properties. Increased enforcement and successful prosecution of misconduct is intended to reduce the risk of future incidents of misconduct, thereby avoiding adverse consequences such as injuries, property damage and loss, and temporary workplace closures.

Ideally, the evaluation of the proposed rule would compare the monetized values for all benefits arising from the proposed rule to the cost of implementing the proposed

rule. Estimating benefits requires information about (1) the incremental change in security risk at Federal facilities and (2) the value individuals place on such risk reductions. In practice, precise quantification and valuation of such risk reductions is difficult.

As discussed in the RIA, this analysis of benefits includes a review of published academic literature evaluating the linkages between increased enforcement and clearer regulations and reduced misconduct. The literature generally suggests that increased enforcement is likely to result in decreased misconduct. Based on this literature, DHS expects that implementing the proposed rule, which DHS expects to lead to increased enforcement, is likely to reduce the incidence of misconduct at Federal properties; however, the literature does not provide a strong basis to quantify likely reductions in such incidents. DHS also reviews studies providing monetary estimates of the value of reductions in various types of misconduct. This literature does not provide a sufficient basis to monetize all the types of misconduct that might be affected by the proposed rule. Thus, this analysis provides a qualitative discussion of the potential benefits of each element of the proposed rule. The benefits broadly fall into three categories:

- Extending FPS's regulatory enforcement authority, which would allow FPS LEOs to prevent incidents of misconduct;
- Removing ambiguities in current regulations, leading to higher rates of successful prosecution and therefore greater deterrence of repeat offenses;
- and;

- Clarifying the language of prohibited activities and behavior, which would increase compliance by raising the public's awareness of prohibited activities and behavior.

DHS has concluded that the proposed rule would best balance the security needs for Federal properties with the potential costs imposed on DHS and other Federal agencies as well as facility occupants and visitors. By incorporating GSA regulations and adding definitions to further clarify the regulations relating to and governing personal conduct on Federal properties, the proposed rule would increase the enforcement (e.g., for certain off-property misconduct) and successful prosecution of misconduct (e.g., due to higher specificity of the regulations), which in turn is expected to reduce the risk of future incidents, thereby avoiding adverse consequences such as injuries, property damage and loss, and temporary workplace closures.

DHS determined that Alternative 1 (the less stringent alternative) would have the lowest costs, but would also yield the fewest benefits. By establishing the regulations under DHS, this alternative resolves the legal ambiguity of FPS's enforcement of the GSA regulations on prohibited conduct at Federal properties. Alternative 1, however, would not enhance security measures at Federal facilities because it does not clarify the language of regulations relating to and governing personal conduct on Federal property or include new, more detailed provisions. Therefore, DHS believes that Alternative 1 is unlikely to reduce incidents involving prohibited conduct relative to existing levels.

DHS determined that Alternative 2 (more stringent alternative) would have higher costs than the other regulatory alternatives, but may also provide additional benefits. Under this alternative, FPS would issue additional citations related to state and local laws. In

addition to providing the same benefits as the proposed rule, Alternative 2 may further reduce incidence of misconduct by providing FPS another mechanism for charging violations of misconduct that fall under state law. However, DHS recognized that the administrative and oversight burden for Alternative 2 (more stringent alternative) would not be possible with FPS's current funding and manpower level. First, this alternative would require significant resources to implement, adding an expanded training requirement for all FPS LEOs and requiring FPS attorneys to undertake extensive research to understand the laws potentially applicable to each Federal facility in all 50 states and many local jurisdictions. Second, it would require FPS attorneys to constantly monitor state and local law to identify and interpret changes in such laws, which may then necessitate changes in officer procedures, guidance, and associated training materials.

In evaluating these alternatives, FPS recognized uncertainty in the estimates of the costs and benefits. For a complete discussion of the analysis, see the complete RIA provided in the docket.

B. Regulatory Flexibility Act

Under the requirements of the Regulatory Flexibility Act (RFA), the Small Business Regulatory Enforcement Fairness Act (SBREFA) and E.O. 13272, entitled "Proper Consideration of Small Entities in Agency Rulemaking," agencies must consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. As discussed above, costs are likely to be incurred by FPS, other Federal agencies (including tenants of Federal facilities), and U.S. district courts. The Federal Government is not considered to be a

small entity. Thus, FPS certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3507(d) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public. According to the Paperwork Reduction Act, an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. DHS has determined that the proposed rule would not result in a new collection nor modify an existing collection of information. The proposed rule is amending prohibited conduct on and adjacent to federal property. The proposed rule places burden on the Federal Government and not directly on the public. In accordance with the authority vested in the Secretary of DHS under 18 U.S.C. 1315, this rulemaking would establish regulations governing conduct on federal property and establish additional Federal charging options off of Federal property to the extent necessary to protect that property or the persons thereon. The proposed rule does not impose any additional burden on the public for the collection of information, so the provisions of the PRA do not apply to this rule and no new collection of information is warranted.³⁵

³⁵ Insofar as DHS may collect information from individuals charged under statute or with regulatory violations under the proposed rule, the PRA exempts from its provisions the collection of information during the conduct of a Federal criminal investigation or prosecution or administrative action or investigation involving an agency against specific individuals or entities. 44 U.S.C. 3518(c)(1)(A), (c)(1)(B)(ii).

D. Executive Order 13132, Federalism

Executive Order 13132, 64 FR 43255 (Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with state and local officials before implementing any such action.

DHS has reviewed this proposed rule under Executive Order 13132 and has concluded that it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this proposed rule does not have federalism implications as defined by the Executive Order. This rulemaking would not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law. In accordance with the authority vested in the Secretary of DHS under 18 U.S.C. 1315, this rulemaking would establish regulations governing conduct on federal property and establish additional Federal charging options off of Federal property to the extent necessary to protect that property or the persons thereon. The rule does not usurp or otherwise effect existing state or local law enforcement authority on or adjacent to federal property. Specifically, DHS rejected the alternative of authorizing FPS to apply state and local laws where there is no applicable Federal law or regulation (see discussion on Alternative 2 in Section V.A. (“**Executive**

Order 12866, Regulatory Planning and Review”)). Instead, the proposed rule merely mirrors DHS’s current statutory enforcement authority under 40 U.S.C. 1315 and does not adopt state laws or otherwise affect State or local enforcement authority. The proposed rule similarly does not affect or alter DHS’s jurisdictional requirements under the Assimilative Crimes Act or DHS’s current ability to enter into agreements with State or local authorities for enforcement of State or local laws.

Therefore, under Executive Order 13132, DHS analyzed this proposed rule and determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year) an identification of the provision of Federal law under which the rule is being promulgated. The proposed rule does not require action or costs by State, local, and tribal governments or the private sector, nor does it affect the health, safety, and the natural environment of these entities. The proposed rule establishes the regulations governing the conduct on Federal property, and off property to the extent that there is a nexus to that Federal property under 40 U.S.C. 1315. Because the rule does not result in expenditures by a

State, local, or tribal government, DHS does not need to assess the effects of this proposed rule.

F. National Environmental Protection Act (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*), as amended, requires Federal agencies to evaluate the impacts of a proposed major Federal action that may significantly affect the human environment, consider alternatives to the proposed action, provide public notice and opportunity to comment, and properly document its analysis. DHS and its agency components analyze proposed actions to determine whether NEPA applies to them and, if so, what level of documentation and analysis is required.

DHS Directive 023-01, Rev. 01 and DHS Instruction Manual 023-01-001-01, Rev. 01 (Instruction Manual) establish the policies and procedures DHS and its component agencies use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA codified in 40 CFR Parts 1500 – 1508. The CEQ regulations allow Federal agencies to establish, in their implementing procedures, with CEQ review and concurrence, categories of actions (“categorical exclusions”) that experience has shown do not, individually or in the aggregate, have a significant effect on the human environment and, therefore, do not require preparation of an environmental assessment or environmental impact statement. 40 CFR 1501.4, 1507.3(e)(2)(ii). Appendix A of the Instruction Manual lists the DHS categorical exclusions. Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more categorical exclusions; (2) the action is not a

piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. This proposed rule would establish DHS regulations for permissible and prohibited conduct on property owned, operated, or secured by the Federal government. Additionally, pursuant to the authority granted in 18 U.S.C. 1315, the rule would provide additional charging authority for LEOs for conduct occurring off property which affects the Federal property or the persons thereon. DHS has analyzed the proposed rule in accordance with its NEPA implementing procedures and has determined that no extraordinary circumstances are present that may create a potential for significant environmental effects. DHS has analyzed this proposed rule and has determined it clearly fits within categorical exclusion A3 because it is a rule is a standalone rulemaking that is not part of a larger DHS action. The conclusion, when the three criteria are met, is that the action is categorically excluded and that no further review or documentation is necessary. DHS has determined that the proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. DHS has also determined that the proposed rule does not involve any of the extraordinary circumstances that require further NEPA analysis. Therefore, DHS has determined preparation of an environmental assessment or impact statement is not required in promulgating this proposed rule.

G. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

The 2000 Executive Order 13175 directs Federal agencies to coordinate and consult with Indian tribal governments whose interests might be directly and substantially

affected by activities on federally administered lands.³⁶ Of the 8,520 Federal facilities protected by FPS, the agency identified 21 such Federal facilities located on tribal lands. As discussed in Chapter 3, the costs of implementing the proposed rule would be incurred solely by the Federal government, including FPS, other Federal agencies that are tenants of Federal facilities protected by FPS, and U.S. district courts. Accordingly, the proposed rule would not impose any costs on local or tribal governments. As discussed in Chapter 4, data limitations prevent the quantification of the incremental improvement in security resulting from the proposed rule. However, this improvement is focused on Federal facilities and persons thereon. Thus, DHS certifies that the proposed rule does not directly and substantially affect tribal government interests as specified in E.O. 13175.

List of Subjects in 6 CFR Part 139

Aircraft, Alcohol and alcoholic beverages, Animals, Buildings and facilities, Civil disorders, Crime, Explosives, Federal buildings and facilities, Firearms, Gambling, Government employees, Government property, Government property management, Homeland Security, Law enforcement, Law enforcement officers, Penalties, Public buildings, Safety, Search warrants, Security measures, Terrorism, Tobacco, Unmanned aircraft.

³⁶ E.O. No. 13175, 64 FR 67249 (Nov. 10, 2000), <https://www.gpo.gov/fdsys/pkg/FR-2000-11-09/pdf/00-29003.pdf>.

For the reasons set forth in the preamble, DHS proposes to add part 139, under the authority of 40 U.S.C. 1315(c), to chapter I of title 6 of the Code of Federal Regulations as set forth below:

1. Add part 139 to read as follows:

PART 139 – CONDUCT ON FEDERAL PROPERTY

Subpart A – General

Sec.

139.1 Purpose.

139.5 Scope, applicability, and agency cooperation.

139.10 Assessments for protective services.

139.15 Definitions.

Subpart B – Personal Conduct Affecting Federal Property

139.20 Admissions and inspections related to federal property.

139.25 Preservation of federal property.

139.30 Conformance with signs and directions.

139.35 Prohibited conduct.

139.40 Gambling.

139.45 Narcotics, other drugs, and drug paraphernalia.

139.50 Alcoholic beverages.

139.55 Soliciting, vending, and debt collection.

139.60 Posting and distributing materials.

139.65 Photography and recording.

139.70 Vehicle operation and removal.

139.75 Firearms, dangerous weapons, and explosives

139.80 Animals.

139.85 Penalties.

Authority citation: 6 U.S.C. 203(3) and 232(a); 40 U.S.C. 586(c) and 1315

PART 139–CONDUCT ON FEDERAL PROPERTY

Subpart A–General

§ 139.1 Purpose.

The regulations in this part provide for the protection and administration of the buildings, grounds, and property or portions thereof that are owned, occupied, or secured

by the federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

§ 139.5 Scope, applicability, and agency cooperation.

(a) *Scope.* This part applies to all federal property under the protection responsibility of the Secretary of Homeland Security and all persons on such property, as well as areas outside such federal property to the extent necessary to protect the property and persons on the property.

(b) *Applicability.* This part shall not be construed to nullify any other federal, state, or local laws or regulations applicable to any area in which federal property is situated; preclude or limit the authority of any federal law enforcement agency; or restrict the authority of the Administrator of General Services or other federal government entity to promulgate regulations affecting property under its jurisdiction, custody, or control.

(c) *Cooperation.* Federal tenants must cooperate to the fullest extent possible with all applicable provisions set out in this part; promptly report all crimes and suspicious circumstances occurring on federal property first to the Federal Protective Service MegaCenter at 1-877-4FPS-411, and, as appropriate, the local responding law enforcement authority; provide training to employees regarding protection and responses to emergency situations; and make recommendations for improving the effectiveness of protection on federal property.

(d) *Notice.* The Facility Security Committee or highest-ranking official of the sole federal agency occupant or a designee must ensure a Notice is posted in a conspicuous place at each federal facility under the protection responsibility of the Secretary of Homeland Security. The posted notice:

(1) Shall be 11 inches by 14 inches;

(2) Shall describe the rules and regulations governing personal conduct contained in this part; and

(3) Shall be prescribed in accordance with directions provided by DHS and found on its website at: <https://www.dhs.gov/fps-visitors>.

(d) *Effective Date*. The regulations in this part are effective [INSERT DATE SIX MONTHS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

§ 139.10 Assessments for protective services.

The Secretary of Homeland Security is authorized to charge federal agencies under the Secretary's protection responsibility for security services provided by the Federal Protective Service.

§ 139.15 Definitions.

For purposes of this part –

Aircraft means any contrivance invented, used, or designed to navigate, or fly in, the air.

Audio recording means the use of any microphone, device, material, or equipment to capture a sound, including any tape recorder, digital recorder, or other recording device.

Building means an enclosed structure (above or below grade).

Building Manager/Property Manager/Facility Manager means the individual employed by or through contract with a federal agency that has real property management and operations authority.

Camping means the use of federal property for living accommodation purposes. The following activities constitute camping when it reasonably appears, based on the totality of the circumstances, that the participant, in conducting these activities, is in fact using the area as a living accommodation: sleeping or preparing to sleep, including the laying down of bedding for the purpose of sleeping; storing personal belongings; making any fire; using a tent, shelter, other structure, or vehicle for sleeping; doing any digging or earth breaking; or carrying on cooking activities.

Commercial purpose means to undertake an activity with the objective of furthering, promoting, or selling a good or service regardless of whether the activity is intended to produce a profit.

Crime of violence means any offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

Damaging means injuring, mutilating, defacing, destroying, or impairing the use of any property owned, occupied, or secured by the federal government without the consent of the federal government.

Dangerous weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of causing, death or serious bodily injury, except that a pocketknife with a blade of less than two and a half inches in length is not a dangerous weapon.

Designated official is the highest-ranking official of the primary federal occupant agency of a federal facility, or, alternatively, a designee selected by agreement of federal occupant agency officials.

Emergency means a situation that causes or has the potential to cause imminent

danger to life or property, including, but not limited to, terrorist attacks, bombings and bomb threats, shootings, civil disturbances, fires, explosions, electrical failures, loss of water pressure or other critical infrastructure failures, chemical and gas leaks, medical emergencies, natural disasters, or other threats to public safety and security.

Facility Security Committee means a group of representatives from federal tenants in the facility responsible for addressing facility-specific security issues and approving the implementation of security measures and practices. The Facility Security Committee (FSC) consists of representatives of all federal tenants in the facility, the federal Protective Service or the Government agency or internal agency component responsible for physical security for the specific facility, and the owning or leasing department or agency with jurisdiction, custody, or control over the property. In the case of new construction or pending lease actions, the FSC will also include the project team and the planned tenant(s).

Federal facility means a federally owned or leased building, structure, or the land it resides on, in whole or in part, that is regularly occupied by Federal employees or Federal contractor workers for nonmilitary activities. The term “Federal facility” also means any building or structure acquired by a contractor through ownership or leasehold interest, in whole or in part, solely for the purpose of executing a nonmilitary Federal mission or function under the direction of an agency. The term “Federal facility” does not include public domain land, including improvements thereon; withdrawn lands; or buildings or facilities outside of the United States.

Federal Government means the United States Government, including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof.

Federal grounds mean all parts outside a federal facility (e.g., lands, walkways, and roadways) that are owned, occupied, or secured by the federal Government.

Federal property means any facility, grounds, or other property, to include vehicles, equipment, and any movable article, that is owned, occupied, or secured by the federal Government and under the protection responsibility of the Secretary of Homeland Security.

Federal tenant means a federal department or agency that occupies space and pays rent on space in any federal facility under the protection responsibility of the Secretary of Homeland Security.

Gambling per se means a game of chance where the participant risks something of value for the chance to gain or win a prize.

Image recording means use of any camera, device, material, or equipment to capture an image, including any photograph, sketch, picture, drawing, map, or graphical representation.

Labor organization means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include –an organization that, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, marital status, or handicapping condition; an organization that advocates the overthrow of the constitutional form of government of the United States; an organization sponsored by an agency; or an organization that participates in the conduct of a strike against the

Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

Littering means discarding wastepaper, cans, bottles, or other refuse or rubbish on the ground or in any other area not designated for disposal.

Nuisance means a condition, activity, or situation, to include a loud noise or foul odor, that interferes with the use or enjoyment of federal property.

Open container means a bottle, can, or any other receptacle containing an alcoholic beverage that is open, has a broken seal, or from which the contents are partially removed.

Personal property means any article or item, including but not limited to outer clothing, purses, backpacks, briefcases, suitcases, packages, and other containers within the possession, custody, or control of a person.

Personal transportation device means any method of conveyance, whether motorized or non-motorized, including but not limited to any personal transportation vehicle, skateboards, roller skates (including inline skates), roller shoes, roller skis, scooters, bicycles, non-medical use personal transporters, and similar devices or vehicles.

Protective Security Officer means a security guard employed by a private security contractor who provides contract security services to the Federal Protective Service (FPS). The contract security services provided by a Protective Security Officer include, but are not limited to, the performance of security screenings and inspections of persons, personal property, and vehicles entering federal property; confronting individuals who have violated or are suspected of violating building rules and regulations; and reporting all such security-related information to FPS.

Public area means any part or section on federal property that is ordinarily open to members of the public.

Secretary means the Secretary of the Department of Homeland Security or any person, officer, or entity within the Department to whom the Secretary's authority under 40 U.S.C. 1315 is delegated.

Secure area means any part or section on federal property marked by signage where persons present themselves to enter the property and submit to the security inspection and screening process.

Security personnel means persons authorized to ensure compliance with this Part, including FPS law enforcement officers, protective security officers, court security officers, or other security personnel charged by the federal Government with security duties under this Part such as other DHS component armed security guards performing similar duties as contract PSOs.

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.

Tobacco product means any item made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). Tobacco product does not mean any item

specifically excluded by the Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq. [add the devices listed in the preamble to this definition.]

Unmanned Aircraft means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

Unmanned Aircraft System means an unmanned aircraft and associated elements (including communication links and components that control the unmanned aircraft) that are required for the operator to operate safely and efficiently in the national airspace system.

Vehicle means any method of conveyance, whether motorized or non-motorized, including but not limited to any motorcycle, automobile, truck, tractor, bus, motorhome, agricultural machinery, construction equipment, and other similar vehicle, even if autonomously operated.

Water Area means any area where water is retained or collected such as a fountain, basin, pool, pond, septic or sewer, reservoir, or other manmade water feature maintained on federal property.

PART 139—CONDUCT ON FEDERAL PROPERTY

Subpart B—Personal Conduct Affecting Federal Property

§ 139.20 Admissions and inspections related to federal property.

When a Facility Security Committee (FSC) or the highest-ranking official of the sole federal agency occupant or designee requires inspections at a federal facility, then no person required to be screened may enter a secure area without submitting to the screening and inspection of that person and all accessible personal property or vehicles. Security personnel shall conduct inspections and screening as follows:

(a) Security personnel shall inspect any person, article of personal property, or vehicle, when entering in or present on federal property, for firearms, explosives, dangerous weapons, and the component parts thereof.

(b) Once a person, article of personal property, or vehicle enters a secure area, the inspection process will not terminate until completed by security personnel.

(c) Security personnel may deny admission, remove, or take other appropriate law enforcement action with respect to any person, article of personal property, or vehicle that fails to comply with security procedures, delays or impairs the inspection process, or presents a threat to either security personnel or other persons in or on federal property.

§ 139.25 Preservation of federal property.

All persons are prohibited from the following conduct affecting federal property:

(a) Littering;

(b) Damaging or otherwise changing the appearance of federal property in any way except through authorized normal and customary use;

(c) Removing federal property without proper authority;

(d) Creating any hazard or threat of hazard on federal property to persons or things;

(e) Throwing articles of any kind from or at federal property;

(f) Climbing on any statue, fountain, or part of a federal facility, or any tree, shrub, or plant on federal property;

(g) Using, operating, parking, locking, or storing any vehicle or personal transportation device on federal property, except as either required by individuals with mobility impairments, or otherwise specifically allowed in designated areas.

§ 139.30 Conformance with signs and directions.

Any person on federal property must at all times comply with official signs of a prohibitory, regulatory, or directive nature and with the lawful direction of security personnel.

§ 139.35 Prohibited conduct.

All persons are prohibited from engaging in the following conduct, on federal property or in areas outside federal property, that affects, threatens, or endangers federal property or persons on the federal property —

(a) Disorderly conduct, which includes, but is not limited to, assaulting, fighting, harassing, intimidating, threatening or other violent behavior, lewd acts, or the inappropriate disposal of feces, urine, and other bodily fluids.

(b) Wearing a mask, hood, disguise, or device that conceals the identity of the wearer when attempting to avoid detection or identification while violating any federal, state, or local law, ordinance, or regulation.

(c) Creating a loud or unusual noise, noxious odor, or other nuisance.

(d) Obstructing the usual use, enjoyment, or access to federal property, including but not limited to use of entrances, exits, exterior areas, plazas, courtyards, foyers, lobbies, corridors, offices, elevators, escalators, stairways, parking areas, garages, loading docks, and areas on federal property designated as closed during an emergency.

(e) Impeding or disrupting the security inspection process administered by security personnel, the performance of official duties by federal employees, or the ability of the general public to obtain services provided by the federal Government.

(f) Threatening by any means, including but not limited to by mail, facsimile,

telephone, or electronic communications, to commit any crime of violence.

(g) Bathing, wading, or swimming in or polluting any water area, except where authorized by the federal agency responsible for the property.

(h) Camping, except in designated areas and as expressly authorized by the Facility Security Committee, Designated Official, or federal agency responsible for the property.

(i) Trespassing, entering, or remaining in or upon areas of federal property closed to the public.

(j) Consuming a tobacco product in all interior space owned, rented, or leased by the federal Government, as well as all courtyards, terraces, and plazas within 25 feet of doorways and air intake ducts under the custody, control, or jurisdiction of the federal Government.

(k) Causing an unmanned aircraft to take off or land on federal property without express permission from the Facility Security Committee, Designated Official, or federal agency responsible for the property.

(l) Using an unmanned aircraft to cause interference, damage, destruction, harm, or a hazard to federal property or persons on the property.

(m) Tampering with, accessing, damaging, or interfering with the operation of a computer, digital network, industrial control system or Supervisory Control and Data Acquisition (SCADA) system without proper authorization.

(n) No person, except authorized security personnel or sworn law enforcement officers, may wear, display, present, or possess any indicia of law enforcement or security authority, to include any badge, insignia, emblem, identification card, uniform or

part of a uniform, or any imitation thereof.

§ 139.40 Gambling.

(a) *General Rule.* Any person on federal property is prohibited from---

- (1) Participating in games for money or other personal property;
- (2) Operating gambling devices;
- (3) Conducting a lottery or pool; or
- (4) Selling or purchasing gambling tickets.

(b) *Exceptions.* This provision is not intended to prohibit:

(1) Vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 et seq.); and

(2) Prize drawings for personal property at otherwise permitted functions on federal property, provided that the game or drawing does not constitute gambling per se.

§ 139.45 Narcotics, other drugs, and drug paraphernalia.

(a) *Narcotics and Other Drugs.* Except when a patient uses a narcotic or drug as prescribed by a licensed health care provider in accordance with federal law, any person on federal property is prohibited from being under the influence of, using, possessing, or operating a vehicle while under the influence of any controlled substance as defined in 21 U.S.C. 802, 812, 841.

(b) *Drug Paraphernalia.* Any person on federal property is prohibited from possessing drug paraphernalia as defined in 21 U.S.C. 863.

§ 139.50 Alcoholic beverages.

(a) *General Rule.* Any person on federal property is prohibited from either consuming, or otherwise being under the influence of alcoholic beverages, possessing an open container of alcohol, or operating a vehicle while under the influence of alcohol.

(b) *Exception.* The head of the occupant agency for the designee in the space where the alcohol is to be served may grant a written exemption to the prohibition against the consumption of alcoholic beverages on federal property. A copy of any granted exemption must be provided to the building manager and the officials responsible for the security of the property before the event at which alcohol will be consumed is held.

§ 139.55 Soliciting, vending, and debt collection.

(a) *General Rule.* Soliciting, begging, or demanding gifts, money, goods, or services on federal property is prohibited, unless otherwise provided in paragraph (b) of this section. Any person on federal property is specifically prohibited from:

(1) Soliciting on behalf of:

(i) Charitable organizations.

(ii) Political campaigns.

(iii) Commercial enterprises.

(2) Vending merchandise of any kind.

(3) Displaying or distributing commercial advertising.

(4) Collecting private debts, including repossession of vehicles.

(b) *Exceptions.* The following activities are allowed:

(1) Soliciting on behalf of charitable organizations as authorized by 5 CFR part 950, Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations and sponsored or approved by the occupant agency.

(2) Posting concessions or personal notices by employees on authorized bulletin boards.

(3) Soliciting on behalf of labor organizations authorized by federal occupant agencies and/or labor organizations representing or seeking to represent contractors working in Federal Government facilities.

(4) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under 40 U.S.C. 581(h). Public areas of GSA-controlled property may be used for other activities in accordance with 41 CFR part 102-74, Subpart D, Occasional Use of Public Buildings.

(5) Collection of non-monetary items that are sponsored or approved by the federal occupant agencies.

(6) Commercial activities sponsored by recognized federal employee associations and on-site childcare centers.

§ 139.60 Posting and distributing materials.

(a) *General Rule.* Any person on federal property is prohibited from the following activities:

(1) Posting or affixing materials, such as pamphlets, handbills, or flyers on federal property, including vehicles, bulletin boards, and other equipment.

(2) Distributing materials, such as pamphlets, handbills or flyers, or free samples, including samples of tobacco products.

(b) *Exceptions.* (1) The posting or distribution of materials is allowed when conducted as part of an authorized federal activity.

(2) An individual may distribute materials in public areas on federal property,

provided the person first obtains a permit from the building manager, as specified in 42 CFR 102.74 subpart D, and the person does not leave behind any of the materials.

§ 139.65 Photography and recording.

(a) *General.* Any person on federal property may not photograph or create video, image, or audio recordings of federal facilities and grounds in a manner that either impedes or disrupts access to or operations on federal property, or is prohibited by a security regulation, rule, order, or directive. Photography and recording on federal property are allowed as provided paragraph (b) of this section.

(b) *Exceptions.* The following activities are allowed:

(1) Any person, including persons affiliated with the media and commercial entities, may photograph or record video, images, and audio of publicly accessible exterior areas of federal facilities and grounds from public areas, including public streets, sidewalks, parks, and plazas, when not impeding or disrupting access to or operations on the federal property.

(2) Any person, including persons affiliated with the media and commercial entities, may photograph or record video, images, and audio of publicly accessible interior areas of federal facilities and grounds from public areas, including public entrances, lobbies, foyers, corridors, or auditoriums, when not impeding or disrupting access to or operations on the federal property.

(3) Any person, including persons affiliated with the media and commercial entities, may only photograph or record video, images, and audio of interior areas occupied by a federal tenant with the express permission of the occupying tenant.

Persons must obtain written permission in advance from the occupying tenant when

photographing or recording tenant-occupied space for a commercial purpose.

§ 139.70 Vehicle operation and removal.

(a) *Safe operation.* All vehicle operators on federal property must:

- (1) Drive/operate in a careful and safe manner at all times;
- (2) Possess a valid driver's/operator's license;
- (3) Comply with the lawful signals and directions of security personnel; and
- (4) Comply with traffic and safety signals and posted signs.

(b) *Prohibited operations.* All vehicle operators on federal property or in areas outside federal property that affect, threaten, or endanger federal property or persons on the property, are prohibited from:

- (1) Blocking entrances, driveways, walks, loading platforms, fire hydrants, docking areas, or other passageways; and
- (2) Parking on or adjacent to federal property in unauthorized locations, or contrary to the direction of posted signs consistent with 41 CFR 102-74.265-102-74.310.

(c) *Responsibility.* Registered vehicle owners will be responsible for violations of this regulation when the vehicle operator is not present.

(d) *Enforcement.* Security personnel may stop any vehicle that is observed operating on federal property in violation of this section.

(e) *Removal and Seizure.* Any vehicle used in violation of these regulations may be seized, removed, immobilized, towed, stored, marked with warning tags or notices, and booted in addition to any law enforcement actions or citations. All expenses incurred because of any seizure, removal, immobilization, towing, storage, marking, booting, or

other law enforcement actions will be the responsibility of the owner, driver, operator, or other person using or operating the vehicle that is in violation of these regulations.

§ 139.75 Firearms, dangerous weapons, and explosives.

(a) Any person on federal property is prohibited from knowingly carrying or otherwise possessing a firearm or other dangerous weapon, as defined by 18 U.S.C. 921 and 930, whether carried or otherwise possessed either openly or concealed, unless authorized by 18 U.S.C. 930(d).

(b) Any person on federal property is prohibited from knowingly carrying or otherwise possessing explosives, as defined by 18 U.S.C. 841, or items intended to be used to fabricate an explosive or incendiary device, whether carried or otherwise possessed either openly or concealed, except for official purposes as authorized by the Facility Security Committee, Designated Official, FPS, or other primary law enforcement agency responsible for the security of the federal property.

§ 139.80 Animals.

(a) *General Rule.* All persons are prohibited from bringing animals in or on federal property for other than official purposes.

(b) *Exception.* Persons with disabilities, as defined under the Americans with Disabilities Act of 1990, may bring a service animal that is trained to do work or perform tasks for the benefit of that individual. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a

wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this exception. Persons with disabilities may be required to state whether the animal is a service animal required because of a disability.

§ 139.85 Penalties.

A person who violates any provision of Subpart B of this Part may be punished by a fine under title 18, United States Code, imprisoned for not more than 30 days, or both.

Alejandro Mayorkas,

Secretary,

Department of Homeland Security.

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