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Presidential Documents

Title 3—

The President

Executive Order 14068 of March 11, 2022

Prohibiting Certain Imports, Exports, and New Investment With Respect to Continued Russian Federation Aggression

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, in order to take additional steps with respect to the national emergency declared in Executive Order 14024 of April 15, 2021, relied on for additional steps taken in Executive Order 14039 of August 20, 2021, and expanded by Executive Order 14066 of March 8, 2022, hereby order:

Section 1. (a) The following are prohibited:

(i) the importation into the United States of the following products of Russian Federation origin: fish, seafood, and preparations thereof; alcoholic beverages; non-industrial diamonds; and any other products of Russian Federation origin as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce;

(ii) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of luxury goods, and any other items as may be determined by the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Treasury, to any person located in the Russian Federation;

(iii) new investment in any sector of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, by a United States person, wherever located;

(iv) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of U.S. dollar-denominated banknotes to the Government of the Russian Federation or any person located in the Russian Federation; and

(v) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this section if performed by a United States person or within the United States.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, or pursuant to the export control authorities implemented by the Department of Commerce, and notwithstanding any contract entered into or license or permit granted prior to the date of this order.

Sec. 2. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. Nothing in this order shall prohibit transactions for the conduct of the official business of the Federal Government or the United Nations (including its specialized agencies, programs, funds, and related organizations) by employees, grantees, or contractors thereof.

Sec. 4. For the purposes of this order:

(a) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term ''person'' means an individual or entity;

(c) the term ''Government of the Russian Federation'' means the Government of the Russian Federation, any political subdivision, agency, or instrumentality thereof, including the Central Bank of the Russian Federation, and any person owned, controlled, or directed by, or acting for or on behalf of, the Government of the Russian Federation; and

(d) the term ''United States person'' means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 5. The Secretary of the Treasury and the Secretary of Commerce, in consultation with the Secretary of State, are hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury and the Secretary of Commerce may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury and the Department of Commerce, respectively. All executive departments and agencies of the United States shall take all appropriate measures within their authority to implement this order.

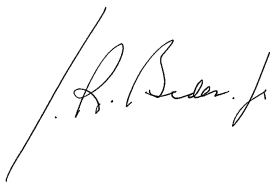
Sec. 6. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
March 11, 2022.

[FR Doc. 2022–05554
Filed 3–14–22; 8:45 am]
Billing code 3395–F2–P

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0278; Project Identifier MCAI–2021–01437–R; Amendment 39–21979; AD 2022–06–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK 117 C–2 and MBB–BK 117 D–2 helicopters. This AD was prompted by a report of erroneous or partial installation of the seat belt restraint system. This AD requires inspecting certain seats, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective March 30, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 30, 2022.

The FAA must receive comments on this AD by April 29, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* For Mecaer Aviation Group (MAG) service information identified in this final rule, contact Mecaer Aviation Group, Via dell'Artigianato 1, Monteprandone 63076 Ascoli Piceno, Italy; telephone (+39) 0735–7091; email *caw@mecaer.com;* or at *www.mecaer.com.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. Service information that is IBRed is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0278.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0278; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, supplemental type certificates (STCs), any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Antariksh Shetty, Aerospace Engineer, Airframe & Propulsion Section, New York ACO Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0287, dated December 21, 2021, and corrected January 26, 2022 (EASA AD 2021–0287), to correct an unsafe condition for Airbus Helicopters Deutschland GmbH (AHD), formerly Eurocopter Deutschland GmbH; and Airbus Helicopters Inc., formerly American Eurocopter LLC, Model MBB–BK117 C–2, D–2, and D–3 helicopters, all serial numbers, if modified in accordance with EASA STC 10038915 or STC 10055175. The equivalent FAA STCs for Model MBB–BK117 C–2 and MBB–BK117 D–2 helicopters are STC SR03130NY and STC SR03703NY, respectively. Currently, there are no equivalent FAA STCs or any other forms of FAA design approval to install an affected seat on Model MBB–BK117 D–3 helicopters. Accordingly, this modification does not affect U.S. registered MBB–BK117 D–3 helicopters, so this AD does not include that model in the applicability.

This AD was prompted by a report of erroneous or partial installation of the seat belt restraint system. The FAA is issuing this AD to ensure proper installation of the seat belt restraint system. See EASA AD 2021–0287 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0287 requires a one-time inspection of the affected seats and depending on the results, corrective action or marking the affected seat ''inoperative.''

The FAA also reviewed Mecaer Aviation Group Mandatory Service Bulletin No. SB–EC1–010, Revision A, dated December 30, 2021 (SB–EC1–010, Rev A). SB–EC1–010, Rev A identifies affected part-numbered and serial-numbered pilot, co-pilot, and passenger (passenger cabin) seats, and specifies procedures for inspecting the affected seats for proper assembly and corrective action if there is a deviation.

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

Other Related Service Information

The FAA reviewed B/E Aerospace Fischer Component Maintenance Manual With Illustrated Parts List, 25–24–19, Revision D, dated September 10, 2018. This service information specifies

procedures for maintenance, repair, disassembly, and assembly of an affected crew (pilot or co-pilot) seat.

The FAA also reviewed Fischer+Entwicklungen Component Maintenance Manual With Illustrated Parts List, 25–24–29, Revision C, dated January 09, 2013. This service information specifies procedures for maintenance, repair, disassembly, and assembly of an affected common (passenger or passenger cabin) seat.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all pertinent information and determining that the unsafe condition exists and is likely to exist or develop on other helicopters of the same type designs.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2021–0287, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and EASA AD 2021–0287.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2021–0287 will be incorporated by reference in this FAA final rule. This AD would, therefore, require compliance with EASA AD 2021–0287 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0287 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0287.

Service information referenced in EASA AD 2021–0287 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0278.

Differences Between This AD and EASA AD 2021–0287

EASA AD 2021–0287 includes Model MBB–BK 117 D–3 helicopters in the applicability, whereas this AD does not. This AD requires renumbering certain figures in SB–EC1–010, Rev A, for the purposes of this AD, whereas EASA AD 2021–0287 does not. Where the service information referenced in EASA AD 2021–0287 specifies to contact ''MAG DOA (*caw@mecaer.com*) to receive instructions,'' this AD requires repair done in accordance with certain approved methods instead.

Where the service information referenced in EASA AD 2021–0287 specifies, ''17. Make available items C (q.ty 2) and D (q.ty 2) (ref. Figure 18), for each affected seat,'' this AD requires installing new (zero total hours time-in-service) nuts and hex head screws (bolts).

Lastly, the service information referenced in EASA AD 2021–0287 specifies to submit certain information to the manufacturer; this AD does not include that requirement.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because seat belt restraint systems are critical for flight crew and occupant safety. The improper installation of the seat belt restraint system, if not corrected, could result in serious injury to the seat occupant during various operations including inclement weather, autorotations, hard landings, and emergency or forced landings. In light of this, the required actions of this AD must be accomplished within 3 months or 50 hours time-in-service, whichever occurs first. This is a short compliance time for these high usage helicopters, some of which could reach these hours within 60 calendar days. Therefore, the compliance time for the required actions is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0278; Project Identifier MCAI–2021–01437–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket

of this AD. Submissions containing CBI should be sent to Antariksh Shetty, Aerospace Engineer, Airframe & Propulsion Section, New York ACO Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 3 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the seat belt restraint system for a cabin seat takes up to 1 work-hour for an estimated cost of up to $85 per cabin seat and up to $2,040 for the U.S. fleet.

If required, reworking the seat belt restraint system for a cabin seat takes up to 1 work-hour and parts cost up to $95 for an estimated cost of up to $180 per cabin seat and up to $4,320 for the U.S. fleet.

Inspecting the seat belt restraint system for a pilot/co-pilot seat takes up to 2 work-hours for an estimated cost of up to $170 per pilot/co-pilot seat and up to $1,020 for the U.S. fleet.

If required, reworking the seat belt restraint system for a pilot/co-pilot seat takes up to 2 work-hours with a negligible parts cost for an estimated cost of up to $170 per pilot/co-pilot seat and up to $1,020 for the U.S. fleet. The FAA has no way of determining the costs pertaining to any necessary repairs that are required to be done with an approved method.

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

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 2022–06–13 Airbus Helicopters Deutschland GmbH (AHD): Amendment 39–21979; Docket No. FAA–2022–0278; Project Identifier MCAI–2021–01437–R.

(a) Effective Date

This airworthiness directive (AD) is effective March 30, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK 117 C–2 and MBB–BK 117 D–2 helicopters, certificated in any category, modified by Supplemental Type Certificate (STC) SR03130NY, or STC SR03703NY.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report of erroneous or partial installation of the seat belt restraint system. The FAA is issuing this AD to ensure proper installation of the seat belt restraint system. The unsafe condition, if not addressed, could prevent proper operation of the seat belt restraint system, resulting in subsequent injury to the seat occupant.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0287, dated December 21, 2021, and corrected January 26, 2022 (EASA AD 2021–0287).

(h) Exceptions to EASA AD 2021–0287

(1) Where EASA AD 2021–0287 requires compliance in terms of flight hours, this AD requires using hours time-in-service (TIS).

(2) Where EASA AD 2021–0287 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2021–0287 specifies to ''inspect each affected part in accordance with the instructions of the SB,'' this AD requires inspecting each affected part by following the procedures in Mecaer Aviation Group Mandatory Service Bulletin No. SB–EC1–010, Revision A, dated December 30, 2021 (SB–EC1–010, Rev A). Except for the purposes of this AD, consider Figure 16 on page 16 of SB–EC1–010, Rev A, as Figure 18 and consider Figures 17 and 18 on page 17 of SB–EC1–010, Rev A, as Figures 19 and 20, respectively.

Note 1 to paragraph (h)(3): SB–EC1–010, Rev A refers to a passenger seat as a passenger seat and passenger cabin seat; a seat belt as a seat belt and safety belt; and a bolt as a hex head screw and hex head bolt.

(4) Where the service information referenced in paragraph (2) of EASA AD 2021–0287 specifies to ''contact MAG to receive missing parts/materials, if any,'' this AD requires replacing the missing parts and materials but does not require contacting MAG to receive the missing parts or materials.

(5) Where the service information referenced in paragraph (2) of EASA AD 2021–0287 specifies contacting ''MAG DOA (*caw@mecaer.com*) to receive instructions,''

this AD requires repair done in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(6) Where the service information referenced in paragraph (2) of EASA AD 2021–0287 specifies, ''17. Make available items C (q.ty 2) and D (q.ty 2) (ref. Figure 18), for each affected seat,'' this AD requires installing new (zero total hours TIS) nuts and hex head screws.

(7) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0287.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0287 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

For more information about this AD, contact Antariksh Shetty, Aerospace Engineer, Airframe & Propulsion Section, New York ACO Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7300; email *9-avs-nyaco-cos@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0287, dated December 21, 2021, and corrected January 26, 2022.

(ii) Mecaer Aviation Group Mandatory Service Bulletin No. SB–EC1–010, Revision A, dated December 30, 2021.

(3) For EASA AD 2021–0287, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* For Mecaer Aviation Group service information identified in this AD, contact Mecaer Aviation Group (MAG), Via dell'Artigianato 1, Monteprandone 63076 Ascoli Piceno, Italy; telephone (+39) 0735–7091; email *caw@mecaer.com;* or at *www.mecaer.com.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on March 10, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05525 Filed 3–11–22; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0940; Airspace Docket No. 21–ASO–12]

RIN 2120–AA66

Amendment and Removal of Area Navigation (RNAV) Routes; South-Central FL Metroplex Project.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends low altitude United States Area Navigation (RNAV) route, T–208 in support of the South-Central FL Metroplex Project. Other route changes that were proposed in the NPRM are being deferred to a later date.

DATES: Effective date 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0940, in the **Federal Register** (86 FR 61724; November 8, 2021), amending 11 T-routes, and removing one T-route. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States RNAV T-routes are published in paragraph 6011 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be subsequently published in FAA Order JO 7400.11.

Differences From the NPRM

In addition to route T–208, the NPRM proposed to amend the following routes: T–207, T–210, T–336, T–339, T–341, T–343, T–345, T–347, T–349, and T–353, and to remove T–337. Since then, the FAA has determined that additional planning and coordination is needed prior to implementing the changes to all of the above routes except for T–208.

Consequently, this rule only implements the amendment of T–208. The remaining routes are delayed to a later date.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending RNAV T-route T–208 in support of the South-Central FL Metroplex Project. The route change is described below.

T–208: T–208 currently extends between the WALEE, FL, WP, and the SHANC, FL, WP. This action removes the WALEE, FL, and the MMKAY, FL, WPs from the route. The SIROC, GA, WP is added as the new start point of the route. The SAHND, FL, WP is added between the SIROC, GA, and the FOXAM, FL, WPs. After the FOXAM, FL, WP, T–208 proceeds to the SHANC, FL, Fix, as currently depicted on the IFR Low Altitude Chart.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending T–208, as described above, in support of efforts transitioning the NAS from ground-based to satellite-based navigation, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–208 SIROC, GA to SHANC, FL [Amended]

SIROC, GA	WP	(Lat. 31°03′02.32″ N, long. 081°26′45.89″ W)
SAHND, FL	WP	(Lat. 30°25′45.91″ N, long. 081°24′34.99″ W)
FOXAM, FL	WP	(Lat. 29°33′37.73″ N, long. 081°09′37.84″ W)
SUUGR, FL	WP	(Lat. 29°19′40.38″ N, long. 081°07′20.79″ W)
SMYRA, FL	Fix	(Lat. 29°00′19.48″ N, long. 080°59′34.51″ W)
OAKIE, FL	Fix	(Lat. 28°51′04.26″ N, long. 080°55′52.35″ W)
MALET, FL	Fix	(Lat. 28°41′29.90″ N, long. 080°52′04.30″ W)
TICCO, FL	Fix	(Lat. 28°31′00.50″ N, long. 080°47′52.80″ W)
INDIA, FL	Fix	(Lat. 28°26′04.19″ N, long. 080°45′55.25″ W)
DIMBY, FL	WP	(Lat. 28°04′52.54″ N, long. 080°37′37.61″ W)
VALKA, FL	Fix	(Lat. 27°55′06.06″ N, long. 080°34′17.17″ W)
SULTY, FL	WP	(Lat. 27°48′12.41″ N, long. 080°32′59.17″ W)
WIXED, FL	WP	(Lat. 27°41′24.86″ N, long. 080°29′56.56″ W)
CLEFF, FL	WP	(Lat. 27°00′03.31″ N, long. 080°32′38.27″ W)
DURRY, FL	WP	(Lat. 26°43′46.96″ N, long. 080°24′09.25″ W)
BOBOE, FL	WP	(Lat. 26°28′48.72″ N, long. 080°23′05.23″ W)
SHANC, FL	Fix	(Lat. 26°18′51.14″ N, long. 080°20′00.16″ W)

* * * * *

Issued in Washington, DC, on March 9, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–05339 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1108; Airspace Docket No. 21–ASO–39]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Lawrenceville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace and Class E airspace extending upward from 700 feet above the surface for Lawrenceville, GA. This action updates the airport's name in both the Class D and E airspace to Gwinnett County/Briscoe Field. In addition, this action amends the Class D airspace by creating an extension to the southwest. The Class E airspace extending upward from 700 feet above the surface is amended by increasing the radius and eliminating the extension to the east. Also, this action eliminates the Gwinnett Non-directional Beacon (NDB) from the legal description. This action also makes an editorial change replacing the term Airport/Facility Directory with the term Chart Supplement in the legal descriptions of the Class D airspace. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 2568, January 18, 2022) for Docket No. FAA–2021–1108 to amend Class D airspace and Class E airspace extending upward from 700 feet above the surface for Lawrenceville, GA.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E airspace designations are published in Paragraphs 5000 and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

The FAA amends 14 CFR part 71 to amend Class D airspace and Class E airspace extending upward from 700 feet above the surface for Gwinnett County/Briscoe Field Airport, Lawrenceville, GA.

The Gwinnett County/Briscoe Field Airport (formerly Gwinnett County-Briscoe Field Airport) Class D airspace is amended by updating the airport's name, adding an extension 1 mile each side of the airports 244° bearing extending from the airport's 4.6-mile radius to 5.5 miles southwest of the airport, and replacing the outdated term Airport/Facility Directory with the term Chart Supplement in the airport description.

The Gwinnett County/Briscoe Field Airport (formerly Lawrenceville, Gwinnett County-Briscoe Field Airport) Class E airspace extending upward from 700 feet above the surface would be amended by updating the airport's name, increasing the radius to 7.0 miles (formerly 6.5 miles), eliminating the extension to the east, and removing the Gwinnett County NDB from the description.

Subsequent to publication of the Notice of Proposed Rule Making, the FAA discovered that the name of Gwinnett County-Briscoe Field Airport required updating. The correct name is Gwinnett County/Briscoe Field Airport. This action resolves this issue.

Class D and Class E airspace designations are published in Paragraphs 5000 and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order JO 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO GA D Lawrenceville, GA [Amended]

Gwinnett County/Briscoe Field Airport, GA (Lat. 33°58′41″ N, long. 83°57′45″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.6-mile radius of the Gwinnett County/Briscoe Field Airport and within 1.0 mile each side of the 244° bearing from the airport, extending from the 4.6-mile radius to 5.5 miles southwest of the airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO GA E5 Lawrenceville, GA [Amended]

Gwinnett County/Briscoe Field Airport, GA (Lat. 33°58′41″ N, long. 83°57′45″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Gwinnett County/Briscoe Field Airport.

Issued in College Park, Georgia, on March 10, 2022.

Matthew N. Cathcart,

Manager, Operations Support Group, Eastern Service Center, AJV–E2.

[FR Doc. 2022–05392 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1149; Airspace Docket No. 21–ASW–27]

RIN 2120–AA66

Amendment of the Class E Airspace and Revocation of Class E Airspace; Grove, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace and revokes Class E airspace at Grove, OK. This action is due to an airspace review conducted as part of the decommissioning of the Neosho very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 73715; December 28, 2021) for Docket No. FAA–2021–1149 to amend the Class E airspace and revoke Class E airspace at Grove, OK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (increased from a 6.3-mile) radius of Grove Municipal Airport, Grove, OK; removes the extensions south and north of Grove Municipal Airport from the airspace legal description as they are no longer needed; removes the Grove General Hospital Heliport, Grove, OK, and the associated airspace as the instrument procedures to the heliport have been cancelled and the airspace is no longer required; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review conducted as part of the decommissioning of the Neosho VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

ASW OK E5 Grove, OK [Amended]

Grove Municipal Airport, OK

(Lat. 36°36′24″ N, long. 94°44′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grove Municipal Airport.

Issued in Fort Worth, Texas, on March 10, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–05433 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0029; Airspace Docket No. 21–AEA–19]

RIN 2120–AA66

Amendment of Area Navigation (RNAV) Routes Q–140 and Q–812; NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends the descriptions of Area Navigation (RNAV) routes Q–140 and Q–812 by changing the spelling of one waypoint (WP) in the descriptions of the routes. The geographic position of the WP remains unchanged.

DATES: Effective date 0901 UTC May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by editing the descriptions of RNAV routes Q–140 and Q–812 to change the spelling of the waypoint (WP) ''ARKKK, NY,'' to ''ARRKK, NY.'' This is an editorial change only. The latitude/longitude coordinates of the WP remain unchanged, and the alignment of the routes is the same as currently depicted on aeronautical charts.

Because this action is a minor editorial change that does not alter the currently charted alignment, altitudes, or Air Traffic Control procedures for navigation along RNAV routes Q–140 and Q–812, I find that notice and public procedure under 5 U.S.C § 553(b) are unnecessary and contrary to the public interest.

United States Area Navigation Routes are published in paragraph 2006, and Canadian Area Navigation Routes are published in paragraph 2007, respectively, of FAA JO Order 7400.11F dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be published subsequently in the Order.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this editorial change to the descriptions of RNAV routes Q–140 and Q–812 qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 2006 Subpart A—United States Area Navigation Routes.

* * * * *

Q–140 WOBED, WA to YODAA, NY [Amended]

WOBED, WA	WP	(Lat. 48°36′01.07″ N, long. 122°49′46.52″ W)
GETNG, WA	WP	(Lat. 48°25′30.57″ N, long. 119°31′38.98″ W)
CORDU, ID	Fix	(Lat. 48°10′46.41″ N, long. 116°40′21.84″ W)
PETIY, MT	WP	(Lat. 47°58′46.55″ N, long. 114°36′20.31″ W)
CHOTE, MT	Fix	(Lat. 47°39′56.68″ N, long. 112°09′38.13″ W)
LEWIT, MT	WP	(Lat. 47°23′00.21″ N, long. 110°08′44.78″ W)
SAYOR, MT	Fix	(Lat. 47°13′58.34″ N, long. 104°58′39.28″ W)
WILTN, ND	Fix	(Lat. 47°04′58.09″ N, long. 100°47′43.84″ W)
TTAIL, MN	WP	(Lat. 46°41′28.00″ N, long. 096°41′09.00″ W)
CESNA, WI	WP	(Lat. 45°52′14.00″ N, long. 092°10′59.00″ W)
WISCN, WI	WP	(Lat. 45°18′19.45″ N, long. 089°27′53.91″ W)
EEGEE, WI	WP	(Lat. 45°08′53.00″ N, long. 088°45′58.00″ W)
DAYYY, MI	WP	(Lat. 44°10′10.00″ N, long. 084°22′23.00″ W)
RUBKI, Canada	WP	(Lat. 44°14′54.82″ N, long. 082°16′07.65″ W)
PEPLA, Canada	WP	(Lat. 43°47′50.98″ N, long. 080°00′53.56″ W)
SIKBO, Canada	WP	(Lat. 43°39′13.00″ N, long. 079°20′57.00″ W)
MEDAV, Canada	WP	(Lat. 43°29′19.00″ N, long. 078°45′46.00″ W)
AHPAH, NY	WP	(Lat. 43°18′19.00″ N, long. 078°07′35.11″ W)
HANKK, NY	Fix	(Lat. 42°53′41.82″ N, long. 077°09′15.21″ W)
BEEPS, NY	Fix	(Lat. 42°49′13.26″ N, long. 076°59′04.84″ W)

EXTOL, NY	Fix	(Lat. 42°39′27.69″ N, long. 076°37′06.10″ W)
MEMMS, NY	Fix	(Lat. 42°30′59.71″ N, long. 076°18′15.43″ W)
KODEY, NY	Fix	(Lat. 42°16′47.53″ N, long. 075°47′04.00″ W)
ARRKK, NY	WP	(Lat. 42°03′48.52″ N, long. 075°19′00.41″ W)
RODYY, NY	WP	(Lat. 41°52′25.85″ N, long. 074°35′49.39″ W)
YODAA, NY	Fix	(Lat. 41°43′21.19″ N, long. 074°01′52.76″ W)

Excluding the airspace within Canada.

* * * * *

Paragraph 2007 Subpart A—Canadian Area Navigation Routes.

* * * * *

Q–812 TIMMR, ND to GAYEL, NY [Amended]

TIMMR, ND	Fix	(Lat. 46°22′49.49″ N, long. 100°54′29.80″ W)
WELOK, MN	WP	(Lat. 45°41′26.32″ N, long. 094°15′28.74″ W)
CEWDA, WI	WP	(Lat. 44°48′32.00″ N, long. 088°33′00.00″ W)
ZOHAN, MI	WP	(Lat. 43°55′57.00″ N, long. 084°23′09.00″ W)
NOSIK, Canada	WP	(Lat. 43°59′00.00″ N, long. 082°11′52.30″ W)
AGDOX, Canada	WP	(Lat. 43°17′01.71″ N, long. 079°05′29.29″ W)
KELTI, NY	WP	(Lat. 43°16′57.00″ N, long. 078°56′00.00″ W)
AHPAH, NY	WP	(Lat. 43°18′19.00″ N, long. 078°07′35.11″ W)
GOATR, NY	WP	(Lat. 43°17′26.08″ N, long. 076°39′07.75″ W)
Syracuse, NY (SYR)	VORTAC	(Lat. 43°09′37.87″ N, long. 076°12′16.41″ W)
FABEN, NY	WP	(Lat. 42°51′12.04″ N, long. 075°57′07.91″ W)
LOXXE, NY	Fix	(Lat. 42°34′29.55″ N, long. 075°43′33.49″ W)
ARRKK, NY	WP	(Lat. 42°03′48.52″ N, long. 075°19′00.41″ W)
STOMP, NY	WP	(Lat. 41°35′46.78″ N, long. 074°47′47.79″ W)
MSLIN, NY	Fix	(Lat. 41°29′30.82″ N, long. 074°33′14.28″ W)
GAYEL, NY	Fix	(Lat. 41°24′24.09″ N, long. 074°21′25.75″ W)

Excluding the airspace within Canada.

* * * * *

Issued in Washington, DC, on March 9, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–05337 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0920; Airspace Docket No. 21–ASW–7]

RIN 2120–AA66

Establishment of United States Area Navigation (RNAV) Routes; South and Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes three United States Area Navigation (RNAV) routes, designated T–370, T–398, and T–419, in the south and central United States. These routes supplement certain VHF Omnidirectional Range (VOR) Federal airways in support of the VOR Minimum Operational Network (MON) program, and they expand the availability of RNAV routing in the National Airspace System (NAS).

DATES: Effective date 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0920, in the **Federal Register** (86 FR 60186; November 1, 2021), to establish new RNAV routes T–370, T–398, and T–419 in the southern and central United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received, but no specifics pertaining to the proposal were included.

United States RNAV T-routes are published in paragraph 6011 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing three new RNAV routes T–370, T–398, and T–419 in the southern and central United States. These routes overlie certain VOR Federal airways that are based on navigation aids (NAVAIDs) that are planned for decommissioning under the FAA's VOR MON program. The new routes are described below.

T–370: T–370 extends between the BURBIN, TX, waypoint (WP) and the VLKNN, AL, WP. T–370 overlies VOR Federal airway V–278 that extends between the Bowie, TX, (UKW) VHF Omnidirectional Range Tactical Air Navigation (VORTAC), and the Vulcan, AL, (VUZ) VORTAC. A number of navigation aids (NAVAIDs) that currently form V–278 are planned for decommissioning. Therefore, in the T–370 description, those NAVAIDs are replaced by RNAV WPs as follows. The BURBN, TX, WP replaces the Bowie, TX, (UKW) VORTAC. The RRORY, TX, WP replaces the Bonham, TX, (BYP) VORTAC. The TASEY, TX, WP replaces the Paris, TX, (PRX) VOR/DME. The SLOTH, TX, WP replaces the Texarkana, TX, (TXK) VORTAC. The RICKG, AR, WP replaces the Monticello, AR, (MON) VOR/DME. The EJKSN, MS, WP replaces the Greenville, MS, (GLH) VOR/DME. The IZAAC, MS, WP replaces the Sidon, MS, (SQS) VORTAC. The SKNNR, MS, WP replaces the Bigbee, MS, (IGB) VORTAC. The VLKNN, AL, WP replaces the Vulcan, AL, (VUZ) VORTAC.

T–398: T–398 extends between the SLOTH, TX, WP, and the GMINI, NC, WP. T–398 overlies VOR Federal airway V–54 that currently extends between the Texarkana, TX, (TXK) VORTAC, and the Sandhills, NC, (SDZ) VORTAC. A number of NAVAIDs that currently form V–54 are planned for future decommissioning. Therefore, in the T–398 description, those NAVAIDs are replaced by WPs as follows. The SLOTH, TX, WP replaces the Texarkana, TX, (TXK) VORTAC. The LITTR, AR, WP replaces the Little Rock, AR, (LIT) VORTAC. The EMEEY, AR, WP replaces the Marvell, AR, (UJM) VOR/DME. The GOINS, MS, WP replaces the Holly Springs, MS, (HLI) VORTAC. The HAGIE, AL, WP replaces the Muscle Shoals, AL, (MSL) VORTAC. The FILUN, AL, WP replaces the Rocket, AL, (RQZ) VORTAC. The JILIS, GA, WP replaces the Choo Choo, TN, (GQO) VORTAC. The BALNN, GA, WP replaces the Harris, GA, (HRS) VORTAC. The BURGG, SC, WP replaces the Spartanburg, SC, (SPA) VORTAC. The CRLNA, NC, WP replaces the Charlotte, NC, (CLT) VOR/DME. The GMINI, NC, WP replaces the Sandhills, NC, (SDZ) VORTAC.

T–419: T–419 extends between the MAHTY, AR, WP, and the TERGE, IN, WP. T–419 overlies those segments of VOR Federal airway V–305 that extend between the Walnut Ridge, AR, (ARG) VORTAC, and the Pocket City, IN, (PXV) VORTAC. A number of NAVAIDs that currently form V–305 are planned for future decommissioning. Therefore, in the T–419 description, those NAVAIDs are replaced by WPs as follows. The MAHTY, AR, WP replaces the Walnut Ridge, AR, (ARG) VORTAC. The FRNIA, MO, WP replaces the Malden, MO, (MAW) VORTAC. The MESSR, KY, WP replaces the Cunningham, KY, (CNG) VOR/DME. The TERGE, IN, WP replaces the Pocket City, IN, (PXV) VORTAC.

The full route legal descriptions of T–370, T–398, and T–419 are listed in ''The Amendment'' section, below. These changes provide RNAV routing to supplement VOR Federal airways that will be impacted by the VOR MON program, and support the transition to a more efficient Performance Based Navigation route structure.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of establishing three RNAV routes T–370, T–398, and T–419, in support of efforts transitioning the NAS from ground-based to satellite-based navigation, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .'' As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–370 BURBN, TX to VLKNN, AL [New]

BURBN, TX	WP	(Lat. 33°32′09.20″N, long. 097°49′15.83″W)
RRORY, TX	WP	(Lat. 33°32′14.95″N, long. 096°14′03.45″W)
TASEY, TX	WP	(Lat. 33°32′32.56″N, long. 095°26′54.55″W)
SLOTH, TX	WP	(Lat. 33°30′49.99″N, long. 094°04′24.38″W)
RICKG, AR	WP	(Lat. 33°33′43.12″N, long. 091°42′56.29″W)
EJKSN, MS	WP	(Lat. 33°31′24.65″N, long. 090°58′57.87″W)
IZAAC, MS	WP	(Lat. 33°27′49.87″N, long. 090°16′37.75″W)
SKNRR, MS	WP	(Lat. 33°29′07.75″N, long. 088°30′49.63″W)
BESOM, AL	Fix	(Lat. 33°35′10.73″N, long. 087°39′23.49″W)
NESTS, AL	WP	(Lat. 33°36′53.34″N, long. 087°20′51.86″W)
VLKNN, AL	WP	(Lat. 33°40′12.47″N, long. 086°53′58.83″W)

* * * * * * *

T–398 SLOTH, TX to GMINI, NC [New]

SLOTH, TX	WP	(Lat. 33°30′49.99″N, long. 094°04′24.38″W)
MUFRE, AR	Fix	(Lat. 34°05′31.32″N, long. 093°10′43.80″W)
LITTR, AR	WP	(Lat. 34°40′39.90″N, long. 092°10′49.26″W)
EMEEY, AR	WP	(Lat. 34°34′30.29″N, long. 090°40′27.14″W)
GOINS, MS	WP	(Lat. 34°46′12.64″N, long. 089°29′46.81″W)
HAGIE, AL	WP	(Lat. 34°42′25.87″N, long. 087°29′29.76″W)
FILUN, AL	WP	(Lat. 34°47′50.14″N, long. 086°38′01.14″W)
JILIS, GA	WP	(Lat. 34°57′23.98″N, long. 085°08′03.46″W)
CRAND, GA	Fix	(Lat. 34°57′28.88″N, long. 084°51′20.59″W)
BALNN, GA	WP	(Lat. 34°56′34.20″N, long. 083°54′56.42″W)
BURGG, SC	WP	(Lat. 35°02′00.55″N, long. 081°55′36.86″W)
GAFFE, SC	Fix	(Lat. 35°05′38.90″N, long. 081°33′23.92″W)
CRLNA, NC	WP	(Lat. 35°12′49.48″N, long. 080°56′57.32″W)
LOCAS, NC	Fix	(Lat. 35°12′05.18″N, long. 080°26′44.89″W)
RELPY, NC	Fix	(Lat. 35°12′45.70″N, long. 079°47′28.76″W)
GMINI, NC	WP	(Lat. 35°12′23.01″N, long. 079°34′01.98″W)

* * * * * * *

T–419 MAHTY, AR to TERGE, IN [New]

MAHTY, AR	WP	(Lat. 36°06′36.35″N, long. 090°57′12.65″W)
FRNIA, MO	WP	(Lat. 36°33′18.69″N, long. 089°54′40.47″W)
MESSR, KY	WP	(Lat. 37°00′30.44″N, long. 088°50′13.16″W)
TERGE, IN	WP	(Lat. 37°55′42.47″N, long. 087°45′44.19″W)

* * * * *

Issued in Washington, DC, on March 9, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–05340 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0913; Airspace Docket No. 21–ASO–11]

RIN 2120–AA66

Amendment of Area Navigation (RNAV) Routes; Southeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends five high altitude area navigation (RNAV) routes (Q-routes), and establishes one new Q-route in the southeastern United States in support of the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) Program. This action improves the efficiency of the National Airspace System (NAS) by expanding the availability of RNAV routing and reducing the dependency on ground-based navigational systems.

DATES: Effective date 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0913, in the **Federal Register** (86 FR 67367; November 26, 2021), to amend five existing Q-routes, and establish one new Q-route, in the southeastern United States to support the VOR MON program.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

RNAV routes are published in paragraph 2006 of FAA Order JO 7400.11F dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be subsequently published in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by amending five existing Q-routes, and establishing one new Q-route, in the southeastern United States to support the VOR MON program.

The Q-route amendments are as follows:

Q–65: Q–65 currently extends between the MGNTY, FL, waypoint (WP) and the Rosewood, OH, (ROD) VOR and Tactical Air Navigational System (VORTAC). The FAA is removing the Rosewood VORTAC and replacing it with the RINTE, OH, WP, which is located 50 feet east of the VORTAC. Additionally, the FAA is amending Q–65 by shifting the route slightly east from the ENEME, GA, WP, to the DAREE, GA, WP, and by removing the JEFOI, GA, WP; the TRASY, GA, WP; and the CESKI, GA, WP while adding the KERLY, GA, WP. As amended Q–65 extends from the MGNTY, FL, WP to the RINTE, OH, WP.

Q–77: Q–77 currently extends between the OCTAL, FL, WP and the WIGVO, GA, WP. The FAA is extending the current route northerly from the WIGVO, GA, WP to the HRTWL, SC, WP. As amended, Q–77 extends from the OCTAL, FL, WP to the HRTWL, SC, WP.

Q–93: Q–93 currently extends between the MCLAW, FL, WP and the QUIWE, SC, WP. The FAA is extending the current route to the northwest from the QUIWE, SC, WP to the HEVAN, IN, WP. The following WPs are added between QUIWE and HEVAN: JEPEX, SC, WP; BENBY, NC, WP; DOOGE, VA, WP; HAPKI, KY, WP; TONIO, KY, Fix; and OCASE, KY, WP. As amended, Q–93 extends between the MCLAW, FL, WP and the HEVAN, IN, WP.

Q–103: Q–103 currently extends between the CYNTA, GA, WP and the AIRRA, PA, WP. The FAA is removing the Pulaski, VA, (PSK) VORTAC and replacing it with the DANCO, VA, WP, which is located 138 feet east of the PSK VORTAC. As amended, Q–103 extends between the CYNTA, GA, WP, and the AIRRA, PA, WP.

Q–116: Q–116 currently extends between the Vulcan, AL, (VUZ) VORTAC, and the OCTAL, FL, WP. The FAA is removing the Vulcan, AL, (VUZ) VORTAC and replacing it with the VLKNN, AL, WP, which is located 49 feet east of the VUZ VORTAC. The FAA is also extending Q–116 northwest to the Springfield, MO, (SGF) VORTAC, and adding the following points prior to the VLKNN, AL, WP: LOBBS, AL, Fix; GOOGY, AL, WP; MEMFS, TN, WP; LUKKY, AR, WP; ZAVEL, AR, WP; and the Springfield VORTAC. As amended, Q–116 extends between the Springfield, MO, (SGF) VORTAC and the OCTAL, FL, WP.

The new Q-route is as follows:

Q–139: Q–139 provides area navigation between the MGMRY, AL, WP, and the RINTE, OH, WP, reducing the need for ground based navigational aids. Between the MGMRY and RINTE WPs, the route consists of the following points: VLKNN, AL, WP; SALMS, TN, Fix; HITMN, TN, WP; Louisville, KY, (IIU) VORTAC; GBEES, KY, WP; HICKI, IN, Fix; and CREEP, OH, Fix.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending five RNAV routes (Q-routes), and establishing one new Q-route, in support of efforts transitioning the NAS from ground-based to satellite-based navigation, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–65 MGNTY, FL to RINTE, OH [Amended]

MGNTY, FL	WP	(Lat. 28°01′32.99″ N, long. 082°53′19.71″ W)
DOFFY, FL	WP	(Lat. 29°15′22.73″ N, long. 082°31′38.10″ W)
FETAL, FL	WP	(Lat. 30°11′03.69″ N, long. 082°30′24.76″ W)
ENEME, GA	WP	(Lat. 30°42′12.09″ N, long. 082°26′09.31″ W)
KERLY, GA	WP	(Lat. 32°04′46.68″ N, long. 082°22′04.90″ W)
DAREE, GA	WP	(Lat. 34°37′35.72″ N, long. 083°51′35.03″ W)
LORNN, TN	WP	(Lat. 35°21′16.33″ N, long. 084°14′19.35″ W)
SOGEE, TN	WP	(Lat. 36°31′50.64″ N, long. 084°11′35.39″ W)
ENGRA, KY	WP	(Lat. 37°29′02.34″ N, long. 084°15′02.15″ W)
OCASE, KY	WP	(Lat. 38°23′59.05″ N, long. 084°11′05.32″ W)
RINTE, OH	WP	(Lat. 40°17′16.11″ N, long. 084°02′34.51″ W)

* * * * * * *

Q–77 OCTAL, FL to HRTWL, SC [Amended]

OCTAL, FL	WP	(Lat. 26°09′01.92″ N, long. 080°12′11.60″ W)
MATLK, FL	WP	(Lat. 27°49′36.54″ N, long. 080°57′04.27″ W)
STYMY, FL	WP	(Lat. 28°02′12.25″ N, long. 081°09′05.47″ W)
WAKKO, FL	WP	(Lat. 28°20′31.57″ N, long. 081°18′32.14″ W)
MJAMS, FL	WP	(Lat. 28°55′37.59″ N, long. 081°36′33.30″ W)
ETORE, FL	WP	(Lat. 29°41′49.00″ N, long. 081°40′47.75″ W)
SHRKS, FL	WP	(Lat. 30°37′23.23″ N, long. 081°45′59.13″ W)
TEUFL, GA	WP	(Lat. 31°52′00.46″ N, long. 082°01′04.56″ W)
WIGVO, GA	WP	(Lat. 32°27′24.00″ N, long. 082°02′18.00″ W)
MELKR, SC	WP	(Lat. 33°37′09.61″ N, long. 082°06′46.45″ W)
HRTWL, SC	WP	(Lat. 34°15′05.33″ N, long. 082°09′15.55″ W)

* * * * * * *

Q–93 MCLAW, FL to HEVAN, IN [Amended]

MCLAW, FL	WP	(Lat. 24°33′49.00″ N, long. 081°01′00.00″ W)
VAULT, FL	WP	(Lat. 24°45′54.75″ N, long. 081°00′33.72″ W)
LINEY, FL	WP	(Lat. 25°16′44.02″ N, long. 080°53′15.43″ W)
FOBIN, FL	WP	(Lat. 25°47′02.00″ N, long. 080°46′00.89″ W)
EBAYY, FL	WP	(Lat. 27°43′40.20″ N, long. 080°30′03.59″ W)
MALET, FL	Fix	(Lat. 28°41′29.90″ N, long. 080°52′04.30″ W)
DEBRL, FL	WP	(Lat. 29°17′48.73″ N, long. 081°08′02.88″ W)
KENLL, FL	WP	(Lat. 29°34′28.35″ N, long. 081°07′25.26″ W)
PRMUS, FL	WP	(Lat. 29°49′05.67″ N, long. 081°07′20.74″ W)
WOPNR, OA	WP	(Lat. 30°37′36.03″ N, long. 081°04′26.44″ W)
GIPPL, GA	WP	(Lat. 31°22′53.96″ N, long. 081°09′53.70″ W)
SUSYQ, GA	WP	(Lat. 31°40′54.28″ N, long. 081°12′07.99″ W)
ISUZO, GA	WP	(Lat. 31°57′47.85″ N, long. 081°14′14.79″ W)
GURGE, SC	WP	(Lat. 32°29′02.26″ N, long. 081°12′41.48″ W)
FISHO, SC	WP	(Lat. 33°16′46.25″ N, long. 081°24′43.52″ W)
QUIWE, SC	WP	(Lat. 33°57′05.56″ N, long. 081°30′07.93″ W)
JEPEX, SC	WP	(Lat. 34°58′29.40″ N, long. 081°44′15.11″ W)
BENBY, NC	WP	(Lat. 35°44′54.69″ N, long. 081°55′16.68″ W)
DOOGE, VA	WP	(Lat. 36°48′38.93″ N, long. 082°35′14.37″ W)
HAPKI, KY	WP	(Lat. 37°04′55.73″ N, long. 082°51′02.62″ W)
TONIO, KY	Fix	(Lat. 37°15′15.20″ N, long. 083°01′47.53″ W)
OCASE, KY	WP	(Lat. 38°23′59.05″ N, long. 084°11′05.32″ W)
HEVAN, IN	WP	(Lat. 39°21′08.86″ N, long. 085°07′46.70″ W)

* * * * * * *

Q–103 CYNTA, GA to AIRRA, PA [Amended]

CYNTA, GA	WP	(Lat. 30°36′27.06″ N, long. 082°05′35.45″ W)
PUPYY, GA	WP	(Lat. 31°24′35.58″ N, long. 081°49′06.19″ W)
RIELE, SC	WP	(Lat. 32°37′27.14″ N, long. 081°23′34.97″ W)
EMCET, SC	WP	(Lat. 34°09′41.99″ N, long. 080°50′12.51″ W)
SLOJO, SC	WP	(Lat. 34°38′46.31″ N, long. 080°39′25.63″ W)
DANCO, VA	WP	(Lat. 37°05′15.75″ N, long. 080°42′46.45″ W)
ASBUR, WV	Fix	(Lat. 37°49′24.41″ N, long. 080°27′51.44″ W)
OAKLE, WV	Fix	(Lat. 38°07′13.80″ N, long. 080°21′44.84″ W)
PERRI, WV	Fix	(Lat. 38°17′50.49″ N, long. 080°18′05.11″ W)
PERKS, WV	Fix	(Lat. 38°39′40.84″ N, long. 080°10′29.36″ W)
RICCS, WV	WP	(Lat. 38°55′14.65″ N, long. 080°05′01.68″ W)
EMNEM, WV	WP	(Lat. 39°31′27.12″ N, long. 080°04′28.21″ W)
AIRRA, PA	WP	(Lat. 41°06′16.48″ N, long. 080°03′48.73″ W)

* * * * * * *

Q–116 Springfield, MO (SGF) to OCTAL, FL [Amended]

Springfield, MO (SGF)	VORTAC	(Lat. 37°21′21.41″ N, long. 093°20′02.55″ W)
ZAVEL, AR	WP	(Lat. 36°15′28.92″ N, long. 091°43′13.51″ W)
LUKKY, AR	WP	(Lat. 36°07′51.19″ N, long. 091°32′20.04″ W)
MEMFS, TN	WP	(Lat. 35°00′54.62″ N, long. 089°58′58.87″ W)
GOOGY, AL	WP	(Lat. 34°01′38.41″ N, long. 087°41′31.45″ W)

LOBBS, AL	Fix	(Lat. 33°54′31.88″ N, long. 087°25′38.09″ W)
VLKNN, AL	WP	(Lat. 33°40′12.47″ N, long. 086°53′58.83″ W)
DEEDA, GA	WP	(Lat. 31°34′13.55″ N, long. 085°00′31.10″ W)
JAWJA, FL	WP	(Lat. 30°10′25.55″ N, long. 083°48′58.94″ W)
MICES, FL	WP	(Lat. 29°51′37.65″ N, long. 083°33′18.30″ W)
DEANR, FL	WP	(Lat. 29°15′30.40″ N, long. 083°03′30.24″ W)
PATOY, FL	WP	(Lat. 29°03′52.49″ N, long. 082°54′00.09″ W)
SMELZ, FL	WP	(Lat. 28°04′59.00″ N, long. 082°06′34.00″ W)
SHEEK, FL	WP	(Lat. 27°35′15.40″ N, long. 081°46′27.82″ W)
JAYMC, FL	WP	(Lat. 26°58′51.00″ N, long. 081°22′08.00″ W)
OCTAL, FL	WP	(Lat. 26°09′01.92″ N, long. 080°12′11.60″ W)

* * * * * * *

Q–139 MGMRY, AL to RINTE, OH [New]

MGMRY, AL	WP	(Lat. 32°13′20.78″ N, long. 086°19′11.24″ W)
VLKNN, AL	WP	(Lat. 33°40′12.47″ N, long. 086°53′58.83″ W)
SALMS, TN	Fix	(Lat. 35°00′03.25″ N, long. 086°47′07.79″ W)
HITMN, TN	WP	(Lat. 36°08′12.47″ N, long. 086°41′05.25″ W)
Louisville, KY (IIU)	VORTAC	(Lat. 38°06′12.47″ N, long. 085°34′38.77″ W)
GBEES, KY	Fix	(Lat. 38°41′54.72″ N, long. 085°10′13.03″ W)
HICKI, IN	Fix	(Lat. 39°01′06.95″ N, long. 084°56′52.83″ W)
CREEP, OH	Fix	(Lat. 39°55′15.28″ N, long. 084°18′31.41″ W)
RINTE, OH	WP	(Lat. 40°17′16.11″ N, long. 084°02′34.51″ W)

* * * * *

Issued in Washington, DC, on March 9, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–05338 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1190; Airspace Docket No. 21–AEA–41]

RIN 2120–AA66

Amendment of Class E Airspace; Elkton, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface for Claremont Airport, Elkton, MD, as an airspace review found the airspace radius required an increase, as well as updating the airport's name. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 2373, January 14, 2022) for Docket No. FAA–2021–1190 to amend Class E airspace extending upward from 700 feet above the surface at Claremont Airport, Elkton, MD.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface at Claremont Airport, Elkton, MD, providing the controlled airspace required to support IFR operations at this airport. This action increases the radius to 6.9 miles (previously 6.0 miles), and updates the airport's name to Claremont Airport, (formerly Cecil County Airport). Also, this action removes the city name from the airport's description, as it is unnecessary (as per FAA Order 7400.2).

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures an air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

AEA MD E5 ELKTON, MD [Amended]

Claremont Airport, MD

(Lat. 39°34′27″ N, long. 75°52′11″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Claremont Airport.

Issued in College Park, Georgia, on March 10, 2022.

Matthew N. Cathcart,

Manager, Operations Support Group, Eastern Service Center, AJV–E2.

[FR Doc. 2022–05393 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0938; Airspace Docket No. 21–ASW–18]

RIN 2120–AA66

Establishment of Class E Airspace; Dewitt, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface for Dewitt Municipal Airport/Whitcomb Field, Dewitt, AR to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 60784, November 4, 2021) for Docket No. FAA–2021–0938 to establish Class E airspace extending upward from 700 feet above the surface for Dewitt Municipal Airport/Whitcomb Field, Dewitt, AR.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO

7400.11F lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Dewitt Municipal Airport/Whitcomb Field, Dewitt, AR, providing the controlled airspace required to support RNAV (GPS) standard instrument approach procedures for IFR operations at this airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures an air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

ASW AR E5 Dewitt, AR [New]

Dewitt Municipal Airport/Whitcomb Field, AR
(Lat. 34°15′44″W″ N, long. 91°18′27″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Dewitt Municipal Airport/Whitcomb Field.

Issued in College Park, Georgia, on March 10, 2022.

Matthew N. Cathcart,

Manager, Operations Support Group, Eastern Service Center, AJV–E2.

[FR Doc. 2022–05394 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0974; Airspace Docket No. 21–AEA–15]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Routes T–212, T–216, T–218, and T–221; Eastern United States.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route T–218 in the eastern United States. In the NPRM, the FAA proposed to also amend T–212, T–216, and T–221 but those changes have been deferred to a later date and are removed from this rule.

DATES: Effective date 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0974, in the **Federal Register** (86 FR 61728; November 8, 2021), to amend RNAV routes T–212, T–216, T–218, and T–221 in the eastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments

on the proposal. No comments were received.

United States RNAV T-routes are published in paragraph 6011 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be subsequently published in FAA Order JO 7400.11.

Differences From the NPRM

The amendment of RNAV routes T–212, T–216, and T–221 has been deferred to a later date to accommodate additional planning and coordination; therefore, this rule only amends T–218. Routes T–212, T–216, and T–221 will be addressed in separate future docket actions.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending RNAV route T–218 in the eastern United States. The change consists of adding an RNAV waypoint (WP) to replace a navigation aid that is scheduled for decommissioning. The change does not affect navigation along the route.

T–218: T–218 currently extends between the Stonyfork, PA, (SFK) VOR/Distance Measuring Equipment (VOR/DME), and the Sparta, NJ, (SAX) VOR and Tactical Air Navigational System (VORTAC). The Stonyfork VOR/DME is replaced by the DLMAR, PA, WP, (located 60 feet southeast of the Stonyfork VOR/DME). As amended, T–218 extends between the DELMAR WP and the Sparta VORTAC. The full route legal description of T–218 is listed in ''The Amendment'' section, below.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending RNAV route T–218, by adding waypoints, in support of efforts transitioning the NAS from ground-based to satellite-based navigation, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points) and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–218 DLMAR, PA to Sparta, NJ (SAX) [Amended]

DLMAR, PA	WP	(Lat. 41°41′42.56″ N, long. 077°25′11.02″ W)
LAAYK, PA	Fix	(Lat. 41°28′32.64″ N, long. 075°28′57.31″ W)
Sparta, NJ (SAX)	VORTAC	(Lat. 41°04′03.15″ N, long. 074°32′17.91″ W)

* * * * *

Issued in Washington, DC, on March 9, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–05336 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the asset allocation regulation for plans with valuation dates in the second quarter of 2022. These interest assumptions are used for valuing benefits under terminating single-employer plans and for other purposes.

DATES: Effective April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–229–3829. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Pension Benefit Guaranty Corporation's (PBGC) regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including interest assumptions—for valuing benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4044 (''Interest Rates Used to Value Benefits'') to determine the present value of annuities in an involuntary or distress termination of a single-employer plan under the asset allocation regulation. The assumptions are also used to determine the value of multiemployer plan benefits and certain assets when a plan terminates by mass withdrawal in accordance with PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281).

The second quarter 2022 interest assumptions will be 2.40 percent for the first 20 years following the valuation date and 2.12 percent thereafter. In comparison with the interest assumptions in effect for the first quarter of 2022, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), an increase of 0.03 percent in the select rate, and an increase of 0.09 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC routinely updates the interest assumptions in appendix B of the asset allocation regulation each quarter so that they are available to value benefits. Accordingly, PBGC finds that the public interest is best served by issuing this rule expeditiously, without an opportunity for notice and comment, and that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication to allow the use of the proper assumptions to estimate the value of plan benefits for plans with valuation dates early in the second quarter of 2022.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, an entry for ''April–June 2022'' is added at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*		*
April–June 2022	0.0240	1–20	0.0212	>20	N/A	N/A

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–05151 Filed 3–14–22; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0132]

Special Local Regulations; Annual Marine Events Within the Eighth Coast Guard District; Riverfest Power Boat Races

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce will enforce special local regulation for the Riverfest boat races on the Neches River in Port Neches, TX, from April 29, 2022, through May 1, 2022, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Eighth Coast Guard District identifies the regulated area for this event in Port Neches, TX. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or designated representative.

DATES: The regulations in 33 CFR 100.801, Table 3, line 4 will be enforced from 2 p.m. through 6 p.m. on April 29, 2022, and from 8:30 a.m. through 6 p.m. on April 30 and May 1, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Mr. Scott Whalen, U.S. Coast Guard; telephone 409–719–5086, email *scott.k.whalen@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.801 Table 3, Line 4, for the Port Neches Riverfest boat races display from 2 p.m. through 6 p.m. on April 29, 2022, and from 8:30 a.m. through 6 p.m. on April 30 and May 1, 2022. This action is being taken to provide for the safety of life on navigable waterways during this three day event. Our regulations for marine events within the Eighth Coast Guard District, § 100.801, specifies the location of the safety zone for the Riverfest boat races which encompasses a portions of the Neches River adjacent to Port Neches Park. During the enforcement period, as reflected in § 100.801, Table 3, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of the enforcement periods via Local Notice to Mariners, Marine Safety Information Bulletin and Vessel Traffic Service Advisory.

Dated: March 9, 2022.

Molly A. Wike,

Captain, U.S. Coast Guard, Captain of the Port Marine Safety Zone Port Arthur.

[FR Doc. 2022–05375 Filed 3–14–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0133]

Annual Fireworks Displays and Other Events in the Eighth Coast Guard District Requiring Safety Zones

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Riverfest fireworks display on the Neches River in Port Neches, TX, from 8:30 p.m. through 10 p.m. on April 30, 2022 to provide for the safety of life on navigable waterways during this event. Our regulation for fireworks displays and other events within the Eighth Coast Guard District identifies the regulated area for this event in Port Neches, TX. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Captain of the Port.

DATES: The regulations in 33 CFR 165.801, Table 3, line 1, will be enforced from 8:30 p.m. through 10 p.m. on April 30, 2022, or in the event of postponement due to rain, on May 1, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Mr. Scott Whalen, U.S. Coast Guard; telephone 409–719–5086, email *scott.k.whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce safety zone regulations in 33 CFR 165.801, Table 3, Line 1, for the Port Neches Riverfest fireworks display from 8:30 p.m. through 10 p.m. on April 30, 2022, or in the event of rain, on May 1, 2022. This action is being taken to provide for the safety of life on navigable waterways before, during, and after a pyrotechnics display. Our annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones, § 165.801, specifies the location of the safety zone for the Riverfest fireworks display which encompasses a 500-yard radius of the fireworks barge anchored on the Neches River in approximate position 29°59′51″ N 093°57′06″ W (NAD83). During the enforcement period, as reflected in § 165.801, Table 3, if you are the operator of a vessel in the regulated area you must comply with directions from the Captain of the Port or designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of the enforcement periods via Local Notice to Mariners, Marine Safety Information Bulletin and Vessel Traffic Service Advisory.

Dated: March 9, 2022.

Molly A. Wike,

Captain, U.S. Coast Guard, Captain of the Port Marine Safety Zone Port Arthur.

[FR Doc. 2022–05376 Filed 3–14–22; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 20–299, FCC 21–42; FR ID 76403]

Sponsorship Identification Requirements for Foreign Government-Provided Programming

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of compliance date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved two information collections associated with rules governing sponsorship identification requirements for foreign government-provided programming in the 2021 Report and Order, FCC 21–42, in MB Docket No. 20–299. The Commission also announces that compliance with the rules is now required. It removes a paragraph in the adopted rules advising that compliance was not required until OMB approval was obtained. This document is consistent with the 2021 Report and Order, which states the Commission will publish a document in the **Federal Register** announcing a compliance date for the rule sections and revise the rules accordingly.

DATES: Effective March 15, 2022.

Compliance with 47 CFR 73.1212(j) and (k), published at 86 FR 32221 on June 17, 2021, is required as of March 15, 2022.

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar of the Media Bureau, Industry Analysis Division, at (202) 418–1523 or *Radhika.Karmarkar@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the two information collection requirements in §§ 73.1212(j) and (k), 73.3526(e)(19), and 73.3527(e)(15) on March 7, 2022. This document also removes section 73.1212(l) of the Commission's rules, which advised that compliance with 73.1212(j) and (k) was not required until OMB approval was obtained.

The Commission publishes this document as an announcement of the compliance date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 3.317, 45 L Street NE, Washington, DC 20554, regarding OMB Control Numbers 3060–0174 and 3060–0214. Please include the applicable OMB Control Number in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on March 7, 2022, for the information collection requirements contained in §§ 73.1212(j) and (k), 73.3526(e)(19), and 73.3527(e)(15). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

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

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

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

OMB Control Number: 3060–0174.

OMB Approval Date: March 7, 2022.

OMB Expiration Date: March 31, 2025.

Title: Sections 73.1212, 76.1615, and 76.1715, Sponsorship Identification.

Form Number: N/A.

Respondents: Business or other for profit entities; Individuals or households.

Number of Respondents and Responses: 22,900 respondents; 1,886,524 responses.

Estimated Time per Response: .0011 to .2011 hours.

Frequency of Response: Recordkeeping requirement, Third party disclosure requirement, On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 4(i), 317 and 507 of the Communications Act of 1934, as amended.

Total Annual Burden: 258,567 hours.

Total Annual Cost: $449,373.

Needs and Uses: The information collection requirements that are approved under this collection are as follows:

47 CFR 73.1212 requires a broadcast station to identify at the time of broadcast the sponsor of any matter for which consideration is provided. For advertising commercial products or services, generally the mention of the name of the product or service constitutes sponsorship identification. In the case of television political advertisements concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical height of the television screen that airs for no less than four (4) seconds. In addition, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter. Sponsorship announcements are waived with respect to the broadcast of ''want ads'' sponsored by an individual but the licensee shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection.

47 CFR 73.1212(e) states that, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter in its public file. Pursuant to the changes contained in 47 CFR 73.1212(e) and 47 CFR 73.3526(e)(19), this list, which could contain personally identifiable information, would be located in a public inspection file to be located on the Commission's website instead of being maintained in the public file at the station.

Burden estimates for this change are included in OMB Control Number 3060–0214.

47 CFR 76.1615 states that, when a cable operator engaged in origination cablecasting presents any matter for which money, service or other valuable consideration is provided to such cable television system operator, the cable television system operator, at the time of the telecast, shall identify the sponsor. Under this rule section, when advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product is sufficient when it is clear that the mention of the name of the product constitutes a sponsorship identification. In the case of television political advertisements concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical height of the television screen that airs for no less than four (4) seconds.

47 CFR 76.1715 state that, with respect to sponsorship announcements that are waived when the broadcast/origination cablecast of ''want ads'' sponsored by an individual, the licensee/operator shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection.

This information collection was revised to reflect the burden associated with the foreign sponsorship identification disclosure requirements adopted in the Sponsorship Identification Requirements for Foreign Government-Provided Programming (86 FR 32221, June 17, 2021, FCC 21–42, rel. Apr. 22, 2021). The collection requires broadcast television and radio stations, as well as 325(c) permit holders, to make a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on the station has been sponsored, paid for, or furnished by a foreign governmental entity that indicates the specific entity and country involved. Licensees of each broadcast station and 325(c) permit

holders also are required to exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements apply at the time of the lease agreement and at any renewal thereof.

This information collection requirements will provide the Commission and the public with increased transparency and will ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American public. The information collection requirements will also enable interested parties to monitor the extent of such efforts to persuade the American public.

OMB Control Number: 3060–0214.

OMB Approval Date: March 7, 2022.

OMB Expiration Date: March 31, 2025.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: N/A.

Respondents: Business or other for profit entities; Not for profit institutions; State, Local or Tribal government; Individuals or households.

Number of Respondents: 23,996 respondents; 66,839 responses.

Estimated Time per Response: 1–52 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority that covers this information collection is contained in Sections 151, 152, 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,047,805 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection requirements included under this OMB Control Number 3060–0214, requires broadcast stations to maintain for public inspection a file containing the material set forth in 47 CFR 73.3526 and 73.3527.

This collection was revised to reflect the burden associated with the foreign sponsorship identification disclosure requirements adopted in the Sponsorship Identification Requirements for Foreign Government-Provided Programming (86 FR 32221, June 17, 2021, FCC 21–42, rel. Apr. 22, 2021). The collection requires broadcast television and radio stations to place copies of foreign sponsorship identification disclosures required by 47 CFR 73.1212(j) and the name of the program to which the disclosures were appended in its online public inspection file on a quarterly basis in a standalone folder marked as ''Foreign Government-Provided Programming Disclosures.'' The collection requires 325(c) permit holders to place copies of foreign sponsorship identification disclosures required by 47 CFR 73.1212(j) and the name of the program to which the disclosures were appended in its International Bureau Filing System record on a quarterly basis. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the online public inspection file in the same manner.

This information collection requirement will provide the Commission and the public with increased transparency and will ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American public. The information collection requirements will also enable interested parties to monitor the extent of such efforts to persuade the American public.

Lists of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows.

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.1212 [Amended]

■ 2. Amend § 73.1212 by removing paragraph (l).

[FR Doc. 2022–05447 Filed 3–14–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2016–0031]

RIN 2127–AL67

Make Inoperative Exemptions; Vehicle Modifications To Accommodate People With Disabilities; Modifications by Rental Car Companies

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends NHTSA's regulations regarding exemptions to the make inoperative prohibition to accommodate disabilities to include new exemptions relating to the Federal motor vehicle safety standards (FMVSS) for roof crush resistance, rear visibility, and air bags. The air bag provision permits rental car companies to make inoperative a knee bolster air bag, on a temporary basis, to permit the temporary installation of hand controls to accommodate persons with physical disabilities seeking to rent the vehicle. We have drafted this rule to facilitate the mobility of drivers and passengers with physical disabilities in a manner that balances safety and accessibility. This rulemaking responds to a petition for rulemaking from the National Mobility Equipment Dealers Association and from Bruno Independent Living Aids, Inc., and to an inquiry from Enterprise Holdings Co.

DATES: This rule is effective March 15, 2022.

Petitions for Reconsideration: Petitions for reconsideration of this final rule must be received at the address below by April 29, 2022.

ADDRESSES: If you wish to petition for reconsideration of this rule, submit your petition to the following address so that it is received by NHTSA by the date above: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590. You should refer in your petition to the docket number of this document. The petition will be placed in the docket. Note that all submissions received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

FOR FURTHER INFORMATION CONTACT: Gunyoung Lee, NHTSA Office of Crash Avoidance Standards (phone: 202–366–

6005; fax: 202–493–0073); Daniel Koblenz, NHTSA Office of Chief Counsel (phone: 202–366–5329; fax 202–366–3820); or David Jasinski (phone: 202–366–5552; fax 202–366–3820. The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

This final rule amends 49 CFR part 595, subpart C, ''Make Inoperative Exemptions, Vehicle Modifications to Accommodate People With Disabilities,'' in response to petitions from the National Mobility Equipment Dealers Association (NMEDA), Bruno Independent Living Aids, Inc. (Bruno), and a request from Enterprise Holdings Co. (Enterprise).

This final rule is preceded by two rulemaking proposals. First, NHTSA published a notice of proposed rulemaking (NPRM) on March 11, 2016 (81 FR 12852), relating to NMEDA's petition on the roof crush resistance standard. Second, the agency published a supplemental notice of proposed rulemaking (SNPRM) on December 28, 2020 (85 FR 84281) on Bruno's petition on the rear visibility standard. The SNPRM also responded to Enterprise's inquiry seeking to permit rental car companies the ability to temporarily make inoperative knee bolster air bags to facilitate installation of hand controls.[1] NHTSA received no comments opposing adoption of the proposals.

[1] NHTSA decided to combine the rulemakings into RIN 2127–AL67 for the convenience of readers and to simplify administrative procedures.

II. Background

The National Traffic and Motor Vehicle Safety Act (49 U.S.C. Chapter 301) (Safety Act) and NHTSA's regulations require vehicle manufacturers to certify that their vehicles comply with all applicable FMVSSs (49 U.S.C. 30112; 49 CFR part 567) at the time of manufacture. A vehicle manufacturer, distributor, dealer, rental company or repair business, except as indicated below, may not knowingly make inoperative any part of a device or element of design installed in or on a motor vehicle in compliance with an applicable FMVSS (49 U.S.C. 30122). NHTSA has the authority to issue regulations that exempt regulated entities from the ''make inoperative'' provision (49 U.S.C. 30122(c)). The agency has used that authority to adopt 49 CFR part 595, ''Make Inoperative Exemptions.''

The provisions at 49 CFR part 595, subpart C, sets forth exemptions from the make inoperative provision to permit, under limited circumstances, vehicle modifications that take the vehicles out of compliance with certain FMVSSs when the vehicles are modified to be used by persons with disabilities after the first retail sale of the vehicle for purposes other than resale. The regulation was promulgated to facilitate the modification of motor vehicles so that persons with disabilities can drive or ride in them. The regulation involves information and disclosure requirements and limits the extent of modifications that may be made. A motor vehicle repair business that avails itself of the exemption provided by subpart C must register itself with NHTSA. The modifier is exempted from the make inoperative provision only to the extent that the modifications affect the vehicle's compliance with the FMVSSs specified in 49 CFR 595.7(c) and only to the extent specified in § 595.7(c). Modifications that would take the vehicle out of compliance with any other FMVSS, or with an FMVSS listed in § 595.7(c) but in a manner not specified in paragraph (c), are not exempted by the regulation.[2]

[2] The modifier must also affix a permanent label to the vehicle identifying itself as the modifier and the vehicle as no longer complying with all FMVSS in effect at original manufacture, and must provide and retain a document listing the FMVSSs with which the vehicle no longer complies and indicating any reduction in the load carrying capacity of the vehicle of more than 100 kilograms (kg) (220 pounds (lb)).

III. FMVSS No. 216a (Roof Crush Resistance)

a. The Standard

FMVSS No. 216a, ''Roof crush resistance; Upgraded standard,'' requires that the vehicle roof meet two requirements when subjected to a test force applied by a large steel test plate first to one side of the roof, and then to the other side: The lower surface of the test plate must not move more than 127 millimeters (mm); and the load applied to a headform positioned on a test device in the corresponding front outboard seat must not exceed 222 Newtons. Vehicles with a gross vehicle weight rating (GVWR) of 2,722 kg (6,000 lb) or less must withstand a test force of up to 3 times the vehicle's unloaded weight. For vehicles with a GVWR greater than 2,722 kg (6,000 lb) and up to 4,536 kg (10,000 lb), the test force is up to 1.5 times the vehicle's unloaded wight. The standard applies, with some exceptions, to passenger cars, trucks, multipurpose passenger vehicles, and buses other than school buses.[3]

The standard provides an alternative compliance option for vehicles built in two or more stages (other than vehicles built using a chassis cab) and vehicles with a GVWR greater than 2,722 kg (6,000 lb) with an altered roof.[4] Manufacturers of these vehicles may certify to the roof crush requirements of FMVSS No. 220, ''School bus rollover protection,'' instead of the upgraded roof crush requirements in FMVSS No. 216a. (The FMVSS No. 220 requirements are explained below.) Vehicle modifiers,[5] however, are (prior to this final rule) prohibited from making any vehicle modifications to vehicles meeting FMVSS No. 216a—such as raising the vehicle roof—unless the vehicle continues to comply with FMVSS No. 216a, due to the make inoperative prohibition. Part 595 does not, prior to today's final rule, provide an exemption from FMVSS No. 216a for modifiers that raise the roof on vehicles to accommodate people with disabilities.

b. NMEDA Petition for Rulemaking

NMEDA requested that NHTSA amend 49 CFR part 595 to provide an exemption from FMVSS No. 216a for

[3] This upgraded roof crush standard was adopted May 12, 2009 (74 FR 22348).

[4] S3.1(b).

[5] The term ''vehicle modifier'' refers to entities that make changes to a vehicle after the first purchase other than for resale. The terms ''alterer'' and ''multistage manufacturer'' refer to entities that makes changes to vehicles prior to the vehicle being sold to the end user (*i.e.,* prior to first purchase other than for resale). *See* 49 CFR parts 567 and 568.

modifiers that raise the vehicle roof to meet the special needs of occupants with disabilities. NMEDA requested that such modifications be permitted as long as the vehicle is not made inoperative with the requirements of FMVSS No. 220.

NMEDA explained that (presumably prior to the effective date of FMVSS No. 216a), raising the roof of a vehicle was an everyday manufacturing operation for hundreds of NMEDA members, most of which are modifiers of vehicles with a GVWR greater than 2,722 kg (6,000 lb), but not greater than 4,536 kg (10,000 lb). NMEDA explained that there is a need for modifiers to raise the roofs of vehicles after first sale to meet the mobility needs of consumers with disabilities. In many cases, a consumer will purchase a vehicle, usually over 2,722 kg (6,000 lb) GVWR and then approach a modifier to have a roof raised. Generally, customers ask to raise the roof 305 to 356 mm (12 to 14 inches) to suit their particular needs. In other cases, a public agency or independent transportation company will purchase a vehicle to have the roof raised to provide public transportation for persons needing accommodation.

NMEDA further argued that FMVSS No. 216a and the make inoperative prohibition make it impossible for such modifiers to raise the roof and ensure continued compliance with FMVSS No. 216a. It explained that, prior to the upgrade to FMVSS No. 216a, NMEDA had tested and provided consortium test and installation instruction to its members for a tubular structure, or roll cage, to comply with the requirements in FMVSS No. 220. Petitioner conducted this testing mainly because it believed that FMVSS No. 220 is a comparatively simpler test and the roll cage is less expensive to install. NMEDA indicated, however, that the modification procedure it developed is no longer performed; it would violate the make inoperative prohibition because it was intended to ensure compliance with FMVSS No. 220, not with FMVSS No. 216a. NMEDA also stated that it is not practical for it to design a FMVSS No. 216a-compliant roof to fit the various makes and models of vehicles that would be modified. The petitioner further explained that, while modifiers would have difficultly ensuring a modified roof continues to meet FMVSS No. 216a, they would be able to ensure that it meets FMVSS No. 220.[6]

c. NPRM

NHTSA granted NMEDA's petition and, on March 11, 2016, published an NPRM (81 FR 12852) proposing to amend part 595 to add an exemption to the upgraded roof strength requirements of FMVSS No. 216a. We proposed to condition this exemption on the installation of a roof meeting the performance requirements of FMVSS No. 220.

In the NPRM we stated that we tentatively agreed with the petitioner that there may be a need to accommodate persons with special mobility needs by raising the vehicle roof and that FMVSS No. 216a essentially prevents vehicle modifiers from doing so. Prior to the promulgation of FMVSS No. 216a, the vast majority of the vehicles being modified for this purpose did not have to comply with any roof crush requirements because they were vehicles with a GVWR between 2,722 kg (6,000 lb) and 4,536 kg (10,000 lb), to which FMVSS No. 216 (the pre-upgrade standard) did not apply. Thus, prior to the 2009 upgrade, modifiers could replace the roof on such vehicles without violating the make inoperative prohibition.

We explained that, while such vehicles now have requirements under FMVSS No. 216a, the need to accommodate persons with disabilities remains. A raised roof makes it easier for someone to enter the vehicle seated in a wheelchair or for a personal care attendant to tend to them or walk in and out of the entrance. Doors may be raised in conjunction with a roof to enable a person in a wheelchair to enter without having to bend over or have a personal care attendant tilt the wheelchair back. Larger wheelchairs or motorized wheelchairs may also require modifications to the roof height to improve ingress and egress of the occupant. These modifications to the roof could take the vehicle out of compliance with the requirements of FMVSS No. 216a.

Accordingly, we tentatively agreed with NMEDA that there is a need to provide an exemption in part 595 for modifications that involve raising the vehicle roof to accommodate persons with special mobility needs. We also tentatively agreed with NMEDA's suggestion that FMVSS No. 220 is a reasonable alternative to ensure a minimum level of roof strength to protect the occupants of vehicles modified in this manner.

Similar to the rationale we expressed in the 2009 final rule (74 FR 22348, May 12, 2009) for allowing alterers and multistage manufacturers the option of certifying to FMVSS No. 220 instead of FMVSS No. 216a, we explained that there are technical problems involved with ensuring that a vehicle that has its roof raised continues to meet the requirements of FMVSS No. 216a. For example, if a van is altered by replacing the roof with a taller roof surface and structure, this would change the location of the FMVSS No. 216a test plate with respect to the original roof surface and structure. If a vehicle was modified and the roof was raised to the heights suggested by NMEDA (305 to 356 mm), the 127 mm of test device travel specified in the requirements would likely be exceeded prior to the test device engaging the original vehicle's roof structure in the FMVSS No. 216a test. We further stated that it would be difficult for modifiers (generally small businesses) to raise the roof of a vehicle to these types of heights and ensure that the vehicle remains compliant with FMVSS No. 216a, given the small volume, variety of roof heights needed to accommodate different disabilities, and variety of vehicle models.

We further stated our tentative belief that providing modifiers an exemption from FMVSS No. 216a, as long as the modified vehicle meets FMVSS No. 220, strikes an appropriate balance between the need to modify these vehicles to accommodate persons with disabilities and the need to ensure that vehicle roofs are sufficiently strong. Providing the qualified exemption would enable modifiers to use a whole raised roof that is designed to be installed on the vehicle. Further, such a raised roof could be applied to vehicles of varying height and would still be able to absorb the load of the test plate in the FMVSS No. 220 test. As NMEDA stated, such a roof structure has been designed and is available to modifiers.[7]

We also explained that we believed the requirements of FMVSS No. 220 offer a reasonable avenue for increasing safety in rollover crashes. We noted that, at the time of the 2009 upgrade, several states required ''para-transit'' vans and other buses, which are typically manufactured in multiple

[6] NMEDA also appeared to suggest that while roof suppliers could (in theory) design, build, and provide vehicle modifiers with roofs capable of meeting FMVSS No. 216a, this is not likely to happen because the business of its members alone is not sufficient incentive for a roof supplier to design and certify a roof that meets FMVSS No. 216a.

[7] NMEDA developed raised roof manufacturing guidelines which provide their members with roof structure designs and installation considerations such that the modified vehicle would meet the minimum load requirements in FMVSS No. 220. *See* NMEDA, Raised Roof Manufacturing Guidelines—Ford E series GM/Chevrolet Savana/Express Model years 2008–2009–2010, Revision 2, January 19, 2010.

stages, to comply with the roof crush requirements of FMVSS No. 220. Further, we noted that our crash data showed that FMVSS No. 220 has been effective for protecting school buses during rollover crashes. We also stated that we believed the strength requirements for FMVSS Nos. 216a and 220 are comparable. FMVSS No. 216a requires the roof on vehicles with a GVWR greater than 2,722 kg (6,000 lb) to withstand a force of 1.5 times the vehicle's unloaded weight, applied sequentially to the front corners of the roof by an angled plate. The roof must withstand the force such that it does not crush to the point of allowing the lower surface of the test plate to travel more than 127 millimeters,[8] and the load applied to a headform located at the corresponding front outboard seating position does not exceed 222 Newtons.[9] The FMVSS No. 220 test uses a single horizontal plate over the whole roof of the vehicle to apply a load to the vehicle's roof. That standard requires the roof to withstand a force of 1.5 times the vehicle's unloaded weight prior to 130 mm of plate travel.

d. Comments on the NPRM

The agency received one comment to the NPRM from an individual who supported the proposal.

e. Agency Decision

NHTSA has decided to finalize the proposal and add an exemption from FMVSS No. 216a to part 595 for the reasons provided in the NPRM. We recognize the concerns raised by NMEDA regarding continued mobility for people with disabilities and have concluded that its request to allow modifiers the option of meeting the performance requirements of FMVSS No. 220 is reasonable. The agency continues to believe the requirements of FMVSS No. 220 have been effective for school buses, and these requirements are permitted as a compliance option in FMVSS No. 216a for alterers and multistage manufacturers who complete or add raised roofs to vehicles prior to first retail sale. In the context of the NMEDA's petition and its development of raised roof manufacturing guidelines for its members, we believe FMVSS No. 220 appropriately balances safety and practicability.

We note that in the 2009 roof crush upgrade rulemaking (in the context of the decision to specify FMVSS No. 220 as an alternative compliance option for certain multistage manufacturers and alterers), we expressed some concern that, while the requirements in FMVSS No. 220 have been effective for school buses, they might not be as effective for other vehicle types (*e.g.,* light vehicles) as FMVSS No. 216a because that test results in roof deformations that are consistent with the crush patterns in the real world for light vehicles. However, at the same time we acknowledged that requiring multistage manufacturers and alterers to meet FMVSS No. 216a would fail to consider the practicability problems and special issues those entities face. In those circumstances, NHTSA believed that the requirements of FMVSS No. 220 offered a reasonable balance between practicability and safety.

Similarly, while we believe that ensuring light vehicles' compliance with FMVSS No. 220 may not provide the same high level of safety as ensuring compliance with FMVSS No. 216a, we also believe that FMVSS No. 220 offers a reasonable avenue to balance the need to modify vehicles to accommodate persons with a disability and the need to increase safety in rollover crashes. We do encourage modifiers only to raise or alter the roof when there are no other options. For this reason, we encourage modifiers to contact the respective manufacturer or seek advice from groups like NMEDA to address questions or concerns related to the modification(s) that may compromise a safety system. It is the agency's position that a modification that deactivates any safety system or takes a vehicle out of compliance from any FMVSS that is exempted in part 595 should be pursued only when all other options have been reasonably exhausted given the circumstances.

Therefore, for the reasons provided here and in the NPRM, we are amending 49 CFR 595.7(c) to exempt vehicle modifications in which the roof is raised so long as the modified vehicle meets the roof crush requirements of FMVSS No. 220. We note that the final regulatory text incorporates some technical changes to the proposed regulatory text. The final regulatory text clarifies that the exemption only applies to modifications involving a raised roof. The final regulatory text also makes clear that the exemption applies to the entirety of FMVSS No. 216a, not just S5.2(b).

IV. FMVSS No. 111 (Rear Visibility)

a. The Standard

FMVSS No. 111 requires light vehicles to be equipped with a backup rear visibility system that, among other things, displays an image of the area directly behind the vehicle. The standard requires that each passenger car must display a rearview image to the driver that meets the requirements of FMVSS No. 111 S5.5.1 through S5.5.7, and that each multipurpose passenger vehicle, low-speed vehicle, truck, bus, and school bus with a GVWR of 4,536 kg (10,000 lb) or less must meet the requirements of S6.2.1 through S6.2.7. It is NHTSA's understanding that all manufacturers comply with the rearview image requirements using a backup camera system (*i.e.,* a rear-facing camera behind the vehicle that transmits a video image to a digital display in view of the driver).

During the rulemaking that established the FMVSS No. 111 rear visibility requirements, the issue of temporary equipment obstructing a backup camera system's field of view was raised by a commenter. The commenter (the National Truck Equipment Association) noted that, because it was expected that manufacturers would meet the new rear visibility requirements with a backup camera system, it would be possible for the camera's field of view to be obstructed by the installation of certain types of temporarily-attached vehicle equipment, such as a salt or sand spreader, which can be temporarily mounted to the trailer hitch of a pickup truck. NHTSA responded to this comment in the final rule by stating that the rule was not intended to apply ''to trailers and other temporary equipment that can be installed by the vehicle owner.'' However, NHTSA did not address the question of whether the installation of such equipment would violate the make inoperative prohibition (49 U.S.C. 30122) if done by an entity subject to section 30122.

b. Bruno Petition for Rulemaking

Bruno requested that NHTSA amend subpart C so that it would include paragraphs S5.5 and S6.2 of FMVSS No. 111. Bruno is a manufacturer of several products that allow a vehicle owner to transport unoccupied personal mobility devices (PMD) such as wheelchairs, powered wheelchairs, and powered scooters intended for use by vehicle occupants with mobility impairments. Bruno stated that there are two types of PMD transport devices that it manufactures. The first type is what the petitioner describes as a platform lift that can be attached to the exterior of the vehicle by means of a trailer hitch. This type of PMD transport device is fully supported by the trailer receiver hitch without ground contact. The second type of PMD transport device is supported in part by contact with the

[8] S5.1(a).

[9] S5.1(b).

ground. As such it is a ''trailer'' under NHTSA's definitions.[10]

Bruno stated that most backup cameras that are installed pursuant to FMVSS No. 111 are mounted at a low height along the horizontal centerline of the vehicle, often near the vehicle's rear license plate mounting. The placement of the backup camera in this location means that it may be obstructed by a rear-mounted PMD transport device, or by a PMD that is mounted onto the transport device. Since the PMD transport devices may obstruct the rear view from the vehicle's rearview video system, installation of the devices could arguably violate the ''make inoperative'' prohibition (49 U.S.C. 30122). Bruno stated that, to avoid potential uncertainty regarding the manufacture, sale or installation of both types of PMD transport devices it manufactures, it requests that subpart C be amended to cover the backup camera requirements (S5.5 and S6.2) of FMVSS No. 111.

c. SNPRM

NHTSA granted Bruno's petition and proposed to add S5.5 and S6.2 of FMVSS No. 111 to the list of exemptions in part 595, subpart C, so that modifiers would know that NHTSA would not consider the temporary installation of a PMD transport device that blocks a vehicle's required backup camera to be a ''make inoperative'' violation. However, to maximize safety, we proposed to write the ''make inoperative'' exemption narrowly to apply only to the ''field of view'' and ''size'' requirements for backup cameras in FMVSS No. 111 (S5.5.1, S5.5.2, S6.2.1, and S6.2.2), and only to the temporary installation of a PMD transport device.[11]

d. Comments on the SNPRM

NHTSA received eight comments on the proposed expansion of part 595 to the ''field of view'' and ''size'' requirements for backup cameras in FMVSS No. 111, all supportive of the proposal. These comments were from disability rights advocates, trade associations, individual commenters, and Bruno itself. The comments supported the proposed exemption due to the mobility benefits it would provide to persons who use PMDs. Commenters who discussed NHTSA's reasoning supported the agency's decision to draft the exemption narrowly, so that it would only apply to temporary (rather than permanent) disabling of the backup camera system, since doing so preserves the safety benefits of the backup camera system to the greatest extent possible.

e. Agency Decision

NHTSA has balanced the safety benefits of the camera system for rear visibility with the enhanced mobility for people with disabilities that this exemption would enable. We are adopting the make inoperative exemption for the field of view and size requirements for backup cameras in FMVSS No. 111 (S5.5.1, S5.5.2, S6.2.1, and S6.2.2) but only for temporary situations. The modifications permitted under the exemption do not permanently affect the vehicle's design or structure and will not be available beyond the population of persons with disabilities who wish to have a covered entity install a PMD transport device on their vehicle. NHTSA believes, and the commenters agree, that this exemption allowing only a *temporary* disabling of the backup camera system is narrowly focused and maintains the safety provided by the backup camera system in most circumstances, while recognizing the needs of persons with disabilities to transport PMDs.

We also emphasize that, while this final rule's exemption permits a temporary disengagement of the field of view and size requirements, we believe that modifiers should consider whether there are supplemental backup cameras that could be used with the PMD conveyances so that rear visibility could be maintained. We are not requiring the installation of such a system because the cost and complexity of wiring such a system into a vehicle could be significant enough to prevent some persons with disabilities from being able to install a PMD transport device.[12] Installing such a system could also affect the compliance of the original backup camera system that drivers would resume relying on once a temporarily installed PMD transport device is removed. Nonetheless, NHTSA encourages modifiers to consider the feasibility of a supplemental backup camera to offset the blockage of the original equipment rear visibility system.

V. FMVSS No. 208 (Occupant Crash Protection)

a. FAST Act

The Fixing America's Surface Transportation Act (FAST Act), Public Law 114–94 (December 4, 2015), made rental companies subject to the ''make inoperative'' prohibition. The FAST Act also defined terms related to rental companies. For example, a ''rental company'' is defined as a person who is engaged in the business of renting covered rental vehicles and uses for rental purposes a motor vehicle fleet of 35 or more covered rental vehicles, on average, during the calendar year. A ''covered rental vehicle'' is defined as a vehicle that meets three requirements: (1) It has a GVWR of 10,000 pounds or less; (2) it is rented without a driver for an initial term of less than four months; and (3) it is part of a motor vehicle fleet of 35 or more motor vehicles that are used for rental purposes by a rental company.

Thus, beginning in December 2015, rental companies, as the term is defined in the FAST Act, were subject to the make inoperative prohibition for the first time. One effect of this FAST Act provision was to subject rental companies to § 30122 prohibitions for making inoperative systems installed to comply with the FMVSS—even if doing so to accommodate the installation of adaptive equipment for use by persons with disabilities, and even if the modification were only temporary.[13]

b. Enterprise Request for Interpretation

In a letter dated August 12, 2019, Enterprise submitted a request for interpretation to NHTSA regarding the effect of the ''make inoperative'' prohibition on its obligations under the Americans with Disabilities Act of 1990 (ADA).[14] Specifically, Enterprise asked whether the ''make inoperative'' prohibition applies to modifications by rental companies to temporarily disable knee bolster air bags to accommodate the installation of hand controls for drivers with physical disabilities.

[10] 49 CFR 571.3.

[11] We noted in the SNPRM that NHTSA issued an interpretation letter explicitly stating that NHTSA would not consider an owner installing a PMD transport device that obstructs the backup camera to be a ''make inoperative'' violation. Letter to Richard A. Keller, III (May 3, 2019), *available at https://isearch.nhtsa.gov/files/571.111%20--%20Camera%20Obstruction%20--%20Keller%20--%2018-0661.htm.* However, it is NHTSA's understanding that PMDs transport devices are generally installed by dealers and motor vehicle repair businesses that specialize in modifications to provide mobility solutions to people with physical disabilities, both of which are subject to the make inoperative prohibition.

[12] This point was raised by Bruno in its comment, where Bruno states that requiring that a vehicle remain compliant with FMVSS No. 111 could significantly increase the cost of PMD transport devices, by as much as 25%–30%.

[13] Although the make inoperative prohibition does contain an exception for temporarily taking vehicles or equipment out of compliance, that limited exception only applies where the entity taking the vehicles out of compliance does not believe the vehicle or equipment will not be used when the device is inoperative. Obviously, a rental company would intend a rental vehicle that has a device or element temporarily ''made inoperative'' to accommodate a disability to be used while the device or element is inoperative.

[14] A copy of this letter has been included in the docket number identified at the beginning of this document.

Following receipt of the letter, NHTSA met with Enterprise to discuss its request further.

In its letter, Enterprise stated that, to provide service to customers with disabilities and ensure compliance with the ADA, rental companies install adaptive equipment, such as hand controls, upon request. Enterprise stated that, when installing adaptive equipment in a motor vehicle, ''equipment or features that were installed in compliance with NHTSA's safety standards may need to be modified. In these cases, the vehicle modification may render the affected equipment or features, as originally certified, 'inoperative.' ''

Enterprise specifically addressed safety concerns with installing hand controls in rental vehicles equipped with knee bolster air bags.[15] Hand controls consist of a metal bar that connects to the accelerator and brake pedals of a vehicle to enable operation by a person unable to control the pedals with their feet. Knee bolster air bags are installed by manufacturers to prevent or reduce the severity of leg injuries and generally help control occupant kinematics in the event of a frontal collision. Since knee bolster air bags, like all air bags, deploy at high speeds with a great degree of force, installed hand controls in the path of knee bolster air bag deployment could break apart, propelling components of the hand control into the driver with great forces—which would create a serious safety risk.

Enterprise stated that manufacturers of hand controls owned by Enterprise specify that a driver's side knee bolster air bag must be disabled (including removal in some instances) [16] for safe operation of the hand controls, both because the presence of a knee bolster air bag may interfere with safe operation of the hand controls, and because the presence of hand controls would interfere with the air bag should it be deployed in the event of a crash.

Enterprise noted that 49 CFR part 595, subpart C, includes exemptions for certain entities from the make inoperative prohibition in certain circumstances to accommodate the modification of vehicles for persons with disabilities. However, as the subpart pre-dated the FAST Act, the subpart does not include rental companies within the entities who could use those exemptions.

Pertaining specifically to knee bolster air bags, Enterprise noted that they are not specifically required by FMVSS No. 208. However, Enterprise observed that vehicle manufacturers are increasingly making knee bolster air bags standard equipment on all models such that it is becoming difficult for Enterprise to purchase new vehicles that do not include knee bolster air bags. Further, Enterprise stated that vehicles with knee bolster air bags are not crash tested with the knee bolster air bags removed or disabled, meaning Enterprise cannot know whether disabling knee bolster air bags affects compliance with FMVSS No. 208.

Enterprise concluded that, based upon its ADA obligations to provide hand controls for drivers requesting them and the increasing trend of knee bolster air bags being standard equipment, knee bolster air bags would have to be temporarily disabled on rental vehicles to continue to make vehicles available to rent by drivers with physical disabilities. Enterprise requested NHTSA's help in answering whether disabling the knee bolster air bag would constitute a violation of the make inoperative prohibition, and if it would, how Enterprise could provide hand controls to serve its customers.

c. SNPRM

NHTSA decided to issue the SNPRM to address the problem raised by Enterprise. NHTSA explained that it did not have sufficient information to determine whether the knee bolster air bag is a part or element of design installed ''in compliance with an applicable motor vehicle safety standard,'' but noted that knee bolster air bags are installed to reduce femur loading, and FMVSS No. 208 does provide specific requirements for femur load.[17] NHTSA determined that, as knee bolster air bags are already becoming standard equipment across much of the light duty fleet, this situation could result in rental companies facing the untenable position of being forced to either: (1) Retain a number of older vehicles in its fleet (without knee bolster air bags) and on its premises to rent to drivers requesting hand controls; (2) cease the rental of vehicles to drivers requesting hand controls; (3) disable the air bag and potentially violate section 30122; or (4) install hand controls on vehicles with knee bolster air bags and create serious safety risks for their customers.

None of these results was acceptable to NHTSA. The first action would prevent Enterprise from providing for rent newer vehicles, which include newer safety innovations, to drivers requiring the use of hand controls, which NHTSA deemed unacceptable because all drivers should be afforded the protections of new safety technologies. Further, the action would be impracticable given the inability to guarantee availability of sufficient vehicles at all relevant rental facilities. The second action was unacceptable as it would eliminate a critical service for people with disabilities and may be contrary to the ADA. The third action would potentially violate the Safety Act. The fourth option would create an unreasonable risk to the safety of rental customers with physical disabilities.

NHTSA issued the December 2020 SNPRM after balancing NHTSA's primary interest in promoting motor vehicle safety with the interest (including the statutory interest implicit within the ADA) to provide access to mobility for persons with disabilities. NHTSA tentatively concluded that it should exercise its statutory authority to exempt rental companies from the make inoperative prohibition in certain circumstances, and with certain conditions, so that rental companies may rent vehicles to drivers requesting hand controls. The action would be consistent with NHTSA's decision to promulgate 49 CFR part 595, subpart C, to exempt motor vehicle repair businesses from the make inoperative prohibition to accommodate persons with disabilities. NHTSA proposed to add a new section to 49 CFR part 595 specifically for rental companies having to disable a knee bolster air bag to install hand controls.

d. Response to Comments

NHTSA received 42 comments on the SNPRM. Twenty-one comments directly addressed the issue of the proposed make inoperative exemption for rental companies.[18] All were generally

[15] Enterprise did not provide an example other than the situation posed by installation of hand controls and its effect on knee bolster air bags.

[16] This document generally refers to the act of ''disabling'' the knee bolster air bag. For the purposes of the applicability of the ''make inoperative'' prohibition and exemption discussed in this document, the act of ''disabling'' the knee bolster air bag may also include removing the air bag. In other words, removal is one means of disabling the air bag.

[17] *See* 49 CFR 571.208, S15.3.5. NHTSA noted that it had made general inquiries with vehicle manufacturers through their trade association about whether knee bolster air bags are installed as part of an element of design installed in compliance with the motor vehicle safety standards, but their association did not provided information to resolve this question.

[18] A number of comments addressed broad issues not discussed in the rulemaking. For example, two anonymous commenters raised issues related to the safety of deaf drivers. An individual raised the issue of the availability of left foot drive rental cars. Another expressed a desire for vehicles that are accessible with ramps and low steps for people who are mobility impaired. An individual suggested that

Continued

supportive of the rulemaking, with a few raising issues with specific aspects of the proposal.

To learn more about this area, NHTSA presented 11 questions in the SNPRM regarding the scope of an exemption to rental companies, and the logistics of granting those exemptions. In this section, NHTSA presents the questions, summarizes and responds to the comments, and indicates any changes made to the proposal in response to those comments.

1. Should rental companies be provided exemptions from the make inoperative prohibitions to make temporary vehicle modifications, permanent vehicle modifications, or both?

The wording of the proposed regulatory text allowed only temporary modifications by rental companies that would include the duration of the rental agreement and a reasonable period before and after modification, to allow the rental company to make and reverse the modification, respectively. If the vehicle would be rented to a second person requiring the same modification immediately after the termination of the first rental agreement, a rental company would not be required to reverse the modification and then immediately modify the vehicle again.

All commenters who addressed the issue supported allowing temporary modifications. Enterprise stated in its comment that it only anticipates making temporary modifications to vehicles. Enterprise stated that, while it was unlikely that the same vehicle would be rented to two people requiring the same modification consecutively, it supported the proposed allowance that, if a vehicle were to be rented to a second person requiring the same modification, the rental company would not be required to reverse the modification and then immediately modify the vehicle again.

The Paralyzed Veterans of America (PVA), National Automobile Dealers Association (NADA), and NMEDA supported only providing temporary modifications. The rental companies did not express a need for an exemption for permanent modifications. This final rule only pertains to temporary modifications by rental companies. Given that this rulemaking was initiated in response to a request for temporary relief from a rental company and that no information was provided on the need or merits of permanent modifications, NHTSA has determined that it is unnecessary for this rule to provide for permanent modifications. Accordingly, this final rule will only allow for temporary modifications to rental cars to accommodate customers with disabilities.

The City of Los Angeles supported temporary modifications only for the driver's seating position, not the passenger's seating position. NHTSA focused on the position that would need the hand controls, which presumably was only the driver's seating position. The scope of the exemption will not cover modifications other than those necessary to install hand controls.

An individual stated that the exemption should only be granted if it could be reasonably assured that the modification is an appropriate type for a person's specific disability, the equipment was manufactured and tested according to applicable standards, regulations, and guidelines, that all modifications are performed by factory trained and certified technicians, and that rental companies prohibit adding a second driver without a disability to the rental contract. NHTSA declines to adopt these suggestions. As to the first suggestion, NHTSA believes that requiring a rental company to verify a customer's need for a specific accommodation is more appropriately addressed by State and Federal civil and disability rights law. Second, the Safety Act already requires that all motor vehicle equipment comply with all applicable FMVSSs and that they be free of safety-related defects. Regarding the third suggestion, NHTSA declines to condition the availability of exemptions to accommodate persons with disabilities on the credentialing of technicians by third parties. (Nevertheless, NHTSA urges all rental companies modifying vehicles to follow manufacturer-recommended practices related to the disabling of knee bolster air bags to ensure the safety of both their customers and the employees who modify vehicles.) Finally, NHTSA declines to adopt a rule prohibiting adding a second driver to the rental contract, as such a requirement appears overly restrictive at this time.

2. Should NHTSA provide a make inoperative exemption for other installations of adaptive equipment by rental companies?

Commenters such as Enterprise, the American Car Rental Association (ACRA), PVA, the City of Los Angeles, and NMEDA suggested that NHTSA could grant similar exemptions for other accommodations. An individual expressed a concern with sitting too close to the air bags and suggested rental companies could disable air bags on a case-by-case basis with the customer acknowledging the risks of removing the air bag. NHTSA has not included any additional make inoperative exemptions in this final rule. If rental companies or others believe that further make inoperative exemptions are necessary, they may submit a petition for rulemaking.

3. If a temporary modification to install adaptive equipment causes the air bag malfunction telltale required by FMVSS No. 208 to illuminate, should the rental company be allowed to disable the telltale?

In its conversations with NHTSA prior to the NPRM, Enterprise stated that its procedure for disabling the knee bolster air bag would involve the installation of a shunt within the electrical circuitry of the air bag system. NHTSA believed that the installation of such a shunt would allow the air bag system, upon its diagnostic check at the time the vehicle is started, to conclude that there is no malfunction within the air bag system. Accordingly, NHTSA was concerned about potential safety implications if, after the diagnostic check, the air bag malfunction telltale would not illuminate even though the knee bolster air bag was disabled. Conversely, the illumination of the air bag malfunction telltale where the knee bolster air bag is disabled also raises concern. If the air bag malfunction telltale is illuminated for the duration of the rental to a driver with a disability, that driver would not have the benefit of the telltale illuminating the event of any other malfunction within the air bag system, including malfunctions affecting air bags that are installed pursuant to FMVSS No. 208.

Commenters were divided in their views. For example, Enterprise, ACRA, PVA, the Alliance for Automotive Innovation, the City of Los Angeles, and NMEDA believed that the telltale should not illuminate when using the shunt so that it could alert the driver of some other air bag system malfunction. Enterprise and Terry Sturgis both noted that the driver would already be aware

induction loops for car rentals be mandated so people with hearing loss can receive effective communication when they rent a car. An individual supported the rulemaking, but believed that additional steps should be taken such as adaptive equipment for deaf and the hard of hearing, and that people with disabilities should be able to rent a car for a spontaneous trip if they desire to do so without waiting for a modification to be completed. An anonymous commenter stated that more must be done because it costs five times more to rent an accessible vehicle than a generic vehicle. Another stated that NHTSA should work with automobile manufacturers to make modifications more financially accessible. These comments provided helpful information to NHTSA regarding issues related to accessibility. To the extent the comments are beyond the scope of this rulemaking, they are not further discussed in this document.

of the disablement of the knee bolster air bag. In contrast, NADA and Eugene Blumkin supported illuminating the telltale when using the shunt.

The arguments presented by the commenters largely echoed the competing safety interests that were discussed in the SNPRM. After considering the comments, NHTSA has decided either illumination status is acceptable. If the air bag malfunction telltale illuminates because of disabling the knee bolster air bag, it is correctly warning about a problem with the air bag system. A telltale that does not illuminate due to a shunt is also acceptable as a related outcome to this final rule's permitting the modification to the knee bolster air bag. Further, an unilluminated telltale may be able to notify the occupants of malfunctions with other air bags in the vehicle. In both situations, the telltale must be restored to operating status when the knee bolster air bag system is returned to its pre-rental state. NHTSA suggests that rental companies inform their customers what it means if the telltale is illuminated in the vehicle.

4. Would a hand control (or any other adaptive equipment typically installed by rental companies) interfere with devices or elements of designs installed in compliance with any other FMVSS?

In response to this question, Enterprise stated its belief that the mere installation of adaptive equipment would not constitute a make inoperative violation. NADA did not address the legal question but stated its desire to limit the exemption to temporary hand control installation and knee bolster air bag deactivation. NMEDA suggested that some hand control designs may interfere with compliance with FMVSS No. 124, which pertains to accelerator control systems. However, NMEDA did not indicate what aspect of FMVSS No. 124 would be made inoperative by the installation of hand controls or whether such hand controls might be commonly used by rental companies.

Having considered the issue and the comments received, the agency is focusing this final rule on the application of FMVSS No. 208 (the disablement of the knee bolster air bag for the installation of hand controls). NHTSA believes that the wording of the exemption sufficiently addresses all make inoperative issues caused by the installation of the hand controls.

5. Should rental companies need to request an exemption from NHTSA or should the exemption be provided automatically within the regulation?

NHTSA tentatively concluded in the NPRM that rental companies should not have to seek an exemption from NHTSA prior to disabling the knee bolster air bags to install hand controls. Rather, NHTSA proposed to grant the exemption to rental companies conditionally on their compliance with the proposed amendments to 49 CFR part 595.

All commenters who addressed this issue agreed that rental companies should not have to seek an exemption from NHTSA. In the SNPRM, NHTSA observed that a rental company may be required to make modifications quickly to provide accommodations when a customer requests a vehicle with hand controls. As a practical matter, NHTSA would not be able to evaluate and respond to requests for exemption quickly enough in situations where customers are waiting at the rental car counter. Accordingly, this final rule does not require that rental companies seek permission from NHTSA prior to making modifications to vehicles. This approach is consistent with other exemptions in § 595.7.

6. Should rental companies be required to notify NHTSA of modifications to vehicles?

As provided in 49 CFR 595.6, a motor vehicle repair business that modifies a vehicle pursuant to part 595 must, not later than 30 days after it modifies a vehicle pursuant to the ''make inoperative'' exemption in part 595, identify itself to NHTSA. In the SNPRM, NHTSA tentatively concluded that a similar requirement is not warranted for rental companies. First, there are far fewer rental companies than there are motor vehicle repair businesses, such that NHTSA is aware of the existence of large rental companies. Second, the modifier information furnished to NHTSA under 49 CFR 595.6 is used, in part, to populate a database available to the public of entities that perform modifications to motor vehicles to accommodate persons with disabilities.[19] Regarding rental companies, they are modifying vehicles to accommodate customers with physical disabilities as part of their business operations, and as part of their efforts to comply with the ADA. Thus, a list of rental companies able to modify vehicles pursuant to 49 CFR part 595 would likely be a list of all rental companies. Such a list would be of limited utility to the public and would impose a paperwork burden on all rental companies.

Enterprise, the City of Los Angeles and NMEDA supported not requiring rental companies to identify themselves to NHTSA or notify NHTSA when making a vehicle modification. Conversely, an individual and NADA asserted that rental companies should have to identify themselves to NHTSA prior to making modifications pursuant to this make inoperative exemption. NMEDA suggested that NHTSA consider requiring rental companies to submit annual reports of modifications and other information pertinent to modifications such as the location, number of installations, types of controls installed, serial number, make/model of vehicles modified, and reports of any incidents.

NHTSA does not believe that the regular reporting of modifications made pursuant to the make inoperative exemption is needed. Safety-related incidents may be reported to NHTSA by anyone via an internet portal at *https://www.nhtsa.gov/report-a-safety-problem,* or by contacting NHTSA's vehicle safety hotline. If NHTSA discovers a safety issue in the future that justifies regular reporting of vehicle modifications, NHTSA may consider a requirement in the future. However, at this time, NHTSA is not aware of any safety issue that would justify the burden and expense of regular reporting of vehicle modifications. Accordingly, NHTSA is not requiring any regular reporting to NHTSA of modifications.[20]

7. Should rental companies be required to notify customers that the air bag in the vehicle they rented is disengaged to accommodate the installation of adaptive equipment?

The SNPRM proposed requiring that the rental company affix a temporary label, meant to remain affixed during the rental, indicating that the knee bolster air bag is disabled. This label would serve both to inform persons driving the vehicle of the status of the air bag and to remind the rental company to reactivate the air bag at the conclusion of the rental.

Commenters were generally supportive of this proposed labeling requirement. Enterprise, NADA and others agreed that a temporary label was a practicable means of notifying the

[19] This list of entities is not intended as an endorsement of any entity but is solely provided for informational purposes.

[20] However, records of modifications that are kept by rental companies may be subject to disclosure to NHTSA in the context of a specific investigation or enforcement action.

driver that the vehicle has been modified. PVA, the City of Los Angeles, NMEDA, and Eugene Blumkin supported the requirement that rental companies notify customers that the knee bolster air bag has been disabled. Terry Sturgis suggested an inward facing windshield sticker or a tag on the key ring.

NHTSA is adopting the requirement, but declines to specify a location for the label. NHTSA is concerned that some States may have laws preventing the placing of such a label on the windshield, hanging from a rearview mirror or in a similarly view-obstructing location. NHTSA believes a label on the key ring would not be sufficient to satisfy the requirement that the label must be in the vehicle's passenger compartment.

In the SNPRM, NHTSA also proposed that renters of modified vehicles would have to be informed of the name and address of the rental company modifying the vehicle and again that the knee bolster air bag has been temporarily disabled. NHTSA believed that this notification could be accomplished simply by annotating the invoice or rental agreement at the rental counter, which would take a minimum amount of time, and that the costs to meet this requirement would be insignificant.

NADA, PVA, the City of Los Angeles, NMEDA, and Eugene Blumkin supported the requirement of separately notifying the renter of the modification, for example, by providing information in the rental agreement. Terry Sturgis suggested that notification directly to the customer may not be necessary because they would likely know about the modification already, having requested it. Enterprise and ACRA opposed the separate notification in the rental agreement. Both commenters found the second notification to be unnecessary and not practical. Both indicated that rental companies did not have systems in place to append such notifications at the time of the execution of the rental agreement. In contrast to NHTSA's estimate that the burden of this notification would be minimal, Enterprise and ACRA suggested that implementing such a system could cause substantial expense. Further, the commenters noted that, in some cases, the customer does not execute a rental agreement at the time of rental. Instead, renters sign a master rental agreement and then, after placing a reservation, can choose an eligible vehicle and leave.

NHTSA agrees with Enterprise, ACRA, and Terry Sturgis that this separate notification is unnecessary. The notification directly to the customer is duplicative of the notification that would be provided in the passenger compartment of the vehicle itself. Finally, NHTSA accepts that the annotation of rental agreements may be a greater burden than estimated in the SNPRM. Accordingly, this final rule does not include the requirement that a rental company provide a separate notification directly to the renter at the time the vehicle is rented.[21]

8. Should rental companies be required to retain records of vehicles modified pursuant to this ''make inoperative'' exemption. If so, what information and for how long?

Motor vehicle repair businesses that permanently modify vehicles pursuant to the make inoperative exemption in 49 CFR part 595, subpart C, are required to retain, for five years, information provided to owners of vehicles that are modified. In the SNPRM, NHTSA proposed that this type of record retention should be required of rental companies as well. The information would facilitate enforcement by NHTSA in the event of potential violations of the terms of the make inoperative exemption, or if a safety problem arises in the vehicle at a later date that could possibly relate to the deactivation of the air bag. NHTSA stated that the costs associated with this record retention would be minimal since the record could be the rental agreement or invoice itself, which can be stored as part of their general record retention process, electronically or in paper format at their discretion.

NADA and Eugene Blumkin agreed with NHTSA's proposal that rental companies be subject to similar record retention requirements applying to motor vehicle repair businesses. NADA suggested that rental companies should have to keep records for each vehicle modified, including vehicle identification information, dates when modifications were made, dates restored, and how and when the company disposed of the vehicle. NMEDA suggested that rental companies be subject to record retention requirements as to customer, equipment, vehicle, technician, installation, and inspection information. The Disability Rights Education and Defense Fund and the Consortium for Citizens with Disabilities Transportation Task Force supported a five-year recordkeeping requirement.

Enterprise and ACRA suggested that rental companies may lack a system to provide and retain a copy of the notice that would be provided to renters. After reading Enterprise's and ACRA's comments, it was unclear to us whether they objected only to retaining the document proposed to be provided to the customer (but not adopted by this final rule), or whether Enterprise objected to the record retention requirement generally. NHTSA sought further clarification from Enterprise. In response, the commenter stated it could reasonably maintain records of a rental company location making the modification, the vehicle being modified, and the device or element of design that is made inoperative.

After considering the comments, NHTSA has decided to require a record consisting of the following be retained: (1) The name and address of the company making the modifications; (2) clear identification of the vehicle being modified; and (3) identification of the devices of elements of design modified. Further, (4) the record must be retained for five years. (Because this final rule does not include the requirement that a rental company provide a copy of the notice placed in the passenger compartment to the customer at the time of execution of the rental agreement, there is no requirement in this final rule that such a document be retained.)

However, this final rule does modify one of the above record requirements. There was some ambiguity in the proposal regarding whether modifications were required to be made by the rental company or whether rental companies may contract with a motor vehicle repair business to perform the modifications. NHTSA did not intend in the SNPRM to limit a rental company's ability to choose whether to use its own employees to perform the modification or to contract with a motor vehicle repair business to perform the modification. This final rule makes this explicit by replacing the proposed requirement that the retained record contain the name and physical address of the rental company making the modification with a requirement that the rental company retain the name and physical address of the rental company and any entity that performed or reversed the modification on behalf of the rental company. In the clarification of its comments, Enterprise stated that its internal recordkeeping systems could not keep track of work provided by third

[21] It is unclear to us, however, how a master agreement would apply to when the customer is renting a vehicle that has been modified under the exemption. Prior to the customer arriving, the rental company would be required to modify a specific vehicle by disabling or removing the knee bolster air bag, installing hand controls and placing the consumer notification information in the passenger compartment. NHTSA believes that such a modified vehicle would be removed from any general circulation until the customer requesting the modification arrives to rent the vehicle.

parties. However, we believe that any invoices or any other record provided by such third parties to Enterprise or created by Enterprise (whether in paper or electronic form) can be reasonably maintained. To allow for the fact that relevant records may be created by more than one entity, NHTSA has changed the term ''document'' to the plural ''documents'' in order to remove any implication that the information required to be retained must all be contained within a single document.

As with the existing record retention requirement for motor vehicle repair businesses that permanently modify vehicles for people with disabilities, NHTSA is specifying a five-year recordkeeping requirement. In its clarification, Enterprise stated this its record retention policy requires records be retained for three years. We believe it is not unreasonable and would result in minimal added expense for records related to the rentals of modified vehicles be retained for five years. A five-year period better ensures that data will be available in case safety problems arise with the performance of the knee bolster air bags, hand controls, or related equipment in vehicles modified pursuant to this exemption. NHTSA is not requiring any regular reporting to the agency of modifications made pursuant to this exemption, so retaining the records for five years better guarantees the availability of data. A five-year period is also consistent with a similar requirement in part 595, subpart C, that has been workable.

NHTSA considers the costs of the recordkeeping requirements in a section below discussing the Paperwork Reduction Act.

9. Should rental companies be required to notify subsequent renters and/or purchasers of rental vehicles that the vehicle was previously modified?

In the SNPRM, NHTSA expressed its view that subsequent renters or purchasers of rental vehicles need not be notified of prior temporary modifications. Enterprise, ACRA, Terry Sturgis, and Eugene Blumkin agreed that rental companies should not be required to disclose prior temporary modifications that were reversed. In contrast, NADA suggested that rental companies should be required to notify purchasers of rental vehicles of prior modifications. NMEDA stated that notification to subsequent renters would be ethical, reasonable, and not overly burdensome. PVA suggested that subsequent purchasers may benefit from knowing that the vehicle could be modified to accommodate hand controls.

NHTSA concludes there is not a sufficient need for a NHTSA requirement that rental companies be required to notify subsequent renters or purchasers of rental vehicles that have been modified pursuant to this make inoperative exemption. As noted by ACRA, the installation and removal of hand controls and disabling and reenabling of the knee bolster air bag typically have no permanent effect on the vehicle. NHTSA agrees these are straightforward processes that are unlikely to compromise the safety performance of the vehicle once the vehicle is restored.

Further, NHTSA believes that State law may be better equipped to handle any general or specific retail disclosure obligations. Nothing in this rulemaking should be construed as affecting any notification obligation imposed by State or other Federal law. In response to PVA, NHTSA believes that it might make more sense if information that a vehicle is capable of being modified to accommodate hand controls were provided by the vehicle manufacturer rather than the rental company.

10. What procedures should NHTSA require of rental companies to ensure the knee bolster air bag will be reenabled when the rental vehicle is returned and the hand controls are disabled?

The proposed make inoperative exemption would only apply for the period during which a covered rental vehicle is rented to a person with a disability and a reasonable period before and after the rental agreement in order to perform and subsequently reverse the modification to accommodate a driver with physical disabilities. However, the proposal did not include any specific requirements for rental companies for reversing modifications to rental vehicles. NHTSA requested comments on whether NHTSA should impose requirements related to reversing a vehicle modification and if so, what those requirements should be.

ACRA stated that rental companies should have their own procedures for ensuring that the knee bolster air bag is replaced and reenabled. PVA and NADA agreed that rental companies should be required to reenable the knee bolster air bag, but did not suggest any specific procedure NHTSA could require to provide assurance that it would be done. An individual stated that rental companies should follow the procedures specified by vehicle and air bag manufacturers.

This final rule does not adopt procedures for reversing the modifications. Each rental company will have protocols and business practices best suited to ensure the air bag is restored. NHTSA believes that the notification in the passenger compartment and the presence of hand controls should be sufficient to ensure that the rental company reinstalls and reenables the knee bolster air bag prior to renting the vehicle to another customer. Nothing in this rulemaking precludes the use of other cues such as a special key ring. However, NHTSA does not believe at this time that mandating secondary cues is necessary to achieve the required reenabling of the air bag.

11. To the extent car sharing companies (*e.g.,* Zipcar) qualify as a ''rental company'' under 49 U.S.C. 30102, would all aspects of this proposal be reasonably applied to ride sharing companies, or would procedural requirements need to be different for them?

In the SNPRM, NHTSA stated that all aspects of this proposal would be equally applicable to a car sharing company that qualifies as a ''rental company'' under the definition in 49 U.S.C. 30102. Commenters who addressed this issue, such as ACRA, the Disability Right Education and Defense Fund, the Consortium for Citizens with Disabilities Transportation Task Force, PVA, and Eugene Blumkin agreed that car sharing companies who met the definition of a ''rental company'' should be held to the same standard. Terry Sturgis stated that procedural requirements for ride sharing companies may need to be different, but provided no specific suggestions.

NHTSA agrees with the commenters that car sharing companies who qualify as a ''rental company'' should be held to the same requirements as any other rental company. Having received no specific suggestion of any special procedural accommodations that might be required based on the process for car sharing, NHTSA is not providing any different accommodations for car sharing companies who may avail themselves of this make inoperative exemption.

e. Agency Decision

For the reasons discussed above and in the NPRM, we are amending subpart C to permit rental car companies to make inoperative a knee bolster air bag, on a temporary basis, to permit the temporary installation of hand controls to accommodate persons with physical disabilities seeking to rent the vehicle. The exemption extends only for the period during which the covered rental vehicle is rented to the person with a

disability and must be reversed after the rental is over. The rental company must affix a label in the passenger compartment, in a visible location, informing the driver that the vehicle has had its knee bolster air bags temporarily disabled. Information about the modification must be kept by the rental company for five years. NHTSA has issued this final rule after balancing vehicle safety with the interest (including the statutory interest implicit within the ADA) to provide access to mobility for persons with disabilities.

VI. Effective Date

As this final rule relieves the regulatory burdens on various entities and facilitates the mobility of persons with disabilities, the agency finds that there is good cause for an immediate effective date.

VII. Rulemaking Analyses and Notices

Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

We have considered the potential impact of this final rule under Executive Order 12866, Executive Order 13563, and DOT Order 2100.6A. This final rule is not significant and so was not reviewed by the Office of Management and Budget (OMB) under E.O. 12866 and is not of special note to the Department under DOT Order 2100.6A. This rulemaking imposes no costs on the vehicle modification or car rental industry. If anything, there could be a cost savings due to the exemptions. NHTSA has qualitatively assessed the benefits and costs of the rule.

FMVSS No. 216a: With respect to benefits, as noted above we believe that while ensuring compliance with FMVSS No. 220 may not provide the same level of safety as ensuring compliance with FMVSS No. 216a, we believe that, in light of the mobility needs of individuals with disabilities, in this particular case FMVSS No. 220 offers a reasonable avenue to balance the need to modify vehicles to accommodate persons with a disability and the need to increase safety in rollover crashes. We have made the exemption narrow and conditioned on maintaining the integrity of the roof. Further, this conditional exemption ensures a higher level of safety than prior to the roof crush upgrade, when FMVSS No. 216 did not apply to any vehicles over 6,000 lb.

With respect to costs, prior to this final rule modifiers needed to ensure that a vehicle on which the roof had been raised continued to meet FMVSS No. 216a. The final rule requires that modifiers instead ensure that the modified vehicle meets FMVSS No. 220. Because the FMVSS No. 220 test is, as NMEDA argued in its petition, less complicated than the FMVSS No. 216a test (and NMEDA has provided its members with information and instructions on how to install an FMVSS No. 220-compliant roll cage when raising a vehicle roof), the final rule will be less costly for modifiers to comply with than the current requirement.

The roof crush resistance rule does not contain new reporting requirements or requests for information beyond what is already required by 49 CFR part 595, subpart C.

FMVSS No. 111: Modifying a vehicle to install a trailer for PMD transport device not only increases business for entities making these modifications, but also increases consumer choices regarding the vehicles they can use to ride in. Because of this rule, a consumer may now ride in a vehicle that cannot fit a PMD because the PMD could be stowed on a carrier.

Modifying a vehicle in a way that reduces the rear visibility of a backup camera by installing a trailer or carrying a PMD could reduce crash avoidance features of the vehicle when the vehicle is reversing. However, few vehicles would be potentially modified and the agency has made the exemption temporary and not permanent. We have made the exemption as narrow as possible to achieve the goal of increasing mobility of drivers and passengers with physical disabilities while maintaining a level of vehicle safety.

The rear visibility rule does not contain new reporting requirements or requests for information beyond what is already required by 49 CFR part 595, subpart C.

FMVSS No. 208: Rental companies choosing to deactivate knee bolster air bags to facilitate installation of hand controls will not incur costs beyond those of their own choosing. This rulemaking will have minor labeling and recordkeeping costs on rental companies that install temporary hand controls and disable the knee bolster air bag; the increased revenue due to increase rentals of vehicles modified with hand controls will likely offset the minor labeling and recordkeeping requirements.

The labeling and recordkeeping costs are necessary to ensure that the renter knows the knee bolster air bag is nonfunctional and to assist in having the knee bolster air bag restored when the rental is over. The 5-year record retention requirement facilitates enforcement by NHTSA in the event of potential violations of the terms of the make inoperative exemption in this rule, and facilitates the investigation and identification of vehicles in the event a subsequent safety problem arises relative to the deactivation of the air bags. NHTSA believes that the costs associated with retaining this record are minimized since the record could be the rental invoice or agreement itself, which can be stored by rental companies in the same manner that they store their invoices, including electronically.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities.

FMVSS No. 216a: Most dealerships and repair businesses are considered small entities, and some proportion of these modify vehicles to accommodate individuals with disabilities. However, NHTSA expects that the number of such modifications that are made every year is not so large as to involve a substantial number of small entities. We also note that it should be more practicable for modifiers to comply with the make inoperative provision after this final rule than in the absence of the final rule. Therefore, the impacts on any small businesses affected by this rulemaking will not be substantial.

FMVSS No. 111: The entities installing the trailers and PMD transport devices could be small entities. However, the impacts on them are not expected to be significant. The exemption provides flexibility to these entities with minimal requirements (there are some labeling and recordkeeping requirements), but overall the agency does not believe there would be a large number of PMD transporters installed. Therefore, the impacts on any small businesses affected by this rulemaking would not be significant.

FMVSS No. 208: A substantial number of rental companies could be small entities, but NHTSA does not believe the impacts on them will be significant. The exemption provides additional flexibility to install hand controls with minimal requirements (there are some labeling and recordkeeping requirements), but overall NHTSA does not believe there will be a large number of rental car transactions affected by this rulemaking. This final rule's impact on small businesses will not be significant.

Executive Order 13132 (Federalism)

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concludes that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule 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.''

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision stating that a State (or a political subdivision of a State) may prescribe or continue to enforce a standard that applies to an aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the FMVSS governing the same aspect of performance. *See* 49 U.S.C. 30103(b)(1). This provision is not relevant because this final rule does not involve establishing, amending, or revoking a Federal motor vehicle safety standard. Second, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law.

NHTSA is aware of a State law that might be seen as differing from this rule.[22] However, the agency does not see a preemption issue. This rule strikes a balance between safety and accessibility appropriate to NHTSA's make inoperative exemptions, 49 CFR part 595, subpart C. NHTSA has struck this balance by setting the performance requirements that must be met so as not to violate section 30122. States can decide if that balance speaks to their safety goals. The agency requested comments on any specific State law or action that would prohibit the disabling of a knee bolster air bag. No comments were received. In sum, NHTSA does not anticipate that this final rule will preempt any State law.

Civil Justice Reform

When promulgating a regulation, agencies are required under Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the SAE International. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. No voluntary standards exist regarding this exemption for modification of vehicles to accommodate persons with disabilities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This final rule does not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act (PRA)

Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from OMB before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rulemaking creates new information collection requirements and is expected to increase the number of respondents under a previously approved Information Collection Request (ICR). The information collection requirements found in 49 CFR part 595, subpart C, were covered by a previously approved ICR that expired on August 31, 2021, titled ''Exemption for the Make Inoperative Prohibition to Accommodate People with Disabilities'' (OMB Control No. 2127–0635). NHTSA has initiated the process of reinstating

[22] *See, e.g.,* N.J. Admin. 16:53–1.3(f) (''Roof modifications shall meet the requirements of the roof crush resistance standard set forth in Federal Motor Vehicle Safety Standard No. 216 (49 CFR 571.216), incorporated herein by reference, as amended and supplemented.'').

the previously approved ICR in a request for comment published in the **Federal Register** on January 12, 2022 (87 FR 1829). To continue the process to request reinstatement of the previously approved information collection with modification to include the new reporting requirements for rental companies, NHTSA will be publishing a separate notice announcing that NHTSA is submitting the request to OMB for review approval, providing a 30-day comment period, and directing that comments be submitted to OMB.

The aspects of this final rule pertaining to roof crush and rear visibility would not result in any additional information collection burdens beyond what is already required by subpart C. NHTSA expects that the vehicles modified under these new exemptions would already be modified under existing exemptions in subpart C.

In the December 2020 SNPRM, NHTSA noted that the portion of this final rule pertaining to rental vehicles would include new reporting requirements or requests for information beyond what was already required by subpart C. The primary source of this recordkeeping burden was the proposed requirement that rental companies provide to a renter of a modified vehicle the information regarding the modifications and containing a copy of the label that must be placed in the vehicle. NHTSA presumed that this information would be included in the invoice provided to a renter and would result in an additional 1,333 burden-hours expended annually by rental companies to comply. However, as discussed earlier in this document, NHTSA has not included in this final rule the requirement that rental companies provide renters with this information separately from the label that must be placed in the occupant compartment.

The other information collection burden associated with the portion of the final rule pertaining to rental vehicles is the requirement that the rental company retain, for each applicable vehicle, a document listing the modifications made to the vehicle. In the December 2020 SNPRM, NHTSA concluded that there was no additional cost or time burden associated with compliance with this requirement because NHTSA believed it was normal and customary in the ordinary course of business to prepare and retain such documents. NHTSA has made changes to this final rule to ensure that this is the case. First, NHTSA has not included the proposed requirement that the renter be provided with a copy of the label that must be placed in the vehicle in response to comments. Commenters such as Enterprise and ACRA identified this requirement as potentially burdensome and not something kept in the ordinary course of business. Second, NHTSA has clarified that third parties may modify vehicles in accordance with this exemption. The records or receipts provided by these third parties to rental companies may be sufficient to satisfy the recordkeeping requirements.

Based on the foregoing, NHTSA believes that there will be no additional burdens beyond the ordinary course of business associated with collections of information subject to the Paperwork Reduction Act as part of this final rule.

A discussion of the new information collection requirements will be included in the 30-day notice announcing NHTSA's submission to OMB of a request for reinstatement of its previously approved collection for part 595.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?

Could we improve clarity by adding tables, lists, or diagrams?

- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please send them to the NHTSA officials listed in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this document.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all submissions to any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 595 to read as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

■ 1. The authority citation for part 595 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Revise § 595.3 to read as follows:

§ 595.3 Applicability.

This part applies to dealers, motor vehicle repair businesses, and rental companies.

■ 3. Revise § 595.4 to read as follows:

§ 595.4 Definitions.

Covered rental vehicle is defined as it is in 49 U.S.C. 30102(a).

Dealer, defined in 49 U.S.C. 30102(a), is used in accordance with its statutory meaning.

Motor vehicle repair business is defined as it is in 49 U.S.C. 30122(a). This term includes businesses that receive compensation for servicing vehicles without malfunctioning or broken parts or systems by adding or removing features or components to or from those vehicles or otherwise customizing those vehicles.

Rental company is defined as it is in 49 U.S.C. 30102(a).

■ 4. Amend § 595.7 by adding paragraphs (c)(18) and (19) to read as follows:

§ 595.7 Requirements for vehicle modifications to accommodate people with disabilities.

* * * * *

(c) * * *

(18) 49 CFR 571.216a, in any case in which:

(i) The disability necessitates raising the roof; and,

(ii) The vehicle, after modification, meets 49 CFR 571.220.

(19) S5.5.1, S5.5.2, S6.2.1, and S6.2.2 of 49 CFR 571.111, in any case in which a personal mobility device transporter is temporarily installed on a vehicle by way of a trailer hitch to carry a personal mobility device (*e.g.,* a wheelchair,

powered wheelchair, or powered scooter) used by a driver or a passenger with a disability.

* * * * *

■ 5. Add § 595.8 to read as follows:

§ 595.8 Modifications by rental companies.

(a) A rental company that modifies a motor vehicle temporarily in order to rent a covered rental vehicle to a person with a disability to operate, or ride as a passenger in, the motor vehicle is exempted from the ''make inoperative'' prohibition in 49 U.S.C. 30122 to the extent that those modifications make inoperative any part of a device or element of design installed on or in the motor vehicle in compliance with the Federal motor vehicle safety standards or portions thereof specified in paragraph (d) of this section. Modifications that would make inoperative devices or elements of design installed in compliance with any other Federal motor vehicle safety standards, or portions thereof, are not covered by the exemption in this paragraph (a).

(b) The exemption described in paragraph (a) of this section extends only for the period during which the covered rental vehicle is rented to a person with a disability and a reasonable period before and after the rental agreement in order to perform and reverse the modification described in paragraph (d) of this section.

(c) Any rental company that temporarily modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle in such a manner as to make inoperative any part of a device or element of design installed on or in the motor vehicle in compliance with a Federal motor vehicle safety standard or portion thereof specified in paragraph (d) of this section must affix to the motor vehicle a label of the type and in the manner described in paragraph (e) of this section and must retain documents of the type and in the manner described in paragraph (f) of this section.

(d)(1) 49 CFR 571.208, in the case of the disablement of a knee bolster air bag to allow the installation of hand controls.

(2) [Reserved]

(e) The label required by paragraph (c) of this section shall:

(1) Be affixed within the passenger compartment of the vehicle;

(2) Be affixed in a location visible to the driver in a manner that does not obstruct the driver's view while operating the vehicle;

(3) Contain the statement ''WARNING—To accommodate installation of hand controls, this rental vehicle has had its knee bolster air bag temporarily disabled;'' and,

(4) Be removed when the modifications described in paragraph (d) of this section are reversed.

(f) The retained documents required by paragraph (c) of this section shall:

(1) Contain the name and physical address of the rental company and any entity making or reversing the temporary modifications on behalf of the rental company;

(2) Be kept in original or photocopied paper form, or retained electronically, by the rental company for a period of not less than five years after the conclusion of the rental agreement for which the modification is made;

(3) Be clearly identifiable as to the vehicle that has been modified; and

(4) Identify the devices or elements of design installed on or in a motor vehicle in compliance with a Federal motor vehicle safety standard made inoperative by the rental company.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.95.

Steven S. Cliff,

Deputy Administrator.

[FR Doc. 2022–05293 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120404257–3325–02; RTID 0648–XB878]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2022 Commercial Longline Closure for South Atlantic Golden Tilefish

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure for the commercial longline component for golden tilefish in the exclusive economic zone (EEZ) of the South Atlantic. Commercial longline landings for golden tilefish are projected to reach the longline component's commercial quota by March 16, 2022. Therefore, NMFS closes the commercial longline component of golden tilefish in the South Atlantic EEZ on March 16, 2022, at 12:01 a.m. local time. This closure is necessary to protect the golden tilefish resource.

DATES: This temporary rule is effective from 12:01 a.m. local time on March 16, 2022, until 12:01 a.m. local time on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial golden tilefish sector has two components, each with its own quota: The longline and hook-and-line components (50 CFR 622.190(a)(2)). The commercial golden tilefish annual catch limit (ACL) is allocated 75 percent to the longline component and 25 percent to the hook-and-line component. The total commercial ACL (equivalent to the commercial quota) is 331,740 lb (150,475 kg) gutted weight, and the longline component quota is 248,805 lb (112,856 kg) gutted weight.

Under 50 CFR 622.193(a)(1)(ii), NMFS is required to close the commercial longline component for golden tilefish when the longline component's commercial quota has been reached or is projected to be reached by filing a notification to that effect with the Office of the Federal Register. After this closure, golden tilefish may not be commercially fished or possessed by a vessel with a golden tilefish longline endorsement. NMFS has determined that the commercial quota for the golden tilefish longline component in the South Atlantic will be reached by March 16, 2022. Accordingly, the commercial longline component of South Atlantic golden tilefish is closed effective at 12:01 a.m. local time on March 16, 2022, and will remain closed until the start of the next fishing year on January 1, 2023.

During the commercial longline closure, golden tilefish may still be commercially harvested using hook-and-line gear on a vessel with a commercial South Atlantic Unlimited Snapper-Grouper permit without a longline endorsement until the hook-and-line quota specified in 50 CFR 622.190(a)(2)(ii) is reached. A vessel with a golden tilefish longline

endorsement is not eligible to fish for or possess golden tilefish using hook-and-line gear under the hook-and-line commercial trip limit, as specified in 50 CFR 622.191(a)(2)(ii). During the commercial longline closure, the recreational bag and possession limits specified in 50 CFR 622.187(b)(2)(iii) and (c)(1), respectively, apply to all harvest or possession of golden tilefish in or from the South Atlantic EEZ by a vessel with a golden tilefish longline endorsement.

The sale or purchase of longline-caught golden tilefish taken from the South Atlantic EEZ is prohibited during the commercial longline closure. The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper and a valid commercial longline endorsement for golden tilefish with golden tilefish on board must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m. local time on March 16, 2022. The prohibition on sale or purchase does not apply to the sale or purchase of longline-caught golden tilefish that were harvested, landed ashore, and sold prior to 12:01 a.m. local time on March 16, 2022, and were held in cold storage by a dealer or processor. Additionally, the recreational bag and possession limits and the sale and purchase prohibitions under the commercial closure apply to a person on board a vessel with a golden tilefish longline endorsement, regardless of whether the golden tilefish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(a)(1)(ii), issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the commercial closure of the golden tilefish longline component have already been subject to notice and public comment, and all that remains is to notify the public of the commercial component closure. Prior notice and opportunity for public comment on this action is contrary to the public interest because of the need to immediately implement the commercial component closure to protect the South Atlantic golden tilefish resource. The capacity of the longline fishing fleet allows for rapid harvest of the commercial longline component quota, and any delay in the commercial closure could result in the commercial longline component quota being exceeded. Prior notice and opportunity for public comment would require time and would potentially result in a harvest that exceeds the commercial quota.

For the aforementioned reasons, the Assistant Administrator for Fisheries also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 11, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–05552 Filed 3–11–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 50
Tuesday, March 15, 2022

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

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 17–310; FCC 22–15; FR ID 75595]

Promoting Telehealth in Rural America

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on revisions to the Rural Health Care Telecommunications (Telecom) Program rules to ensure that rural healthcare providers receive funding necessary to access the broadband and telecommunications services necessary to provide vital healthcare services; proposes to modify the applicability of the internal funding cap on upfront costs and multi-year commitments in the Rural Health Care Healthcare Connect Fund Program, proposes to streamline the invoice process in the Telecom Program, and seeks comment on ways to further increase the speed of funding commitments.

DATES: Comments are due on or before April 14, 2022 and reply comments are due on or before May 16, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the listed contact as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 17–310, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings at its headquarters. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, A 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 17–310; FCC 22–15, adopted on February 18, 2022 and released on February 22, 2022. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-22-15A1.pdf.*

I. Introduction

1. In the FNPRM the Commission proposes and seeks comment on several revisions to the Commission's Rural Health Care Program (RHC Program) rules designed to ensure that rural healthcare providers receive funding necessary to access the broadband and telecommunications services necessary to provide vital healthcare services while limiting costly inefficiencies and the potential for waste, fraud, and abuse. The RHC Program provides vital support to assist rural health care providers with the costs of broadband and other communications services. Reliable high speed connectivity is critical for rural health care providers to serve patients in rural areas that often have limited resources, fewer doctors, and higher rates for broadband and telecommunications services than urban areas. Recent years have also seen an explosion in demand for telehealth services, a trend accelerated by the COVID–19 pandemic, that has increased the bandwidth needs of rural health care providers. The Commission seeks comment on proposed revisions to the RHC Program's funding determination mechanisms and administrative processes in an effort to improve the accuracy and fairness of RHC Program support and increase the efficiency of program administration.

II. Discussion

2. In the FNPRM, the Commission seeks comment on options for determining support in the Telecom Program and propose revisions to Telecom Program forms to improve the quality and consistency of Telecom Program data. The Commission also seeks comment on an alternative rate determination mechanism to the Rates Database to improve the accuracy of rates in the Telecom Program. Additionally, it proposes to limit the applicability of the internal funding cap on upfront payments and multi-year commitments to instances in which demand exceeds available funding; to target funding for the current funding year over future years when the internal cap is exceeded; and to simplify the invoicing process in the Telecom Program while strengthening protections against waste, fraud and

abuse. The Commission also seeks comment on ways to expedite and streamline the application and funding commitment process.

3. *Determining Accurate Rate in the Telecom Program, Defining cost factors and service technologies for a rate setting mechanism.* As an initial matter, the Commission examines how to classify the inputs used to determine rates in the Telecom Program. To determine rates that reflect the cost of delivering service to health care providers, the data inputs used to determine rates must capture, consistent with section 254(h)(1)(A) of the Telecommunications Act of 1996 (Act), which health care providers are in ''comparable rural areas,'' as well as which Telecom Program supported services are ''similar.'' The Commission seeks therefore comment on several inputs related to rurality classifications for health care providers and categorization of eligible services.

4. *Rurality classifications for health care providers.* The Commission seeks input on how to evaluate rurality to determine what areas are comparable for purposes of determining rates. First, examining how the Commission defines rurality for the RHC Program, proposing to maintain the current standard for ''rural'' used to determine whether a health care provider may participate in the RHC Program. Then seek comment on what factors to consider to differentiate rural areas.

5. *Defining ''Rural Area'' for the Purposes of Program Participation.* Support under section 254(h)(1)(A) of the Act is limited to services provided to persons who reside in ''rural areas.'' The RHC Program employs a definition of ''rural area'' that relies upon a healthcare provider's location relative to the Census Bureau's Core Based Statistical Area designation. In the 2019 *Promoting Telehealth Report and Order,* 84 FR 54952, October 11, 2019), the Commission declined to adopt a new definition of ''rural area'' for the RHC Program because the existing definition served the needs of the program. The Commission also explained that changes to the definition could cause uncertainty and eligibility issues for program participants. The Commission believes these justifications for maintaining the existing definition of ''rural area'' remain applicable today and therefore propose to maintain the current definition of ''rural area'' for the RHC Program.

6. Despite the Commission's belief that the existing definition of ''rural area'' remains applicable today, the Commission seeks comment on whether the proposal to maintain the current definition of ''rural area'' is appropriate for purposes of RHC Program participation. Does the current definition meet the needs of the RHC Program for purposes of eligibility? Are there any alternative definitions that would be more appropriate? For instance, should the Commission adopt a definition that does not rely (or does not exclusively rely) on a healthcare provider's location in relation to relatively densely settled areas, and would such a definition capture areas that reasonably could be viewed as ''rural'' within the meaning of section 254(h)(1)(A) of the Act? Until 2004, the Commission followed the definition used by the Federal Office of Rural Health Policy (FORHP) located within the Health Resources and Services Administration. Are there any definitions used by other government agencies, such as FORHP, or medical organizations that would be more appropriate at this time for the RHC Program? Are there definitions that take into account the geographic features that are unique to Alaska? Commenters are encouraged to describe the effects on Program participants of any potential modifications to the current definition. After the Commission adopted a new standard for ''rural area'' in 2004, it permitted health care providers that were participating in the RHC Program under the previous definition but did not qualify as rural under the new definition to continue to participate in the RHC Program. If the Commission maintains the current definition, should the Commission continue to allow health care providers that do not fall under the current definition, but who were grandfathered under the old definition, to participate in the RHC Program? In the event the Commission adopts a new definition of ''rural area'' that does not encompass health care providers that fall under the current definition, should the Commission permit those providers to continue participating in the RHC Program?

7. *Identification of Geographic Cost Factors.* The Commission next turns to how to identify methods for further classifying gradients or tiers of rurality and what already-existing tools might be used to differentiate gradients or tiers of rurality for the purpose of setting rural and urban rates in the Telecom Program. Under section 254(h)(1)(A) of the Act, carriers must be reimbursed using rates for similar services provided to other customers in ''comparable rural areas'' in the state. In the *Promoting Telehealth Report and Order,* the Commission amended its definition of ''comparable rural areas'' from just the areas immediately surrounding the health care provider to also include similar rural areas. The Commission proposes to maintain a definition of ''comparable rural areas'' that includes the areas immediately surrounding the health care provider and also similar areas within the state and agree with the Commission's previous determination that such an approach reflects a faithful interpretation of the statutory obligation to reimburse carriers for similar services for other customers in ''comparable rural areas'' in the state. The Commission seeks comment on this approach.

8. The Commission also seeks comment on the factors to consider in determining what are ''comparable rural areas'' when establishing rates for telecommunication services. Under the existing Commission rules, rurality tiers are used to determine the comparable rural areas in a state or territory. In the *Promoting Telehealth Report and Order,* the Commission decided that the determination of what rural areas are ''comparable'' should be based on the factors impacting the cost to provide services, and adopted rurality tiers based on the assumption that the costs to provide telecommunication services increases as the population density of an area decreases. The Commission continues to believe that grouping health care providers by geographic area is the best way to ensure that carriers are compensated based on services provided to health care providers in ''comparable rural areas'' and that it is appropriate to consider comparability of rural areas by looking at the factors impacting cost and seek to identify what those factors might be. In addition to population density, distance to the nearest metropolitan area, topography, and existing infrastructure may impact the cost to provide telecommunications services as well. The Commission seeks comment on the extent to which population density, distance, topography, and existing infrastructure could be factors to consider when determining ''comparable rural areas.'' To what extent may these factors affect rates for telecommunications services? Are there other geographic cost factors the Commission should consider that affect telecommunication service rates? Are there geographic cost factors specific to Alaska that should be considered if elected to establish specific rules for ''comparable rural areas'' in Alaska?

9. The Commission seeks comment on whether establishing specific rurality metrics for each health care provider based on multiple geographic cost factors could more accurately determine

prices available to health care providers in rural areas. Specifically, the Commission seeks comment on whether measuring a combined set of factors such as population density, distance to a nearby urban area, topography, and existing infrastructure would be effective in establishing levels of rurality that more accurately reflect the cost of service. How can the Commission account for variances in health care providers' location and topography? Are there any other specific cost factors to consider based on the existing data that are more closely related to or affected by rurality? Finally, given the unique geography and topography of Alaska, are there specific cost factors that impact rates in Alaska only?

10. *Applying Geographic Cost Factors to Rurality Tiers.* Next, the Commission considers whether there are methods to delineate rurality that are preferable to the rurality tier system based on Core Based Statistical Areas adopted by the *Promoting Telehealth Report and Order.* One of the primary reasons for adopting the rurality tiers in the Rates Database was to ensure that rates increased as the level of rurality increased, to reflect a presumed increase in cost of providing service as rurality increased. However, outputs of the Rates Database revealed examples of lower median rural rates in more rural tiers than in less rural tiers (*i.e.,* higher rates in the Rural and Less Rural tiers than in the Extremely Rural and Frontier tiers), and higher median rural rates in less rural tiers than in more rural tiers (*i.e.,* lower rates in the Extremely Rural and Frontier tiers than the Rural and Less Rural tiers). These anomalies raise questions about whether the rurality tiers based on Core Based Statistical Areas accurately group comparable rural areas for purposes of determining telecommunications rates. The Commission seeks comment on whether the current rurality tiers used to determine ''comparable rural areas'' are appropriate for determining accurate and reasonable rates. Despite the anomalies, did the Rates Database deliver rates that are ''rates for similar services provided to other customers in comparable rural areas in that State'' as required by the Telecommunications Act of 1996? Could the current rurality tiers be improved by subdividing them? If so, how could the Commission do so in an objective and administratively feasible way? Are there other explanations besides the classification of rurality tiers for these anomalies? For example, would these anomalies disappear or dissipate if the Commission had better controls for different services or for different service level agreements?

11. With respect to anomalies in Alaska, rates for the Rural tier are consistently higher than rates in the Extremely Rural tier due primarily to the state's Census Bureau categorizations. Most of Alaska is not part of a Core Based Statistical Area (CBSA) and therefore Extremely Rural. Juneau and Ketchikan are located in a CBSA and are defined as Rural under Telecom Program rules because they do not contain any Urban Area with a population of 25,000 or greater. However, these areas are isolated in the southeast portion of Alaska, are not necessarily connected by roads despite being located in a CBSA, and are therefore relatively expensive to serve. Would adjusting rurality tiers so that health care providers located in the Juneau and Ketchikan CBSAs fall into the Extremely Rural tier resolve some anomalies? Are there other adjustments that can be made to address this issue?

12. The Commission also seeks comment on replacing the current rurality tiers with alternative methods of determining degrees of rurality, such as the Index of Relative Rurality (IRR). The IRR is a ''continuous, threshold-free, and unit-free measure of rurality.'' IRR addresses degrees of rurality instead of simply designating an area as urban or rural. The IRR focuses on four dimensions of rurality, which include size, density, remoteness, and built-up area, and has three major advantages over typology-based rurality measures. First, it is ''spatially flexible'' in that it is not confined to a particular spatial scale such as counties but can be designed for any spatial units such as townships or census tracts; second, it is a relative and continuous measure and thus treats rurality as a concept rather than a traditional classification; and lastly it is easier to analyze than threshold-based typologies. The Commission seeks comment on using the IRR to replace the current rurality tier system. What would be the advantages and disadvantages of using the IRR to evaluate rurality? What groupings of IRR scores would be appropriate for evaluating rurality tiers? Is the IRR spatially flexible enough to account for Alaska's unique geography? If not, do commenters have specific ideas on how the Commission might build off the IRR to accommodate Alaska?

13. Alternatively, would the Rural Urban Commuting Area (RUCA) codes be preferable to determine rurality tiers? The RUCA codes are a census tract-based classification scheme that uses measures of population density and urbanization in combination with commuting information to characterize all of the nation's census tracts regarding their rural and urban status and relationships to one another. One of the reasons the Commission stopped using FORHP's definition of ''rural area'' in 2004 was because part of FORHP's methodology changed to incorporate the RUCA methodology which at the time failed to incorporate the most recent census data. Since their creation, the RUCA codes have been updated several times with new Census data. The most recent RUCA codes were created by the FORHP, the University of North Dakota Center for Rural Health, and the United States Department of Agriculture (USDA) Economic Research Service and are based on data from the 2010 decennial census and the 2006–10 American Community Survey. The Commission seeks comment on using the RUCA codes to replace the current rurality tiers. What would be the advantages and disadvantages of using the RUCA codes to evaluate rurality? Are the RUCA codes granular enough for Alaska given its unique geography and topography?

14. The Commission seeks comment on other known methods that could more accurately determine degrees of rurality. Are there any other objective and administratively feasible methodologies that should be considered? If so, are these methods appropriate for all states, including Alaska? If the Commission maintains the current definition of ''rural'' for eligibility purposes, how will these new methods interact with the current definition? For example, are there any scenarios in which a particular area is rural under the current definition but would not be sufficiently rural under one of these other methodologies to receive funding? The Commission asks that commenters describe alternate ways to evaluate rurality and, when possible, provide data showing whether these alternatives accurately reflect geographic cost factors in telecommunications rates.

15. The Commission also seeks comment on whether to eliminate rurality tiers altogether and establish rates based on an applicant's census tract information. Examples of such information could include population and business density, measures of terrain and topography such as elevation and slope, measures of distance from urban areas, percentage of built-up areas, etc. Such an approach would be similar to the IRR approach, but instead of producing an index, would directly estimate the impact of various dimensions of rurality on

service prices in a given location. The Commission seeks comment on the feasibility of using specific census tract information to evaluate rurality and determine rates. What are the benefits of using census tract information to determine rates? Do commenters believe that moving away from rurality tiers and relying on census-tract information would more accurately determine reasonable rates? If so, should such an approach be incorporated into the nationwide pricing model that seeks comments.? The Commission also seeks comment on how to use specific census tract information to determine rates if the Commission adopts such an approach. Should the Commission average rates among all ''rural'' census tracts within a state to determine rates? Should the Commission group census tracts that have similar data to evaluate rurality without using specific tiers? How should the Commission group the data? The Commission encourages commenters to suggest creative ways to evaluate rurality and establish rates based on an applicant's census tract information.

16. *Alaska-only Rurality Tiers.* In light of Alaska's unique topography, the Commission seeks comment on whether establishing distinct tiers for Alaska is appropriate for purposes of the Telecom Program. If the Commission adopts one of the alternate methods, will it be appropriate for Alaska, even if it is functional for other states? Should an entirely different method be implemented for evaluating rurality for Alaska than for other states? What specific dimensions of geography and rurality are unique to Alaska that would need to be accounted for in any Alaska-specific methodology? In the 2019 *Promoting Telehealth Report and Order,* the Commission created a Frontier tier unique to Alaska, comprised of off-road areas in the state. The Commission declined, however, to further sub-divide off-road communities in Alaska for determining comparable rural areas. The Commission recognizes that, even in Alaskan off-road communities, different levels of communications infrastructure may exist resulting in different costs for providing and obtaining services. If the Commission maintains the current rurality tiers, should the Commission further sub-divide Alaskan off-road areas to capture these variances in service deployment? If so, what methodology could be used that is objective, administratively feasible, and transparent?

17. *Funding Prioritization.* In the event the Commission adopts a new rurality tier system or an alternative to rurality tiers altogether, the Commission seeks comment on whether the new system should also be used for prioritization. When program demand exceeds available funding, the Commission's current prioritization system prioritizes health care providers in Medically Underserved Areas and health care providers in more rural rurality tiers using the Commission's current methodology for evaluating rurality. If the Commission changes the current methodology for evaluating rurality, should that new methodology replace the current rurality tiers in the prioritization system? Commenters that oppose using the same methodology for evaluating rurality and prioritization should provide viable alternative ways to prioritize funding.

18. *Categorizing service technologies purchased by health care providers.* The Commission examines the categorization of services supported by the Telecom Program. The Commission first seeks comment on approaches to analyzing existing data that would result in more accurate urban and rural rates. The Commission then seeks comment on potential changes to the Telecom Program's categorization of service technologies that could further improve the accuracy of urban and rural rates in future funding years.

19. The Telecom Program subsidizes the difference between the urban rate for a service in the health care provider's State, which must be ''reasonably comparable to the rates charged for similar services in urban areas in that State,'' and the rural rate, which is ''the rate for similar services provided to other customers in comparable rural areas'' in the State. Correct categorization of ''similar services'' is therefore critical to ensuring that the rates charged to rural health care providers and supported by Telecom Program funds align with the cost of delivering those services and that health care providers receive equitable, consistent funding. Accurate categorization also helps to eliminate the potential for waste and gamesmanship in the Program by, for example, removing incentives for service providers to mischaracterize lower cost services as similar to higher cost services in order to increase Telecom Program funding.

20. The Commission currently analyzes the similarity of services based on whether the services are ''functionally similar as viewed from the perspective of the end user,'' rather than assessing similarity based on technical similarities of the technologies used to deliver service. If a rural health care provider purchases a service that provides a similar user experience to another service, then regardless of underlying media, protocol(s), implementation, or commercial sales/product name, the Commission considers the two services to be functionally similar. For example, if a rural health care provider purchases a satellite service, that service is functionally similar to a DS3 service or Ethernet service from the health care provider's perspective because the services offer features and functions that provide a similar user experience. The Commission proposes to maintain this approach of viewing functional similarity from the perspective of the end user for the purpose of determining urban and rural rates, while also seeking comment about improving the service details incorporated into the rate determination consideration, and the Commission seeks comment on this proposal.

21. In the *Promoting Telehealth Report and Order* the Commission decided to consider services to be ''similar'' if the advertised speed is 30 percent above or below the speed of the service requested by the health care provider. The Commission explained that a 30 percent range would ''provide a sufficiently large range of functionally similar services to enable reasonable rate comparisons.'' The Commission also recognized that factors other than bandwidth such as reliability and security are important to accurately characterizing the functional similarity of services and that these enhanced functions may not be part of a best efforts service. The Commission therefore instructed Universal Service Administrative Company (USAC) to take into account whether a health care provider requests dedicated service or other service level guarantees when grouping similar services for the purpose of rate determination. The Commission further instructed USAC to expand the scope of its inquiry into similar services beyond telecommunications services to include all services that are functionally similar from an end user perspective regardless of regulatory classification. The Commission proposes to continue this technologically-agnostic approach because it is consistent with determining functional similarity from the end user perspective. The Commission seeks comment on maintaining this general approach, including considering advertised speeds within a 30 percent range to be similar.

22. *Existing service category data.* The Commission seeks comment on how to conduct more effective analysis of Telecom Program data which has been previously reported, or will be reported

using the current FCC Form 466, to calculate more accurate urban and rural rates. In the *Promoting Telehealth Report and Order,* the Commission did not elect to consider FCC Form 466 data beyond bandwidth, whether the service is dedicated or best efforts, and whether upload and download speeds are symmetrical or asymmetrical when grouping services within each rurality tier in a State. Is there other data currently available to USAC, or other data that could be provided to USAC such as contract term or volume discounts, that should be factored into rate determination to improve the accuracy of urban and rural rates? Are there adjustments to how USAC groups similar services or otherwise applies data from FCC Form 466 to rate determinations that would improve the accuracy of urban and rural rates?

23. The Commission also seeks comment on recategorizing or refining categorizations for existing Telecom Program service data so that the data more accurately identifies the services being purchased by rural health care providers. The Commission's initial analysis of FCC Form 466 submissions reveals that services reported as ''Ethernet'' or ''MPLS'' that have similar bandwidths frequently have significantly different monthly rates that likely reflect a wide range of customized bundled services and functionalities that can directly impact total costs. These differences are likely attributable in part to overly broad terminology. Telecom Program forms treat multi-protocol label switching (MPLS) as a service when in fact MPLS is a networking technique for routing packets on the internet. There is no standardized meaning of the commercial term ''MPLS,'' and therefore it is possible for service providers to label very different services as MPLS. Furthermore, service providers use a wide variety of pricing models for ''MPLS'' service that make it complicated to compare offerings. Similarly, ''Ethernet'' services are often generic constructs used to create a broad range of services. As a result, it is likely that some of the significant differences in monthly rates for ''Ethernet'' services with comparable bandwidths are due to significant differences in the actual services purchased. A health care provider that selects MPLS or Ethernet service may choose specific security, network management systems, performance guarantees, or technical support that in sum cost significantly more than the basic transmission component of the telecommunications service. Factors beyond the components of the selected service, such as geography, distance, and local exchange carrier channel termination rates can impact the rate for end-to-end service. These non-bandwidth related components of the delivered service may be a significant source of the irregular behavior of the Rates Database, creating anomalies from an inappropriate grouping of rates within a bandwidth or rurality tier that reflect services that are not functionally similar despite having similar bandwidths. Consequently, the medians calculated using these groupings are likely to be unreliable. The Commission seeks comment on this analysis. To the extent these non-bandwidth components impact rates, how should the Commission reconcile its definition and treatment of end-to-end rates?

24. *Revision to service categories.* The Commission seeks comment on updating the Telecom Program's categorization of services to more accurately reflect the functionality and cost of services purchased by rural health care providers by incorporating certain key data points into the similar service determination. For example, one rural health care provider might purchase point-to-point transmission services only, while another's purchase might include, at an additional charge, network management services. Failure to control for such a difference could lead to price anomalies. A more rural low-bandwidth transmission only service could be less expensive than a less rural higher-bandwidth service that includes substantial network management. Similarly, Commission staff's analysis of service and rate data submitted by rural health care providers in recent Telecom Program funding years indicates that many rural health care providers choose to purchase telecommunications services with different service level agreements (SLAs). Distinguishing between basic transmission and enhanced services and between services with different service level agreements should more accurately group similar services from the perspective of the functionality delivered to the end user.

25. One potential approach to service categorization could be to first separate data transmission from more comprehensive service offerings and then collect a limited, defined set of data points about the service purchased to enable similar services to be more accurately grouped together when determining rural rates. Different services would be comparable if they provide a comparable user experience, regardless of each service's underlying transmission media, protocol(s), implementation, or commercial sales/product name. This approach would classify services based upon functionality of the service provided, regardless of its commercial name. For example, rural health care providers completing the FCC Form 466 could identify their service functionality based on three factors: system type, system scope, and additional services. System type covers whether the network is a private network, a managed performance network, or a best effort public network. System scope covers network endpoints, *i.e.,* how many separate facilities are to be connected, and if more than one endpoint, whether there is a hybrid mix of transmission media (fiber, microwave, satellite) or service (MPLS, SD–WAN, Ethernet). For each endpoint the following factors would be considered: Connectivity, *i.e.,* whether it is point-to-point (1:1), point-to-multipoint (1:N), and multipoint-to-multipoint (N:N); facility type, *i.e.,* copper, cable, microwave or other terrestrial wireless, fiber and satellite; bandwidth/speed, separately for download and upload; and billable distance if applicable. Additional services would allow for reporting of premises equipment (managed router service administration); priority maintenance support; security; redundancy/diversity options; availability; failover options; overflow options; data CAP; peak/non-peak options; VoIP; and service level agreements.

26. The Commission seeks comment on questions related to this approach. When considering service level agreements, what should be the focus? For example, is it enough to distinguish from all other contracts, contracts that guarantee a minimum amount of downtime and provide liquidated damages or penalty payments when that guarantee is violated? If so, should the Commission distinguish between different downtime minimums and how? If not, what other service level guarantees should be taken into account? Should the Commission ignore any service level guarantees which do not come with material liquidated damages or penalty payments?

27. The Commission also welcomes recommendations for alternative approaches to service categorization. Proponents of an alternative approach should provide an analysis that seeks to demonstrate why their preferred approach will yield more accurate rural and urban rates than those produced by the Rates Database prior to its waiver. Commenters should also discuss whether their alternative approach would be consistent with viewing the

similarity of services from the end user perspective as proposed.

28. *Improving reporting requirements and data quality.* The Commission seeks comment on proposed revisions to Telecom Program forms and corresponding USAC online portals to improve the quality and consistency of Telecom Program data. The Commission seeks comment on revisions to the FCC Form 466 as well as any other RHC Program forms, including Healthcare Connect Fund Program (HCF Program) forms, that would allow the collection of more detailed service information to allow for more accurate comparisons of rates for similar services consistent with the revised rurality classifications and service categories proposed in the FNPRM. The Commission also seeks general comment on the data collected for the Telecom Program. Is there additional data that could improve the accuracy of urban and rural rate determinations? Is there additional data that would be helpful to ensure program integrity and to minimize waste, fraud, and abuse? Is any data collected on FCC Form 466 unnecessary for evaluating the efficacy of Telecom Program expenditures? How should the Telecom Program balance the importance of data quality with concerns about overburdening health care providers with reporting requirements? The Commission also seeks comment on adding a process for updating, correcting, or removing unreliable or inappropriate rate observations. Should a process exist for validating the rate data that is included in the Rates Database, and if so, what should it entail?

29. The Commission also seeks comment on revisions to current sources of urban and rural rates that are used to populate the rate determination mechanism, be it a database or some alternative. In the *Promoting Telehealth Report and Order,* the Commission established a ''broadly inclusive'' list of sources for urban and rural rates including rates from ''service providers' websites, rate cards, contracts such as state master contracts, undiscounted rates charged to E-Rate Program applicants, prior funding years RHC Program pricing data, and National Exchange Carrier Association (NECA) tariff rates.'' The Commission seeks comment on the benefits and drawbacks of continuing to compile rates from multiple sources as opposed to limiting rate data to rates paid by disbursements from the Telecom Program. Does relying on a large sample of rates actually available in the market increase the accuracy of median rates? Would limiting the relevant rates to those submitted by health care providers on FCC Form 466 result in too narrow a sample that is skewed by the lack of competition in many rural areas? How should the Commission balance the benefits of increasing the pool of sample rates with concerns about whether services purchased by other commercial customers are comparable to those purchased by health care providers participating in the Telecom program? If FCC Form 466 reporting requirements are revised to better identify the service being offered, will it still be feasible to compile rates from other sources that do not have similar reporting requirements? The Commission seeks comment on whether, if continuing to collect data from a large range of sources, statistical tools could be used, such as indicator variables in the proposed nationwide regression model, to control for data sourcing.

30. The Commission also seeks comment on whether there is certain information regarding the technical details or components of telecommunications services that rural health care providers cannot access or lack the technical expertise to report to USAC and should therefore be reported by service providers. How can the Commission ensure that health care providers, who may not have technical expertise over the telecommunications services they receive, accurately report the services they receive in the RHC Program? Should the Commission require service providers to submit service information to USAC? How should the Commission balance the value of detailed service data with the importance of minimizing burdens on health care providers and service providers, and also avoiding redundancies in data submissions?

31. *Selecting a rate determination mechanism.* The Commission seeks comment on the most effective method for determining urban and rural rates in an objective, transparent manner that can be uniformly applied to all Telecom Program applications. The Commission also seeks comment on whether, and if so how, to factor market competition into the rate determination mechanism. Are there areas where rural healthcare providers that receive Telecom Program support have competing service alternatives sufficient to enable the Commission to rely on competition to establish reasonable rural rates? If an area has multiple service providers but only one bidder offers to provide service to the rural healthcare provider, should a rate determination mechanism consider the market to be competitive? How should the rate determination mechanism factor in rates for deregulated commercial services that may be similar to services sought through the Telecom Program but are not publicly available?

32. *Modifications to the current urban and rural rates database.* The Commission first seeks comment on whether to retain the requirement that health care providers and service providers use a modified version of the Rates Database to determine urban and rural rates when the current waiver expires. Pursuant to the *Nationwide Rates Database Waiver Order,* DA 21–394, §§ 54.604(a) and 54.605(a) of the Commission's rules are waived for funding year 2021 and funding year 2022, delaying implementation of the Rates Database. Should the Commission revise the Rates Database to incorporate the modified rurality classifications and service categorizations? Will the revisions to those key data inputs be sufficient to resolve the anomalies that resulted in the waiver?

33. The intent of the rate determination process is to establish transparent, predictable, easy-to-administer rural and urban rates that also fulfill the requirements of section 254 of the Act so that Telecom Program subsidies result in rural health care providers paying rates that are reasonably comparable to rates for functionally similar services in urban areas of the health care provider's state and universal service support to service providers that is based on ''rates for similar services provided to other customers in comparable rural areas.'' The Commission seeks comment on whether modifications could be made to a future iteration of the Rates Database to enhance transparency, predictability, or efficient administration.

34. Wireline Competition Bureau's (Bureau) waiver of the Rates Database was due primarily to significant anomalies in median rural rate outputs, specifically instances where median rural rates were lower in more rural areas of state when compared to less rural areas and several instances where median rates for higher bandwidth services were lower than lower bandwidth services in comparable areas. If more effective collection of rates and service descriptions significantly reduces the anomalies found in the current approach, the Commission seeks comment on whether the resulting Rates Database, or some similar set of rate comparisons, should be used for setting urban and rural rates. The Commission seeks comment on whether the modifications to rurality tiers and service categorizations discussed in the FNPRM, or any further modifications

identified by commenters, will sufficiently address those anomalies.

35. The Commission also seeks more general comment on the Rates Database. What are the overall benefits and drawbacks of the Rates Database? How, if at all, have those benefits and drawbacks changed since the Commission adopted the Rates Database in the *Promoting Telehealth Report and Order*? Is a Rates Database framework the best solution for Alaska? Are there alternative methods for determining rates in Alaska that would be objective, independent, and administratively efficient?

36. In the event that the Rates Database is retained for future funding years, the Commission seeks comment on whether to take further action or rescind the guidance previously issued to USAC by the Bureau regarding administration and implementation of the Rates Database. The Commission seeks comment on further guidance or clarifications that would further the goal of promoting transparency and predictability in the rates determination process. Are there additional changes to the Rates Database that might resolve the anomalies the FNPRM? Would determining rates using the average, rather than the median, of inputs provide sufficient and predictable funding?

37. *Alternative rate determination methods.* The Commission seeks comment on potential alternative rate setting mechanisms to the Rates Database. The Commission seeks comment on the benefits and drawbacks of these alternative approaches.

38. *Pricing model with nationwide rate data.* The Commission seeks comment on creating a nationwide regression model to estimate rural and urban rates and determine Telecom program reimbursement on a state-by-state basis. As with the Rates Database, with a regression model, health care providers would enter information about the services for which they seek support. A regression model would estimate the rural and urban rates for Telecom Program-eligible services as determined by the characteristics that are reasonably expected to affect those rates. While the Commission does not know exactly how providers, including providers of Telecom Program services, set prices, certain characteristics are expected to influence a service's price, known as explanatory variables for the purposes of this analysis. For example, based on data submitted by health care providers on the FCC Form 466, the Commission has an indication of the service type (*e.g.,* Ethernet, MPLS, satellite), bandwidth, the health care provider's location, and whether there are service-level agreements associated with the service contract. Using the same data that is used to construct the Rates Database or any new data that may be collected, a Telecom Program regression model would analyze how these explanatory variables influence price, and it would then estimate the rural and urban rates for the particular service purchased by a health care provider in a particular state. The Regression Model Technical Analysis, provides details on the relationship between explanatory variables and the estimated rates (the outcome variables). The Commission seeks comment on the regression model analysis.

39. *Model inputs.* The Commission seeks comment on the appropriate set of explanatory variables for use in such a model. The data used to construct the current Rates Database contain a range of information about both the services that are eligible for Telecom Program support and related services. The Rates Database categorizes services by three sets of characteristics: bandwidth, rurality tier, and the presence or absence of a service level agreement (*i.e.,* whether the service was dedicated or best efforts). A regression model would account for the same or an expanded set of characteristics by analyzing a large number of existing rural and urban rates. The Commission seeks comment on using the same characteristics from the Rates Database as explanatory variables in a regression model. The Commission also seeks comment on whether it is beneficial to identify and include in the regression model a broader set of characteristics that are likely determinative of rates. The Commission anticipates that using an expanded list of characteristics would be superior to a model that only relies on bandwidth, rurality tier, and presence or absence of a service-level agreement, because staff review of the data used to construct the Rates Database suggests that other characteristics could significantly contribute to the variation in rates. Further, it is possible to revise the existing set of explanatory variables to better specify the relevant factors that drive rates. For example, modifications to rurality tiers and service categories on which the Commission seeks comment in the FNPRM could improve the model estimates by improving the quality of those key variables and strengthening their relationship to how services are priced.

40. A regression model could also be applied to a subset of the data used to construct the Rates Database based on the underlying source of data (for example, the FCC Form 466 versus E-Rate forms), or alternatively, it could easily account for new data that are subsequently collected. The Commission seeks comment on the best immediately available data that should be included in a regression model if the Commission were to adopt such an approach. Should the Commission include the universe of rates used to determine medians in the Rates Database? Should records used in the regression model be limited to RHC Program rates from FCC Forms 466? How many years of rate data should the regression analysis include? Regression models can control for relatively simple time trends. For example, including data year as an explanatory variable can capture price movements from one year to another. In such cases, using all the available years of data is to be preferred to excluding some of them. However, ensuring time effects are appropriately modeled becomes increasingly difficult when the effect of other explanatory variables on prices also varies with time. In such instances the use of old data may confound, rather than reveal, more recent relationships. The Commission also seeks comment on the type of data to include in a nationwide regression analysis going forward. Would newly collected data stemming from changes to reporting requirements proposed in the FNPRM improve the regression model results? What other data should the Commission consider that could improve the model's ability to estimate rural and urban rates? Beyond conventional regression analysis, should other data-driven approaches be considered, such as machine learning?

41. *State-specific analysis.* Section 254(h)(1)(A) of the Act requires that urban rates be ''reasonably comparable to rates charged for similar services in urban areas in that State'' and that rural rates be ''rates for similar services provided to other customers in comparable rural areas of the state.'' The Commission seeks comment as to whether it would be consistent with the statute to use nationwide inputs as a part of a regression analysis that determines the urban and rural rates within a state. A nationwide regression model would distinguish the independent effects of a range of explanatory variables that influence rates in a statistically coherent fashion, while taking into account the influence of state-specific factors that are not accounted for by the other explanatory variables. Thus, if rates in a given state are higher than other states, the regression model would account for

these differences. Furthermore, additional local factors that influence rates beyond those used by the Rates Database, such as the terrain of a given location or existing network density, could be included within the regression model to further refine state-by-state results.

42. A regression model considers how any explanatory variable the Commission could measure (service type, bandwidth, rurality, state, etc.) affects rates holding the other variables constant. Such an approach separates out the independent effect of each variable on the rate. Thus, the Commission can account for effects on rates that are constant within a state but vary among states, such as state laws that affect construction, labor or other costs, or unique geographic or demographic conditions, by using the state as an explanatory variable in the regression model.

43. In addition, a regression model gains accuracy with more data. Knowledge about how bandwidth or service type affect rates in one state can assist the model in determining how these same factors affect rates in another. Could the use of nationwide data in a regression framework improve the Commission's capacity to set reasonably comparable rates for similar services in any state? The Commission also seeks comment on how to account for factors that are unique to each state.

44. *Rurality-based discount tiers.* Alternatively, the Commission seeks comment on whether to adopt discount rates based on the rurality of the health care provider for the Telecom Program as a way to satisfy the statutory requirements for establishing rates under section 254(h)(1)(A) of the Act. Under a discount rate system, the amount of support would be a percentage of the price of the service listed in the contract, and the percentage paid by the Universal Service Fund would increase as rurality increases. In the E-Rate program, schools and libraries may receive discounts ranging from 20 to 90 percent of the pre-discount price of eligible services and equipment based on indicators of need. The Commission seeks comment on whether an analogous approach establishing discount tiers based on the health care provider's rurality would be an effective, reasonable, and workable method of determining rates for the Telecom Program.

45. The Commission seeks comment on whether a discount rate approach could meet section 254(h)(1)(A) of the Act's requirement that telecommunications carriers provide services to rural health care providers at ''rates that are reasonably comparable to rates charged for similar services in urban areas in that State.'' Historically, the Commission has implemented this statutory mandate by allowing health care providers to report their *exact* urban rates on their own. Section 254(h)(1)(A) of the Act, however, does not require that the rate charged to the health care provider be equal to the rate charged for similar services in a state. It merely requires that the rate charged to the health care provider be ''reasonably comparable'' to that rate. Section 254(h)(1)(A) of the Act also requires that the level of support be the difference between rates charged in urban areas and ''rates for similar services provided to other customers in comparable rural areas in the state.'' Would the amount that a health care provider pays in a discount rate system satisfy the requirements under section 254(h)(1)(A) of the Act given that the costs incurred by the health care provider under such a system would change depending on the price of the service?

46. The Commission also seeks comment on the advantages and disadvantages of a discount rate system in the Telecom Program. Under current program rules, the health care provider does not receive any financial benefit from a reduction in its rural rate because it pays the same urban rate regardless of what the rural rate is. Would a discount rate system incentivize healthcare providers to search for or negotiate lower priced contracts? Would this mechanism consequently apply competitive pressure on telecommunications carriers to submit more competitive bids during the bidding process?

47. The Commission adopted the E-Rate program percentage discount mechanism as recommended by the Joint Board on Universal Service. The Joint Board's recommendation was based on its finding that percentage discounts would ''establish incentives for efficiency and accountability'' by both requiring schools and libraries to pay a share of the cost and encouraging schools and libraries to seek out the lowest pre-discount cost in order to reduce their post-discount cost. However, the Joint Board recognized the importance of focusing the highest discounts on the most disadvantaged schools and libraries and set discounts for those schools and libraries at 90 percent. The Commission seeks comment on potential discount percentages for the Telecom Program as well as whether discount percentage tiers could be determined strictly by the health care provider's rurality or if other data points should factor into discount tier determination. What level of discount would be necessary to ensure reasonable comparability considering the very high cost of services in remote areas, particularly regions of Alaska currently classified as Frontier, and the limited resources of many rural health care providers? Due to the unique challenges that Tribal health care providers face, should Tribal health care providers receive a higher discount rate than non-Tribal providers in comparable rural areas? Would providing a higher discount rate for Tribal health care providers or considering factors other than rurality in determining discount rates comply with section 254(h)(1)(A) of the Act? Are there any other considerations beyond rurality that should be factored into a discount tier approach?

48. *Cost curves.* The Commission also seeks comment on whether independent, reliable cost curves might be used in a future rates determination process to account for the relationship between bandwidth and rates. Although rates generally increase as bandwidth increases if all other factors are unchanged, cost on a per megabit per second basis generally decreases as bandwidth increases. A pricing curve shows how the relationship between cost and bandwidth changes as bandwidth increases. Using a pricing curve might make it possible to increase the sample size of inputs that are used to calculate the rates used to determine support in the Telecom Program beyond inputs 30 percent above or below the speed of the requested service, thereby improving reliability. The Commission could use the pricing curve to establish a baseline per megabit per second rate for inputs consisting of rates that are actually charged, use those inputs to calculate a per megabit per second rate, and then extrapolate the rate for the requested bandwidth with the pricing curve. This option would not be viable without an independent, pricing curve that accurately reflects the relationship between bandwidth and price and can be verified by interested parties. What, if any, independent cost curves reflect the relationship between bandwidth and price? Do these cost curves accurately reflect the relationship between bandwidth and price across all parts of the country? Would a single cost curve be appropriate for all technologies, or does the relationship between bandwidth and cost vary depending on the technology used to deliver the service? Would a single nationwide cost curve produce accurate rates across all geographies? Would the unique

geographic characteristics of Alaska require a separate cost curve? Would the use of a cost curve allow for support that is ''reasonably comparable to rates charged for similar services'' in urban areas? What other aspects of the use of a cost curve should the Commission consider?

49. *Other potential rate determination methods.* In addition to the alternatives, the Commission seeks comment on any other alternative rate determination methods that would increase rate transparency while ensuring program integrity and promoting program administration. SHLB suggested that the Commission change the ''amount of the subsidy in the Telecom Program from 100 percent of the difference between the urban and rural rate to 95 percent of the difference between the urban and rural rate,'' while requiring health care providers to pay the remaining five percent. SHLB claimed at the time that such an approach ''would ensure that HCPs are price sensitive to the total cost of the services.'' The Commission seeks comment on such an approach. If the Commission adopted such an approach, would five percent be an appropriate portion of the urban/rural rate difference for health care providers to pay, or should another percentage be adopted? Should health care providers always pay the same percentage of the urban/rural rate difference or should the percentage vary depending on the circumstances of the health care provider? If the latter, how should the Commission determine when and how the percentage varies? Should the Commission consider capping the total amount that a health care provider would pay under such a system? Would this approach be workable for health care providers in Alaska given the higher costs of providing service in that state? In the *2019 Promoting Telehealth Report and Order,* the Commission declined to follow this approach, finding that ''it would be inconsistent with the goal of section 254'' of the Act. Are there reasons for the Commission to reconsider that analysis?

50. *Potential transition period.* The Bureau's waiver of the use of the Rates Database expires at the end of funding year 2022 and the current Telecom Program rules and forms will govern the rate determination process and Telecom Program data collection at least through funding year 2022 and potentially further into the future depending on rulemaking and implementation timelines. The Commission acknowledges that competitive bidding for funding year 2023 is approaching and may begin as early as July 1, 2022. The Commission seeks comment on how to manage this transition period. To the extent that the new rules established for determining urban and rural rates are not in effect in time for use in funding year 2023, the Commission seeks comment on how to determine urban and rural rates during any transition period that may occur. Should the current waiver of Commission rules governing the Rates Database be extended to permit time for implementation of new rates determination rules and any associated modifications to RHC Program forms and systems? Are there viable alternatives to extending the waiver? If the Commission implements changes to Telecom Program rules and forms, should the Rates Database waiver also be extended for an additional funding year so that USAC can collect one funding year of data under the new rules to repopulate the Rates Database? If the Commission retains the Rates Database, should the reinstated Rates Database continue to rely on rate data collected under previous Telecom Program rules? Should older rates be phased out gradually?

51. *Reforming the Internal Cap on Multi-Year Commitments and Upfront Payments.* In 2018, the Commission increased the annual RHC Program funding cap to $571 million, annually adjusted the RHC Program funding cap to reflect inflation using the Gross Domestic Product Chain-type Price Index (GDP–CPI), beginning with funding year 2018, and established a process to carry-forward unused funds from past funding years for use in future funding years. In the 2019 *Promoting Telehealth Report and Order,* it further directed the Bureau to adjust the $150 million funding cap on multi-year commitments and upfront payments in the HCF Program (internal cap) pursuant to the same index established for adjusting the overall RHC Program cap, the GDP–CPI inflation index. Any increases to the internal cap is accounted for *within* the overall RHC Program cap, *i.e.,* an increase in the internal cap on multi-year commitments and upfront payments will not increase the overall RHC Program cap. In each of the funding years 2018, 2019, and 2020, gross demand for multi-year commitments and upfront payments exceeded the $150 million internal cap, and the Commission took actions to avoid proration or prioritization reductions of the support for those funding requests. With this history in mind, the Commission proposes reforming the funding cap rules to more efficiently and effectively handle the internal cap on multi-year commitments and upfront payments in the HCP Program by having the internal cap apply only when overall demand exceeds available funding and, if it does apply, targeting funding for equipment and services needed in the funding year at issue.

52. First, to promote the efficiency of the RHC program and reduce delays of funding commitments, the Commission proposes amending the rules to limit the application of the internal cap to only funding years for which the total demand exceeds the total remaining support available. In other words, when the total support available for the funding year, which is the sum of the inflation-adjusted RHC Program aggregate cap in § 54.619(a) of the Commission's rules and the proportion of unused funding determined for use in the RHC Program pursuant to § 54.619(a)(5) of the Commission's rules, could satisfy the total demand, the internal cap would not apply. Specifically, in an initial filing window, the internal cap would apply only when the total program demand during the filing window exceeds the total support available in the RHC Program for the funding year. In the unlikely event that there is an additional filing window in a given year, and if the total demand during the additional filing window exceeds the total remaining support available for the funding year, funding for upfront payment and multi-year commitment requests submitted during the additional filing window will be capped at the remaining support available within the internal cap.

53. This proposed amendment to Commission rules would preserve the internal cap's intended purpose of preventing multi-year and upfront payment requests from encroaching on the funding available for single-year requests, because the internal cap would still apply in the same way as before when the total demand exceeds the total remaining support available. The Commission seeks comment on this proposed new rule. In particular, will it have any negative impact on the RHC Program? The Commission recognizes there might be concerns that a very large demand for upfront payments and multi-year commitments could consume a significant amount of the unused funds, and consequently could impact the available funding for single-year requests in the next funding year because there would be less unused funding available to be carried forward to the next funding year. The more likely result of fully funding a large demand for upfront payments and multi-year commitments, however, is that *less* funding would be required for

single-year requests in the next funding year. This would be the case because there likely will be fewer single-year requests in the next funding year given that some of the multi-year commitments may have their second-year requests filed as single-year requests in the next funding year if not fully funded. Thus, the full-funding of a large demand for upfront payments and multi-year commitments would be unlikely to cause single-year request prioritization in the next funding year. Nevertheless, the Commission believes that this proposed new rule will not result in all or most unused funding from prior funding years being exhausted in a single funding year because the Bureau, in consultation with the Office of the Managing Director, controls the proportion of unused funding to be used in the RHC Program. Are these assessments reasonable?

54. Second, when the internal cap applies and is exceeded, the Commission proposes to target funding for upfront costs and the first year of multi-year commitment requests and to fund the second and third year of multi-year commitments with any leftover funding. Currently, when funding requests for upfront payments and multi-year commitments must be prioritized, requests falling in a higher prioritization category will be fully funded before requests in the next lower prioritization category can be funded, provided that there are funds available and the internal cap has not been reached. For example, a three-year multi-year commitment request in a ''Priority 2'' tier may have all three years' services funded while a three-year multi-year commitment request in a ''Priority 6'' tier may not be funded at all, including the first year's service.

55. The current prioritization process will inevitably result in some health care providers, likely those in the lower prioritization categories, losing all or a portion of their requested support when the requests must be prioritized while other health care providers receive commitments for the second and third years of multi-year commitments, even though they could request funding for these services in the next two funding years. To mitigate the adverse impact on those health care providers, the Commission proposes amending § 54.621 of the Commission's rules to fund upfront payments and the first year of multi-year commitments for all priority tiers (provided funding is available), and then the second and third years of the multi-year commitments until the internal cap is reached. This way, it is more likely that all health care providers that requested upfront payments and multi-year commitments can at least have their current funding year's financial need satisfied. Applicants can still request the second and third year funding in the next funding year. The Commission seeks comment on the proposed change to § 54.621 of the Commission's rules. Alternatively, should the internal cap apply only to self-construction, in order to reduce its impact on other forms of upfront payments, such as funding for equipment, and on multi-year commitments?

56. The Commission also proposes allowing the underlying contracts associated with those multi-year requests that are not fully funded to be designated as ''evergreen,'' provided that the contracts satisfy the criteria set forth in § 54.622(i)(3)(ii) of the Commission's rules. The evergreen designation will exempt applicants from having to complete the competitive bidding process for the contracts when subsequently filing requests for support pursuant to these contracts. As a result, applicants can request multi-year commitments pursuant to these contracts in the next funding year without going through the competitive bidding process. The Commission seeks comment on this proposal.

57. The proposed method for prioritizing upfront payment and multi-year commitment requests applies when both the total support available and the internal cap are exceeded. Should this method also apply when the total support available is exceeded but the internal cap is not exceeded? Currently, if the total demand exceeds the total support available but the demand for upfront payments and multi-year commitments is within the internal cap, all eligible requests (single-year requests and upfront payment and multi-year commitment requests) submitted during the filing window will be prioritized according to the priority schedule defined in § 54.621(b) of the Commission's rules. In such a case, no separate prioritization of the upfront payment and multi-year commitment requests will be conducted because the internal cap is not exceeded. If the proposed method should also apply when the total support available is exceeded but the internal cap is not exceeded, the Commission proposes funding all single-year requests, upfront payments, and the first-year of multi-year commitment requests in accordance with § 54.621(b) of the Commission's rules *before* funding the second year and third year of multi-year commitment requests.

58. The Commission acknowledges that some health care providers, especially those in the higher prioritization categories, may be inconvenienced under the proposed method because they would have to file applications in future funding years for services that otherwise would fall under the second and third year of a multi-year commitment. The Commission tentatively concludes that this inconvenience to those health care providers is outweighed by the benefit to health care providers who, without this rule change, could have funding requests for upfront costs and services in the first year of a multi-year commitment request denied or prorated. Do program participants agree with this tentative conclusion? Are there any additional disadvantages associated with this method? Are there any other approaches to better handle the prioritization reduction of upfront payments and multi-year commitments? Rather than making these changes, would it be better to simply eliminate the internal cap on upfront costs and multi-year commitments? The Commission also seeks comment on whether the current funding cap is sufficient to satisfy demand now and in the coming years for the RHC Program, including whether the current inflation adjustment mechanism accurately reflects changes in the cost to provide broadband and telecommunications services.

59. *Harmonizing Telecom Program Invoicing With HCP Program Invoicing.* In the 2019 *Promoting Telehealth Report and Order,* the Commission established a number of improvements to the invoicing process for both the HCF Program and Telecom Program. Specifically, the Commission established a uniform invoice filing deadline for the RHC Program, beginning with funding year 2020, established a one-time invoice deadline extension allowing service providers and billed entities to request and automatically receive a single one-time 120-day extension of the invoice deadline, and strengthened the certifications under both the Telecom Program and HCF Program.

60. The Commission proposes to fully harmonize the invoicing process between the Telecom Program and the HCF Program. Currently, there are separate invoicing processes for the two programs. Under the Commission's rules, Telecom Program participants ''must submit documentation to [USAC] confirming the service start date, the service end or disconnect date, or whether the service was never turned on.'' Health care providers send this

information to USAC via the FCC Form 467 (Connection Certification). After that, USAC generates a Health Care Provider Support Schedule (HSS), which the service provider uses to determine how much credit the applicant will receive for the services. When the HSS is generated, the service provider reviews the HSS for accuracy and applies the credit to the health care provider's account. Once the credit is applied to the health care provider's account, the service provider can file invoices through USAC's online filing system, My Portal. After an HSS is issued, it is the responsibility of the health care provider to submit a request for an FCC Form 467 revision if services are delayed or not turned on. Absent requests for an FCC Form 467 revision, the service provider may submit invoices for services for the exact amount listed on the HSS and USAC will continue to disburse funds according to the schedule.

61. The Commission tentatively concludes that HSSs compromise the ability of USAC to administer the Telecom Program effectively and efficiently because once a service provider files an invoice and receives a disbursement, the FCC Form 467 can no longer be revised even when there is a change in service. Due to this limitation, if a service is later disconnected or was never actually installed, the service provider could still submit invoices for the service (but only for the amount established in the HSS) and receive disbursements from USAC. In My Portal, when a service provider submits an invoice, the amount requested for disbursement is pre-populated and must match the amount determined in the HSS even if the actual costs reflected in the bill are for less than the HSS amount. In recent years, the Enforcement Bureau discovered instances where invoices submitted under a valid HSS were inaccurate. Specifically, the invoices were for disconnected or uninstalled services, which resulted in funding disbursements to the service provider that exceeded the amount of Telecom Program support to which it was entitled.

62. The HCF Program uses a simpler invoicing process. To invoice in the HCF Program, the participating service provider and the health care provider must submit an invoice for broadband service using FCC Form 463 (Invoice and Request for Disbursement Form) to USAC after services are provided. Once a health care provider receives a bill from its service provider, it can create an invoice for the services received using the FCC Form 463. The health care provider must certify that the information in the form and attachments is accurate and that it or another eligible source has paid the 35 percent contribution. The health care provider then sends the FCC Form 463 to the service provider for approval through My Portal. The service provider reviews the FCC Form 463 and certifies its accuracy, and then submits the form to USAC. Once USAC receives the FCC Form 463, it processes the form and, if approved, funds are then distributed to the service provider. Thus, funding is only disbursed in the HCF Program when actual costs are reflected in an invoice from the service provider. The process of confirming costs with invoices reduces the possibility of over-invoicing because funding is disbursed only when expenses are actually incurred, which differs from the Telecom Program where a service provider may receive funds when the service was never installed or was disconnected.

63. To alleviate inefficiencies and to further protect against waste, fraud, and abuse in the RHC Program, the Commission proposes to revise the rules to eliminate the use of HSSs in the Telecom Program and align the Telecom Program's invoicing process with the HCF Program's invoicing rules. Specifically, the Commission proposes to have participants in both programs invoice USAC for services actually provided using the FCC Form 463 rather than use HSSs in the Telecom Program. The Commission tentatively concludes that eliminating the use of HSSs in the Telecom Program would increase the efficient and effective distribution of program funds because funds would be distributed according to actual costs rather than according to a predetermined schedule. The Commission seeks comment on this tentative conclusion. If the proposal to eliminate HSSs is adopted, the use of the FCC Form 467 would be unnecessary because health care providers would no longer need to file the form to receive HSSs. The Commission therefore proposes to eliminate the use of the FCC Form 467 and retire the form. The Commission tentatively concludes that removing the burden of reporting changes in service would better protect the Telecom Program from waste, fraud, and abuse because it would reduce the possibility that service providers could over invoice USAC for services not provided. The Commission seeks comment on these proposals and invite commenters to comment on whether there is an alternative method for revising the invoicing rules in the Telecom Program to protect against waste, fraud, and abuse.

64. *Application Processing, Funding Decisions, and Appeals of Decisions.* The Commission seeks comment on any additional measures beyond those already taken by the Commission and USAC that could further enhance the efficiency of application processing and the speed in which funding commitment decisions are made. To ensure distribution of support in accordance with program rules and to make the application process as smooth as possible for health care providers, in the *Promoting Telehealth Report and Order,* the Commission directed USAC to develop procedures for application review and to develop outreach materials to help participants navigate program processes. Additionally, USAC recently began a multi-step overhaul of its application platform that should make the funding review process faster and more efficient. Analysis conducted by Commission staff indicates that USAC's processing for RHC Program applications has improved in recent funding years. The Commission seeks comment on what additional steps, if any, the Commission or USAC can take to further expedite application processing while still protecting the integrity of the Fund. Should the Commission consider requiring USAC to process applications and make funding commitment decisions within a specified period of time after the close of the filing window or after the requisite forms and responses to USAC information requests have been deemed received by USAC after initial cursory review? One stakeholder raised concerns that program rules are unclear regarding the eligibility of equipment, leading to inconsistent funding decisions. If this is the case, in what way are program rules unclear regarding the eligibility of equipment and how can they be made clearer? The Commission also seeks comment on whether there are changes that can be made to the existing appeals process for appeals with USAC and the Commission, including whether the Commission or USAC should be required to act on such appeals within a specified period of time.

65. Finally, The Commission seeks comment on whether there are other reforms the Commission should consider to eliminate common errors with the application review and decision-making process. Stakeholders have previously expressed concern about administrative errors on the part of USAC that lead to lengthy delays. Do these types of errors remain a concern?

Are there steps the Commission can take to reduce the administrative costs and burdens on health care providers while maintaining the integrity of the Fund and protecting against waste, fraud, and abuse?

66. *Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commissions seek comment on how the proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

III. Procedural Matters

A. Initial Paperwork Reduction Act Analysis

67. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how to further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Initial Regulatory Flexibility Analysis

68. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities'' by the policies and rules proposed in the FNPRM. Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in the FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

69. *Need for, and Objective of, the Proposed Rules.* Through the FNPRM, the Commission seeks to improve the Rural Health Care (RHC) Program's capacity to distribute telecommunications and broadband support to health care providers–especially small, rural healthcare providers (HCPs)—in the most equitable and efficient manner as possible. Over the years, telehealth has become an increasingly vital component of healthcare delivery to rural Americans. Rural healthcare facilities are typically limited by the equipment and supplies they have and the scope of services they can offer which ultimately can have an impact on the availability of high-quality health care. Therefore, the RHC Program plays a critical role in overcoming some of the obstacles healthcare providers face in healthcare delivery in rural communities. Considering the significance of RHC Program support, the Commission proposes and seeks comment on several measures to most effectively meet HCPs' needs while responsibly distributing the RHC Program's limited funds.

70. In the FNPRM, the Commission seeks comment on several measures to improve the process of determining accurate and reasonable rates in the Telecom Program. Specifically, the Commission seeks comment on various data inputs related to rurality classifications for health care providers and categorization of eligible services to determine rates that reflect the cost of delivering service to health care providers. The Commission also seeks comment on how to improve the current rate determination mechanism to prevent some of the inconsistencies and anomalies in Rates Database. The Commission seeks additional comment on alternatives to the Rates Database, including a regression model.

71. The Commission also proposes and seeks comment on a few procedural matters that would improve the overall effectiveness of the RHC Program. For example, the Commission seeks comment on reforming the RHC Program's internal funding cap. Specifically, the Commission proposes to amend the current rules so that the internal cap for upfront costs and multi-year commitments applies only if available funding for the entire program is exceeded. The Commission seeks comment on a two-tiered system that would prioritize first the funding of upfront costs and the first year of multi-year commitments and then the second and third year of multi-year commitments until the internal cap is reached.

72. To alleviate inefficiencies and to further protect against waste, fraud, and abuse in the RHC Program, the Commission also proposes to revise the rules to eliminate the use of Health Care Provider Support Schedules (HSSs) in the Telecom Program and harmonize the Telecom Program's invoicing process with the HCF Program's invoicing rules.

73. *Legal Basis.* The legal basis for the FNPRM is contained in sections 1 through 4(g)(D)(i)–(j), 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154(i), (j), 201 through 205, 254, 303(r), and 403.

74. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

75. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. Therefore, at the outset, there are three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 31.7 million businesses.

76. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its

field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

77. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicates that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 39, 931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments (independent school districts) with populations of less than 50,000. Based on the 2017 U.S. Census Bureau data the Commission estimates that at least 48, 971 entities fall in the category of ''small governmental jurisdictions.''

78. Small entities potentially affected by the proposals herein include eligible rural non-profit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, internet Service Providers (ISPs), and vendors of the services and equipment used for dedicated broadband networks.

79. *Healthcare Providers, Offices of Physicians (except Mental Health Specialists).* This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has created a size standard for this industry, which is annual receipts of $12 million or less. According to 2012 U.S. Economic Census, 152,468 firms operated throughout the entire year in this industry. Of that number, 147,718 had annual receipts of less than $10 million, while 3,108 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms operating in this industry are small under the applicable size standard.

80. *Offices of Dentists.* This U.S. industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry. The SBA has established a size standard for that industry of annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 115,268 firms operated in the dental industry throughout the entire year. Of that number 114,417 had annual receipts of less than $5 million, while 651 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes that a majority of business in the dental industry are small under the applicable standard.

81. *Offices of Chiropractors.* This U.S. industry comprises establishments of health practitioners having the degree of D.C. (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census statistics show that in 2012, 33,940 firms operated throughout the entire year. Of that number 33,910 operated with annual receipts of less than $5 million per year, while 26 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes that a majority of chiropractors are small.

82. *Offices of Optometrists.* This U.S. industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of optometry. These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy. They operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact lenses. The SBA has established a size standard for businesses operating in this industry, which is annual receipts of $8 million or less. The 2012 Economic Census indicates that 18,050 firms operated the entire year. Of that number, 17,951 had annual receipts of less than $5 million, while 70 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes that a majority of optometrists in this industry are small.

83. *Offices of Mental Health Practitioners (except Physicians).* This U.S. industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has created a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 16,058 firms operated throughout the entire year. Of that number, 15,894 firms received annual receipts of less than $5 million, while 111 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes that a majority of mental health practitioners who do not employ physicians are small.

84. *Offices of Physical, Occupational and Speech Therapists and Audiologists.* This U.S. industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) Providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or

fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 20,567 firms in this industry operated throughout the entire year. Of this number, 20,047 had annual receipts of less than $5 million, while 270 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes that a majority of businesses in this industry are small.

85. *Offices of Podiatrists.* This U.S. industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry. These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for businesses in this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 7,569 podiatry firms operated throughout the entire year. Of that number, 7,545 firms had annual receipts of less than $5 million, while 22 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

86. *Offices of All Other Miscellaneous Health Practitioners.* This U.S. industry comprises establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists). These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 11,460 firms operated throughout the entire year. Of that number, 11,374 firms had annual receipts of less than $5 million, while 48 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes the majority of firms in this industry are small.

87. *Family Planning Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy. The SBA has established a size standard for this industry, which is annual receipts of $12 million or less. The 2012 Economic Census indicates that 1,286 firms in this industry operated throughout the entire year. Of that number 1,237 had annual receipts of less than $10 million, while 36 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that the majority of firms in this industry is small.

88. *Outpatient Mental Health and Substance Abuse Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse. These establishments generally treat patients who do not require inpatient treatment. They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary. The SBA has established a size standard for this industry, which is $16.5 million or less in annual receipts. The 2012 U.S. Economic Census indicates that 4,446 firms operated throughout the entire year. Of that number, 4,069 had annual receipts of less than $10 million while 286 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

89. *HMO Medical Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the health maintenance organization (HMO) subscribers with a focus generally on primary health care. These establishments are owned by the HMO. Included in this industry are HMO establishments that both provide health care services and underwrite health and medical insurance policies. The SBA has established a size standard for this industry, which is $35 million or less in annual receipts. The 2012 U.S. Economic Census indicates that 14 firms in this industry operated throughout the entire year. Of that number, 5 firms had annual receipts of less than $25 million, while 1 firm had annual receipts between $25 million and $99,999,999. Based on this data, the Commission concludes that approximately one-third of the firms in this industry are small.

90. *Freestanding Ambulatory Surgical and Emergency Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (*e.g.,* orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (*e.g.,* setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis. Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 3,595 firms in this industry operated throughout the entire year. Of that number, 3,222 firms had annual receipts of less than $10 million, while 289 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

91. *All Other Outpatient Care Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers). Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (*i.e.,* Doctor of Medicine and Doctor of Dental Medicine) are included in this industry. The SBA has established a size standard for this industry, which is annual receipts of $22 million or less. The 2012 U.S. Economic Census indicates that 4,903 firms operated in this industry throughout the entire year. Of this number, 4,269 firms had annual receipts of less than $10 million, while 389 firms had annual receipts between $10

million and $24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

92. *Blood and Organ Banks.* This U.S. industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs. The SBA has established a size standard for this industry, which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 314 firms operated in this industry throughout the entire year. Of that number, 235 operated with annual receipts of less than $25 million, while 41 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that approximately three-quarters of firms that operate in this industry are small.

93. *All Other Miscellaneous Ambulatory Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic laboratories; home health care providers; ambulances; and blood and organ banks). The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 2,429 firms operated in this industry throughout the entire year. Of that number, 2,318 had annual receipts of less than $10 million, while 56 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of the firms in this industry is small.

94. *Medical Laboratories.* This U.S. industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner. The SBA has established a size standard for this industry, which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 2,599 firms operated in this industry throughout the entire year. Of this number, 2,465 had annual receipts of less than $25 million, while 60 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small. *Centers.* This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner. The SBA has established size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 4,209 firms operated in this industry throughout the entire year. Of that number, 3,876 firms had annual receipts of less than $10 million, while 228 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

95. *Home Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: Personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 17,770 firms operated in this industry throughout the entire year. Of that number, 16,822 had annual receipts of less than $10 million, while 590 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

96. *Ambulance Services.* This U.S. industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a medical emergency but are not restricted to emergencies. The vehicles are equipped with lifesaving equipment operated by medically trained personnel. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 2,984 firms operated in this industry throughout the entire year. Of that number, 2,926 had annual receipts of less than $15 million, while 133 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry is small.

97. *Kidney Dialysis Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 396 firms operated in this industry throughout the entire year. Of that number, 379 had annual receipts of less than $25 million, while 7 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

98. *General Medical and Surgical Hospitals.* This U.S. industry comprises establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. These hospitals have an organized staff of physicians and other medical staff to provide patient care services. These establishments usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 2,800 firms operated in this industry throughout the entire year. Of that number, 877 has annual receipts of less than $25 million, while 400 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that approximately one-quarter of firms in this industry are small.

99. *Psychiatric and Substance Abuse Hospitals.* This U.S. industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide

other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 404 firms operated in this industry throughout the entire year. Of that number, 185 had annual receipts of less than $25 million, while 107 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that more than one-half of the firms in this industry are small.

100. *Specialty (Except Psychiatric and Substance Abuse) Hospitals.* This U.S. industry consists of establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse). Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 346 firms operated in this industry throughout the entire year. Of that number, 146 firms had annual receipts of less than $25 million, while 79 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that more than one-half of the firms in this industry are small.

101. *Emergency and Other Relief Services.* This industry comprises establishments primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (*e.g.,* wars). The SBA has established a size standard for this industry which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 541 firms operated in this industry throughout the entire year. Of that number, 509 had annual receipts of less than $25 million, while 7 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

102. *Providers of Telecommunications and Other Services, Telecommunications Service Providers. Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the Commission's actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

103. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

104. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is Wired Telecommunications Carriers and under the size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most competitive access providers are small businesses that may be affected by these actions. According to Commission data the *2010 Trends in Telephone Report,* 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or few employees and 186 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

105. The small entities that may be affected by the reforms include eligible nonprofit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, Internet Service Providers, and service providers of the services and equipment used for dedicated broadband networks.

106. *Vendors and Equipment Manufactures. Vendors of Infrastructure Development or ''Network Buildout.''* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are ''Radio and Television Broadcasting and Wireless Communications Equipment'' with a size standard of 1,250 employees or less and ''Other Communications Equipment Manufacturing'' with a size standard of 750 employees or less.'' U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year. Of that number, 828 establishments operated with fewer than 1,000 employees, and 7 establishments operated with between 1,000 and 2,499 employees. For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012, show that 383 establishments operated for the year. Of that number 379 operated with fewer than 500 employees and 4 had 500 to

999 employees. Based on this data, the Commission concludes that the majority of Vendors of Infrastructure Development or ''Network Buildout'' are small.

107. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways. The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year. Of this total, 262 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

108. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

109. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (*e.g.,* highway, pedestrian, railway, traffic) manufacturing. The SBA has established a size standard for this industry as all such firms having 750 or fewer employees. U.S. Census Bureau data for 2012 shows that 383 establishments operated in that year. Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, the Commission concludes that the majority of Other Communications Equipment Manufacturers are small.

110. *Steps Taken to Minimize the Significant Economic Impact of Small Entities and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' The Commission expects to consider all of these factors when it has received substantive comment from the public and potentially affected entities.

111. Largely, the proposals in the FNPRM if adopted will have no impact on or will reduce the economic impact of current regulations on small entities. Certain proposals could have a positive economic impact on small entities. In the FNPRM, the Commission seeks comment on changes that would streamline and simplify the application process; maximize efficient and fair distribution of support; and increase support for small entities relative to their larger counterparts, thereby decreasing the net economic burden on small entities. In the instances in which a proposed change would increase the financial burden on small entities, the Commission has determined that the net financial and other benefits from such changes would outweigh the increased burdens on small entities.

112. *Determining Accurate Rates in the Telecom Program.* To minimize potential rate variances and anomalies, the Commission seeks comment on how to determine accurate and reasonable urban and rural rates in the Telecom Program. The Commission specifically seeks input on how to define and evaluate rurality to determine what areas are comparable for purposes of determining rates. The Commission then seeks comment on what factors to consider when differentiating rural areas. The Commission seeks comment on approaches to analyzing existing data that would result in more accurate urban and rural rates such as establishing potential changes to the Telecom Program's categorization of service technologies that could further improve the accuracy of urban and rural rates in future funding years. The Commission also seeks comment on ways to improve and modify the current rate determination mechanism, the Rates Database, based on existing data. The Commission also seeks comment on an alternative model to the Rates Database.

113. *Harmonizing the Invoicing Process in the Telecom and HCF Program.* Currently, there are separate invoicing processes for the two programs. To alleviate inefficiencies and to further protect against waste, fraud, and abuse in the RHC Program, the Commission proposes to revise the rules to eliminate the use of HSSs in the Telecom Program and align the Telecom Program's invoicing process with the HCF Program's invoicing rules, which are simpler than the Telecom Program's current invoicing rules. Specifically, the Commission proposes to have participants in both programs invoice for services actually provided using the FCC Form 463 rather than use HSSs in the Telecom Program.

114. *Reform of Program Funding Cap.* The Commission proposes and seeks comment on reforming the RHC Program's funding cap. Specifically, the Commission proposes to amend the current rules so that the internal cap for upfront costs and multi-year commitments apply only if available funding for the entire program is exceeded. The Commission additionally seeks comment on a two-tiered system that would distribute funding first to upfront costs and the first year of multi-year commitments and then the second and third year of multi-year commitments until the internal cap is reached.

115. *Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules.* None.

116. *Ex Parte Rules—Permit-But-Disclose.* The proceeding the FNPRM is a part of shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations

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

117. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The reporting, recordkeeping, and other compliance requirements proposed in the FNPRM likely would positively and negatively financially impact both large and small entities, including healthcare providers and service providers, and any resulting financial burdens may disproportionately impact small entities given their typically more limited resources. In weighing the likely financial benefits and burdens of the proposed requirements, however, the Commission has determined that the proposed changes would result in more equitable, effective, efficient, clear, and predictable distribution of RHC support, far outweighing any resultant financial burdens on small entity participants.

118. *Application Documentation.* The Commission seeks comment on proposed revisions to Telecom Program forms and corresponding USAC online portals to improve the quality and consistency of Telecom Program data. The Commission seeks comment on revisions to the FCC Form 466 as well as any other RHC Program forms including HCF Program forms that might allow for the collection of more detailed service information to allow for more accurate comparisons of rates for similar services consistent with the revised rurality classifications and service categories proposed in the FNPRM. The Commission also seeks comment on whether there is certain information regarding the technical details or components of telecommunications services that rural health care providers cannot access or lack the technical expertise to report to USAC and should therefore be reported by service providers.

119. *Invoicing Requirements.* To harmonize the Commission's rules under the Telecom and HCF Programs, and to ensure sufficient program oversight, efficiency, and certainty, the Commission proposes to harmonize the invoicing process between the Telecom Program and the HCF Program.

120. *Improving Data Collection.* As the Commission seeks to better monitor RHC Program effectiveness, the Commission seeks general comment on the data collected for the Telecom Program.

IV. Ordering Clauses

121. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1 through 4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, the Further Notice of Proposed Rulemaking *is adopted.*

122. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the FNPRM on or before April 14, 2022, and reply comments on or before May 16, 2022.

123. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR part 54

Communications common carriers, Health facilities, Infants and children, internet, Telecommunications, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

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

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601–1609 unless otherwise noted.

■ 2. Amend § 54.619 by revising paragraph (b) to read as follows:

§ 54.619 Cap.

* * * * *

(b) *Application of the internal cap on multi-year commitments and upfront payments in the Healthcare Connect Fund Program.* The internal cap on multi-year commitments and upfront payments in the Healthcare Connect Fund Program applies only when the total demand during a filing window period exceeds the total remaining support available for the funding year. The total remaining support available for the funding year is based on the inflation-adjusted aggregate annual cap, the proportion of unused funding for use in the Rural Health Care Program determined in paragraph (a)(5) of this section, and the amount of funding allocated in one or more previous filing window periods, if any, of the funding year.

■ 3. Amend § 54.621 by adding paragraph (b)(3) to read as follows:

§ 54.621 Filing window for requests and prioritization of support.

* * * * *

(b) * * *

(3) *Prioritization of upfront payment and multi-year commitment requests.* When the internal cap on multi-year commitments and upfront payments applies pursuant to § 54.619(b) and the demand for upfront payments and multi-year commitments during a filing window period exceeds the internal cap on multi-year commitments and upfront payments in the Healthcare Connect Fund Program, the Administrator shall

fund upfront payments and the first year of the multi-year commitments in all eligible requests in accordance with paragraph (b) of this section before funding the second year and the third year, if applicable, of the multi-year commitment requests in accordance with paragraph (b) of this section until the internal cap is reached or no available funds remaining. The Administrator shall also designate the underlying contracts associated with the multi-year commitment requests that are not fully funded as ''evergreen'' provided those contracts meet the requirements under § 54.622(i)(3)(ii).

■ 4. Amend § 54.627 by revising paragraph (c) to read as follows:

§ 54.627 Invoicing process and certifications.

* * * * *

(c) *Certifications.*

(1) Before the Administrator may process and pay an invoice, both the health care provider and the service provider must make the following certifications.

(i) The health care provider must certify that:

(A) The service has been or is being provided to the health care provider;

(B) The universal service credit will be applied to the telecommunications service billing account of the health care provider or the billed entity as directed by the health care provider;

(C) It is authorized to submit this request on behalf of the health care provider;

(D) It has examined the invoice and supporting documentation and that to the best of its knowledge, information and belief, all statements of fact contained in the invoice and supporting documentation are true;

(E) It or the consortium it represents satisfies all of the requirements and will abide by all of the relevant requirements, including all applicable Commission rules, with respect to universal service benefits provided under 47 U.S.C. 254; and

(F) It understands that any letter from the Administrator that erroneously states that funds will be made available for the benefit of the applicant may be subject to rescission.

(ii) The service provider must certify that:

(A) The information contained in the invoice is correct and the health care providers and the Billed Account Numbers have been credited with the amounts shown under ''Support Amount to be Paid by USAC;''

(B) It has abided by all of the relevant requirements, including all applicable Commission rules;

(C) It has received and reviewed the invoice form and accompanying documentation, and that the rates charged for the telecommunications services, to the best of its knowledge, information and belief, are accurate and comply with the Commission's rules;

(D) It is authorized to submit the invoice;

(E) The health care provider paid the appropriate urban rate for the telecommunications services;

(F) The rural rate on the invoice does not exceed the appropriate rural rate determined by the Administrator;

(G) It has charged the health care provider for only eligible services prior to submitting the invoice for payment and accompanying documentation;

(H) It has not offered or provided a gift or any other thing of value to the applicant (or to the applicant's personnel, including its consultant) for which it will provide services; and

(I) The consultants or third parties it has hired do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider chosen to provide the requested services, and that they have otherwise complied with Rural Health Care Program rules, including the Commission's rules requiring fair and open competitive bidding.

(J) As a condition of receiving support, it will provide to the health care providers, on a timely basis, all documents regarding supported equipment or services that are necessary for the health care provider to submit required forms or respond to Commission or Administrator inquiries.

* * * * *

[FR Doc. 2022–05191 Filed 3–14–22; 8:45 am]

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Notices

Federal Register
Vol. 87, No. 50
Tuesday, March 15, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0023]

BASF Corporation; Determination of Nonregulated Status of Plant-Parasitic, Nematode-Protected and Herbicide-Tolerant Soybean

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that soybean designated as event GMB151, which has been developed using genetic engineering for resistance to the plant-parasitic nematode, soybean cyst nematode (*Heterodera glycines*), and for tolerance to 4-hydroxyphenylpyruvate dioxygenase (HPPD–4) inhibitor herbicides, is no longer considered regulated. Our determination is based on our evaluation of data submitted by BASF Corporation in its petition for a determination of nonregulated status, our analysis of available scientific data, and public comments received in response to our previous notices announcing the availability of the petition for nonregulated status and its associated draft environmental assessment and draft plant pest risk assessment. This notice also announces the availability of our final environmental assessment, final plant pest risk assessment, written determination, and finding of no significant impact.

DATES: This change in regulatory status was recognized on March 9, 2022.

ADDRESSES: You may read the documents referenced in this notice and the comments we received at *www.regulations.gov* and entering APHIS–2020–0023 in the Search field. You can also view them in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

Supporting documents are also available on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/permits-notifications-petitions/petitions/petition-status* under APHIS Petition 19–317–01p.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Eck, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1238; (301) 851–3892, email: *cynthia.a.eck@usda.gov.* To obtain copies of the supporting documents for this petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of the Plant Protection Act (PPA) (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Movement of Organisms Modified or Produced Through Genetic Engineering,'' regulate, among other things, the importation, interstate movement, or release into the environment of organisms modified or produced through genetic engineering that are plant pests or pose a plausible plant pest risk.

The petition for nonregulated status described in this notice was evaluated under the version of the regulations effective at the time that it was received. The Animal and Plant Health Inspection Service (APHIS) issued a final rule, published in the **Federal Register** on May 18, 2020 (85 FR 29790–29838, Docket No. APHIS–2018–0034),[1] revising 7 CFR part 340; however, the final rule has been implemented in phases. The new Regulatory Status Review (RSR) process, which replaces the petition for determination of nonregulated status process, became effective on April 5, 2021, for corn, soybean, cotton, potato, tomato, and alfalfa. The RSR process is effective for all crops as of October 1, 2021. However, ''[u]ntil RSR is available for a particular crop . . . APHIS will continue to receive petitions for determination of nonregulated status for the crop in accordance with the [legacy] regulations at 7 CFR 340.6.'' (85 FR 29815). This petition for a determination of nonregulated status is being evaluated in accordance with the regulations at 7 CFR 340.6 (2020) as it was received by APHIS on January 28, 2020.

The petition (APHIS Petition Number 19–317–01p)[2] from BASF Corporation, of Research Triangle Park, NC (BASF), seeks a determination of nonregulated status of soybean (*Glycine max*) designated as event GMB151, which has been developed using genetic engineering for resistance to the plant-parasitic nematode, soybean cyst nematode (*Heterodera glycines*), and for tolerance to 4-hydroxyphenylpyruvate dioxygenase (HPPD–4) inhibitor herbicides. The BASF petition states that information collected during field trials and laboratory analyses indicates that GMB151 soybean is unlikely to pose a plant pest risk, and therefore should not be regulated under APHIS' regulations in 7 CFR part 340.

According to our process[3] for soliciting public comment when considering petitions for determinations of nonregulated status of organisms developed using genetic engineering, APHIS accepts written comments regarding a petition once APHIS deems it complete. In a notice published in the **Federal Register** on May 28, 2020 (85 FR 32004–32005, Docket No. APHIS–2020–0023),[4] APHIS announced the availability of the BASF petition for public comment. APHIS solicited comments on the petition for 60 days ending on July 27, 2020, in order to help identify potential environmental and interrelated economic issues and impacts that APHIS may determine

[1] To view the final rule, go to *www.regulations.gov* and enter APHIS–2018–0034 in the Search field.

[2] To view the petition, go to *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/permits-notifications-petitions/petitions/petition-status.*

[3] On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our process for soliciting public comments and information when considering petitions for determinations of nonregulated status for organisms developed using genetic engineering. To view the notice, go to *http://www.regulations.gov* and enter APHIS–2011–0129 in the Search field.

[4] To view the notice, petition, supporting documents, and the comments that we received, go to *www.regulations.gov* and enter APHIS–2020–0023 in the Search field.

should be considered in our evaluation of the petition.

APHIS received nine comments on the petition from agricultural trade groups, farmers, and members of the public. Five comments generally supported BASF's petition, while four expressed objections to crops developed or modified through genetic engineering.

APHIS decided, based on its review of the petition and its evaluation and analysis of the comments received during the 60-day public comment period on the petition, that the petition involves an organism developed using genetic engineering that raises substantive new issues. According to our public review process for such petitions (see footnote 3), APHIS is following Approach 2, in which we first solicit written comments from the public on a draft environmental assessment (EA) and a draft plant pest risk assessment (PPRA) for a 30-day comment period through the publication of a **Federal Register** notice. Then, after reviewing and evaluating the comments on the draft EA and the draft PPRA and other information, APHIS revises the draft PPRA as necessary and prepares a final EA. APHIS also publishes a notice in the **Federal Register** announcing the regulatory status of the organism developed using genetic engineering and the availability of APHIS' final EA, PPRA, finding of no significant impact (FONSI), and our regulatory determination.

A second opportunity for public involvement was provided on August 17, 2021, with a notice published in the **Federal Register** (86 FR 45955–45956) announcing the availability of the draft EA and draft PPRA for public review and comment. That comment period closed on September 16, 2021. APHIS received 2,743 comments on the petition and supporting documents. All but eight of the comments consisted of identical and near-identical copies of a form letter submitted by different individuals who expressed their general opposition to the concept and use of genetic engineering for any purpose. Commenters objected to GMB151 soybean because it expresses a novel protein from *Bacillus thuringiensis,* which many stated has not been adequately evaluated for use as a pesticide. Others objected to deregulation of GMB151 soybean on grounds that it would contribute to weed resistance. Commenters also opposed deregulation because it would contribute to an increase in the use of isoxaflutole, which they stated will jeopardize human health and safety. The comments are addressed in our final EA.

National Environmental Policy Act

The final EA contains the results of APHIS' review and evaluation of the comments received during the comment period on the draft EA, draft PPRA, and the petition. The final EA provides the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the determination of nonregulated status of GMB151 soybean. The EA was prepared in accordance with: (1) National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on our EA, the response to public comments, and other pertinent scientific data, APHIS has reached a FONSI with regard to the preferred alternative identified in the EA (to make a determination of nonregulated status of GMB151 soybean).

Determination

Based on APHIS' analysis of field and laboratory data submitted by BASF, references provided in the petition, peer-reviewed publications, information analyzed in the EA, the PPRA, comments provided by the public, and information provided in APHIS' response to those public comments, APHIS has determined that GMB151 soybean is unlikely to pose a plant pest risk and therefore is no longer subject to our regulations governing the importation, interstate movement, or release into the environment of organisms developed using genetic engineering.

Copies of the signed determination document, PPRA, final EA, and FONSI, as well as the previously published petition and supporting documents, are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 10th day of March 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–05444 Filed 3–14–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–22–MFH–0002]

Multi-Family Housing Preservation and Revitalization (MPR) Demonstration Program—Section 514 and Section 515 for Fiscal Year 2022

AGENCY: Rural Housing Service, United States Department of Agriculture.

ACTION: Notice of Solicitation of Applications (NOSA).

SUMMARY: The Rural Housing Service (RHS) (Agency), a Rural Development agency of the United States Department of Agriculture (USDA), announces it is soliciting applications to defer existing eligible loans for the Multi-Family Housing (MFH) Preservation and Revitalization (MPR) Demonstration Program. Current RHS borrowers (stay-in owners) and/or eligible applicants applying to assume existing Section 515 Rural Rental Housing (RRH) or Section 514 Off-Farm Labor Housing (Off-FLH) loans that are closed and were obligated on or after October 1, 1991, are invited to apply for MPR deferral-only assistance for such loans. This Notice does not provide any funding or additional units of Agency Rental Assistance (RA).

DATES: Complete applications requesting deferral-only assistance under this NOSA must be received no later than 5 p.m., Eastern Standard Time, May 16, 2022. The Agency will not consider any applications received after the closing deadlines.

ADDRESSES: *Application Submission:* All materials must be submitted via CloudVault. The submission process is detailed in section III. Application and Submission Information of this Notice.

After publication in the **Federal Register**, this Notice will be posted on the Rural Development (RD) website, *www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* The Agency will publish, as necessary, any revisions and amendments reflecting program modifications, in the **Federal Register** within the period this Notice remains open. Expenses incurred in applying for this NOSA will be borne by and be at the applicant's sole risk.

FOR FURTHER INFORMATION CONTACT: Fallan Faulkner, Multi-Family Specialist, Multi-Family Housing, RHS, U.S Department of Agriculture, via email: *fallan.faulkner@usda.gov,* or by phone: 615–812–0050. Any questions on eligibility for deferral should be directed via email at: *RD.MPR@usda.gov.* Please include in the subject

line ''MPR NOSA Eligibility'' and the name and address of the property in question.

For information regarding the Addendum: Capital Needs Assessment Process located at the end of this notice, contact: Fallan Faulkner, Multi-Family Specialist, Multi-Family Housing, RHS, U.S. Department of Agriculture, via email: *fallan.faulkner@usda.gov* or telephone: (615) 812–0050.

SUPPLEMENTARY INFORMATION:

Authority

The Consolidated Appropriations Act, 2021 (H.R. 133) authorized USDA to conduct a demonstration program for the preservation and revitalization of the Section 514 (Off-FLH) and 515 programs authorized by the Housing Act of 1949; 7 CFR part 3560.

Rural Development: Key Priorities

The Agency encourages applicants to consider projects that will advance the following key priorities:

- Assisting Rural communities recover economically from the impacts of the COVID 19 pandemic, particularly disadvantaged communities.
- Ensuring all rural Residents have equitable access to RD programs and benefits for RD funded projects.
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

For further information, visit *https://www.rd.usda.gov/priority-points.*

Executive Summary

This Notice solicits applications for deferrals of any closed Section 514 (Off-FLH) or 515 Agency loan obligated on or after October 1, 1991 for the purpose of revitalization and preservation of existing properties. Under this NOSA, eligible loan payments can be deferred for 20 years. The cash flow from the deferred RHS direct loan principal and interest payment will be deposited to the RHS project's reserve account or as directed by the Agency to meet the specific project's present and future physical needs as determined by the Capital Needs Assessment (CNA) concurrently approved by the Agency. At the end of this Notice, a CNA addendum is provided with detailed instructions to assist the applicant in completing CNA reports, expected useful life tables, and forms. The deferral may also support new debt payments being incurred for repair/rehabilitation loans and/or to reduce tenant rents as determined by the Agency to be in the best interests of the tenants and Government. There are no other MPR tools or forms of assistance available under this NOSA.

I. MPR Debt Deferral Information

A. Deferral of Principal and Interest Payments

A deferral of principal and interest payments for 20 years of any closed Section 514 (Off-FLH) or Section 515 Agency loan(s) that was obligated on or after October 1, 1991. Loans obligated prior to October 1, 1991 are not eligible for deferral under this NOSA. If there are multiple loans on the account, all loans must be obligated on or after October 1, 1991 to be eligible. If the account has a loan(s) obligated prior to October 1, 1991, the account/property is not eligible for MPR. The total of all liens against the project, with the exception of Agency deferred debt, cannot exceed the Agency-approved security value of the project. All Agency debt, either in first lien position or in a subordinated lien position, must be secured by the project, except deferred debt, which is not included in the Agency's total lien position for computation of the Agency's security value in the MPR program.

(1) The deferral will assure the continued feasibility of preserving needed rental units based on criteria described in 7 CFR 3560.57(a)(3).

(2) Transfers with MPR Deferrals must be processed through the MFH Production and Preservation Division in accordance with the transfers regulations.

(3) All terms and conditions of the deferral will be described in the MPR Conditional Commitment (MPR–CC), the MPR Debt Deferral Agreement, and any associated transfer approval.

(4) A balloon payment of principal and accrued interest (deferral balloon) will be due at the end of the deferral period, or upon default pursuant to the terms contained therein. Interest will accrue at the promissory note rate. If applicable, the subsidy will be applied as set out in the Agency's Form RD 3560–9, ''Multiple Family Housing Interest Credit Agreement.''

B. Eligibility Deferral Information

Any questions on eligibility for deferral should be directed via email at: *RD.MPR@usda.gov*. Please include in the subject line ''MPR NOSA Eligibility'' and the name and address of the property in question.

C. Project Consolidation Information

MPR deferrals may be approved for project consolidations for stay-in-owner or transfer transactions in accordance with 7 CFR part 3560 providing the following are met:

(1) All projects being consolidated must be submitted on one application and located in the same market area as defined in 7 CFR 3560.11;

(2) Projects must be of the same type, managed under one management plan and one management agreement, and in sufficient proximity to permit convenient and efficient management of the property.

D. Terms

The Agency will require a re-amortization of the existing loan(s). MPR debt deferrals authorized in conjunction with transfers or subordinations will become effective upon completion of all planned repairs and rehabilitation deemed acceptable to the RHS approval official as outlined in the MPR conditional commitment.

E. Transfers

Special conditions apply to transfers. Under the provisions of 7 CFR 3560.406, debt deferral for any eligible loans(s) as described herein may be included in the transfer underwriting under the following conditions:

1. The new owner, including all principals, sharing an identity of interest (IOI) with the selling entity in any other RHS properties, is fully compliant with all Agency requirements and conditions, unless there is an Agency approved workout agreement as specified in 7 CFR 3560.453 in place and on schedule for at least six (6) months prior to the date of application.

2. The maximum return-to-owner-(RTO) will be determined prior to applying the deferral.

II. Eligibility Information

A. Applicant Eligibility Requirements

(1) For the purpose of this Notice, ''Applicant'' includes the applying entity (*e.g.,* ABC LLP) and the entity's principals (*e.g.,* John Doe, General Partner of ABC LLP; XYZ, Inc., General Partner of ABC LLP; John Doe Jr., President of XYZ, Inc.). In the case of a single asset entity that is not a natural person, the Agency will rely solely on the qualifications of the natural person(s) managing/controlling the entity (whether directly or indirectly through other entities) to establish the applicant's eligibility.

(2) Eligible applicants for the MPR program include individuals, partnerships or limited partnerships, consumer cooperatives, trusts, State or local public agencies, corporations, limited liability companies, non-profit organizations, Indian tribes, associations, or other entities authorized by the Agency that own (stay in owner)

or will be the owner of the project for which an application for transfer of ownership by the Agency has been submitted.

(3) Eligibility requirements include substantial and verifiable favorable experience and creditworthiness as required by the respective MFH program regulations specified in 7 CFR part 3560, with the exception that stay-in owner applicants are not required to meet the test for other credit for MPR purposes as stated in 7 CFR 3560.55(a)(2). Appropriate credit reports for the applicant, entity and principals will be submitted and considered in both the MPR and transfer processing eligibility determination as defined in Section III. Application and Submission Information B. 9. below.

B. Additional Eligibility Requirements

(1) All applicants must meet the respective (Section 515 or 514 Off-FLH) requirements for initial and/or current (continuing) borrower eligibility and program participation. Initial eligibility will be determined as of the date of the application filing deadline. The Agency reserves the right to discontinue processing any application due to material changes in the applicant's status occurring at any time after the initial eligibility determination.

(2) Eligibility also includes the continued ability of the borrower/applicant to provide acceptable management and will include an evaluation of any current outstanding deficiencies. Any outstanding violations or extended open operational findings associated with the applicant/borrower or any affiliated entity having an identity of interest (IOI) with the project ownership and which are recorded in the Agency's automated Multi-Family Information System (MFIS), may preclude further processing of any MPR applications unless there is a current, approved workout agreement in accordance with § 3560.453 in place and the plan has been satisfactorily followed for a minimum of six (6) consecutive months, as determined by the Agency.

(3) In the event of an MFH transfer, the proposed transferee must submit evidence of site control together with a copy of the borrower's written request signed by both the proposed buyer and the seller describing the general terms of the proposed transfer. Evidence may include a valid and unexpired Purchase Agreement, Letter of Intent, or other documentation acceptable to the Agency. Transfers will be processed in accordance with the guidelines of § 3560.406.

(4) All applicants are subject to the applicable requirements of the Office of Management and Budget (OMB)-approved USDA Suspension and Debarment, and Drug-Free Workplace Certifications as prescribed under Title 2 CFR parts 417 and 421.

C. Project Eligibility Requirements

(1) Project loans must have been obligated on or after October 1, 1991. Any projects with a loan(s) obligated prior to October 1, 1991, are not eligible for this MPR demonstration program.

(2) Projects must have open physical finding(s) identified by a recent physical inspection and recorded by the Agency. Furthermore, the open physical finding(s) of record must be the result of circumstances beyond owner and/or management control and/or must be uncorrected due to insufficient operating income/reserve funds necessary to address the outstanding physical need(s) of the project. Any projects with open physical findings resulting from deferred maintenance, as recorded by the Agency, are not eligible for this MPR demonstration program. Physical deficiencies identified by the Agency or another lending organization (*i.e.,* HUD, Housing Finance Agency, etc.) or reported by local code enforcement of imminent threats to the health and safety of tenants that have not been recorded but are documented by the applicant and provided as part of the application, may be considered when determining project eligibility.

D. Key Priority Eligibility

For an application to be deemed eligible, applicants must also meet the criterion of at least two of the Agency's three key priorities (COVID–19, Equity and Climate). To help with your understanding of the Key Priorities and how your property could qualify, please refer to the key priority eligibility information below, and then on the following website for details: *https://www.rd.usda.gov/priority-points.* Please note for purposes of this NOSA, the Key Priorities as described below and on the website, are being used solely for eligibility purposes and no points will be awarded. All eligible applications will be accepted.

(1) COVID–19—the project must be located in or serving one of the top 10% of counties or county equivalents based upon the county risk score in the United States. The dashboard located at *https://www.rd.usda.gov/priority-points* will be used to determine if a project is eligible to apply based upon its location. Applicants must use the dashboard to verify if the project is located within one of the top 10% of counties or county equivalents based upon the county risk score in the United States and provide documentation from the dashboard within the application to verify the location in order to be eligible.

(2) Equity—the project must be located in or servicing a community with a score of 0.75 or above on the CDC Social Vulnerability Index. The dashboard located at *https://www.rd.usda.gov/priority-points* will be used to determine if a project is eligible to apply based upon its location. Applicants must use the dashboard to verify if the project is located in or servicing a community with a score of 0.75 or above on the CDC Social Vulnerability Index and provide documentation from the dashboard within the application to verify the location in order to be eligible.

(3) Climate Impacts—applicants may be eligible through one of two methods:

a. The project must be located in or serving coal, oil and gas, and power plant communities whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. The dashboard located at *https://www.rd.usda.gov/priority-points* will be used to determine if a project is eligible to apply based upon its location. Applicants must use the dashboard to verify if the project is located within or serving coal, oil and gas, and power plant communities and whose economic well-being ranks in the most distressed tier of the Distressed Communities Index and provide documentation from the dashboard within the application to verify the location in order to be eligible.

b. demonstrate through a written narrative how proposed climate-impact projects improve the livelihoods of community residents and meet pollution mitigation or clean energy goals.

III. Application and Submission Information

A. Submission Process

(1) All materials must be submitted via CloudVault.

(2) The process for submitting an electronic application to RHS via CloudVault is outlined below:

a. At least three business days prior to the application deadline, the applicant must email RHS a request to create a shared folder in CloudVault. The email must be sent to the following address: *RD.MPR@usda.gov.* The email must contain the following information:

(i) *Subject line:* MPR NOSA Submission.

(ii) *Body of email:* Applicant Name, Applicant Contact Information, Project State, Project Name, and Project City.

(iii) *Request language:* ''Please create a shared CloudVault folder so that we may submit our application documents.''

(b) Once the email request to create a shared CloudVault folder has been received, a shared folder will be created within two business days. When the shared CloudVault folder is created by RHS, the system will automatically send an email to the applicant's submission email with a link to the shared folder. All required application documents in accordance with this NOSA must be loaded into the shared CloudVault folder. When the submission deadline is reached, the applicant's access to the shared CloudVault folder will be removed. Any document uploaded to the shared CloudVault folder after the application deadline will not be reviewed or considered.

B. Submission Requirements

(1) The applicant must upload a Table of Contents for the documents that have been uploaded to the shared CloudVault folder.

(2) Applications must include all applicable information requested on the MPR application form (Form Approved: OMB No. 0575–0190) to be considered complete. The application form can be found at *http://www.rd.usda.gov/programs-services/housing-preservation-revitalization-demonstration-loans-grants.* Click on the To Apply tab to access the ''Fiscal Year 2022 Application for MFH Preservation and Revitalization Demonstration Program (MPR).''

(3) Responding entity's Dun and Bradstreet Data Universal Numbering System (DUNS) number, registration in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b), and other supporting information to substantiate their legal authority and good standing. Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at (866) 705–5711 or via the internet at *http://www.dnb.com/.* Additional information concerning this requirement can be obtained on the *grants.gov* website at *http://www.grants.gov.* All applicants must be registered in SAM prior to submitting an application, unless determined exempt under 2 CFR 25.110. Federal award recipients must maintain an active SAM registration during which time they have an active Federal award or an application under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM. Similarly, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170, so long as an entity respondent does not have an exception under 2 CFR 170.110(b), they must have the necessary processes and systems in place to comply with the reporting requirements should the responding entity receive federal assistance. See 2 CFR 170.200(b).

(4) Applicant must provide a narrative describing the transaction in detail of how the deferral-only MPR tool will benefit their transaction. List any adverse impacts or physical failures (*i.e.,* natural causes not foreseen, damage not reimbursable by insurance or disaster loan or grant, etc.)

(5) Applicant must complete the Form SF 424, ''Application for Federal Assistance,'' which can be found and completed online at the following website: *https://apply07.grants.gov/apply/forms/readonly/SF424_2_1-V2.1.pdf.*

(6) Provide evidence of site control for all transfers of ownership.

(7) For Section 515 projects, the average physical vacancy rate for the 12 months preceding this Notice's application submission date can be no more than 10 percent for projects consisting of 16 or more revenue units and no more than 15 percent for projects less than 16 revenue units. If the applicant is seeking an exception to this requirement or there are concerns about the market, the applicant must submit an explanation as to the circumstances affecting the vacancy rate. The Agency will request additional information if the vacancy rates along with a current market study to support the need of the project and its continued financial feasibility. The Agency will request additional information if the vacancy rates exceed the percentages stated above, which may include a current market study, to assess the need of the project and its continued financial feasibility. To further demonstrate there is a continuing need for the RHS project, the Agency may request waiting lists and/or confirmation of a housing shortage by local housing agencies. The market data must show a clear need and demand for the project. The Agency will determine whether the proposal has market feasibility based on the data provided by the applicant. Any costs associated with the completion of the market data is NOT an eligible program project expense. If a project consolidation is involved, the consolidation will remain eligible so long as the average vacancy rate for each individual project meets the occupancy standard noted in this paragraph each project must meet the average vacancy rate outlined above.

(8) For Sections 514/516 Off-FLH projects, since this program is typically seasonal which affects the vacancy rate, rather than an average physical vacancy rate as noted in section (ii) above, a positive cash flow for the previous full three (3) years of operation is required unless an exception applies as described section III(A)(3), above for projects with an approved work out plan.

(9) Submit a current (no older than six months from the date of issuance) combination comprehensive credit report for both the entity and the actual individual principals, partners, members, etc. within the applicant entity, including any sub-entities, who are responsible for controlling the ownership and operations of the entity. Although a commercial credit report for a new entity may have limited information available, a combination report ties the entity and individual principal(s) together under the applicant/borrower name based on the credit report agency's ability to provide a single reporting source. However, if any of the principals in the applicant entity are not natural persons (*i.e.,* corporations, other limited liability companies, trusts, etc.) separate commercial credit reports must be submitted on those organizations as well. Individual personal consumer credit reports are not required if a combination report is being provided. Only Credit reports provided by accredited major credit bureaus will be accepted. In the past, the Agency has required the applicant to submit the credit report fee. In lieu of the applicant submitting the fee, the Agency will require the applicant to provide the credit report. It is the Agency's expectation that this change will create an efficiency in the application process that did not exist, which should assist with streamlining the application process for the applicant.

Failure to submit all required documents, forms and information prior to the deadline will result in an incomplete application, the application will be rejected and the applicant will be notified of appeal rights under 7 CFR part 11. Applicants are reminded that all submissions must be received by the deadline. Applications received after the deadline will not be evaluated. Upon request, RHS will provide the responding entities with a written acknowledgement of receipt.

IV. Agency Review and Selection Information

The Agency will conduct an initial screening for eligibility within 90 business days of the NOSA closing deadline. Transfer applicants must meet Agency eligibility, application, and approval process requirements outlined in HB–3–3560, Chapter 7.

Eligibility determination is not an award or commitment for federal assistance. If the application is not accepted for further processing due to being incomplete or ineligible, the applicant will be notified of appeal rights under 7 CFR part 11. Applications that are deemed eligible but are not selected for further processing (*i.e.,* financially infeasible, etc.) will be withdrawn from processing and the applicant will be notified of appeal rights under 7 CFR part 11.

Eligible applicants accepted for further processing that do not include a project transfer (stay-in owner) will be required to submit a CNA in accordance with 7 CFR 3560.103(c) and the addendum at the end of this NOSA. The timeframe for submitting the CNA will be included in the applicant's selection letter. The CNA will be used to underwrite the proposal to determine financial feasibility. The CNA must be approved by the Agency prior to the Agency underwriting the transaction. Stay-in owner applicants can use property reserve account funds to pay for CNA costs if approved by the servicing specialist assigned to the property. Servicing specialist assignments by property can be found at: *https://www.sc.egov.usda.gov/data/MFH.html.* A CNA is comprised of nine main sections:

- Definitions;
- Contract Addendum;
- Requirements and Statement of Work (SOW) for a CNA;
- The CNA Review Process;
- Guidance for the Multi-Family Housing (MFH) CNA Recipient Regarding Contracting for a CNA;
- Revising an Accepted CNA During Underwriting;
- Updating a CNA;
- Incorporating a Property's Rehabilitation into a CNA; and
- Repair and Replacement Schedule.

Additionally, there are seven attachments which accompany the CNA addendum identified as follows:

- Attachment A, ADDENDUM TO THE CAPITAL NEEDS ASSESSMENT CONTRACT
- Attachment B, CAPITAL NEEDS ASSESSMENT STATEMENT OF WORK
- Attachment C, FANNIE MAE PHYSICAL NEEDS ASSESSMENT GUIDANCE TO THE PROPERTY EVALUATOR
- Attachment D, CNA e-Tool Estimated Useful Life Table
- Attachment E, CAPITAL NEEDS ASSESSMENT REPORT
- Attachment F, SAMPLE CAPITAL NEEDS ASSESSMENT REVIEW REPORT
- Attachment G, CAPITAL NEEDS ASSESSMENT GUIDANCE TO THE REVIEWER

Transfer applicants must comply with the requirements of 7 CFR 3560.406 and Chapter 7 of HB–3–3560, including all Agency approval and closing conditions prior to closing the MPR debt deferral. The Agency will provide additional guidance to the applicant and request information and documents necessary to complete the underwriting and review process within 45 days of the Agency's selection letter. Since the character of each application may vary substantially depending on the type of transaction proposed, additional information may be requested as appropriate.

V. Agency Processing Information

A. Feasibility and Structure

The feasibility and structure of each proposal will be based on the Agency's underwriting and the following parameters:

(1) For applications submitted under this Notice, the Agency will conduct eligibility determinations and eligible applicants will be processed accordingly.

(2) Applications marked as any of the following will be prioritized for the initial review and processing. Priority projects will have an initial review completed within 30–60 business days of the NOSA closing deadline:

a. ''Deferral needed as part of a pending transfer''

b. ''stay-in owner transaction with third-party funding that will expire within 120 days''

c. ''project with urgent health/safety/accessibility issues to address''

d. ''projects with an average physical vacancy rate of no more than 5% for the 12 months preceding this Notice's application submission date with a demonstrated waiting list''

e. ''projects that meet all three of the Agency's key priorities (COVID–19, Equity and Climate)''.

(3) Upon completion of RHS underwriting, MPR debt deferral offers will be presented to successful applicants as a conditional commitment (CC) and the Letter of Conditions (LOC). These documents will outline the borrower's requirement for executing and recording an Agency-approved Restrictive-Use Covenant (RUC) for a period equivalent to the remaining term of any non-deferred existing loan or the remaining term of any existing RUC, whichever ends later.

(4) Stay-in-owner applicants that have secured third party funding that will add new hard debt in an amount more than the amount approved to be deferred, will require an appraisal to ensure the property remains secure before the transaction will be approved.

(5) Transfer applicants requesting MPR debt deferral will be presented an opportunity to accept or reject the offered terms and conditions for such deferral in the MPR CC. Additional transfer requirements will be outlined in a Transfer Letter of Conditions.

(6) If no offer is made or if the applicant fails to accept or reject the offer presented, the application will be rejected, and appeal rights will be given.

(7) Closing of MPR offers will occur within six months of the accepted MPR CC unless extended in writing by the Agency.

(8) Applicants will be informed of any proposals that are determined to be financially infeasible. Any proposal denied by the Agency will be returned to the applicant, and the applicant will be given appeal rights pursuant to 7 CFR part 11.

(9) Any MPR applications not approved one year from the selection notice date will be withdrawn, unless an extension is approved by the Agency. Applicants may reapply for federal assistance under future Notices as they may be made available.

B. Third Party Funding Sources

If third party funding sources have not yet been committed, the Agency may issue a conditional approval contingent upon receipt of firm funding commitments consistent with the terms used in the PAT attached to the Conditional Commitment to underwrite the transaction. Agency approval will be withdrawn if a satisfactory firm commitment is not received as the transaction cannot close until a firm commitment is provided. Any changes to the proposed sources that cause substantial material changes will require re-evaluation of the transaction by the National Office Underwriter and, in some cases, may cause approval to be rescinded and/or a new concurrence to be issued.

VI. Other Information

A. Paperwork Reduction Act

The information collection requirements contained in this Notice have received approval from the Office

of Management and Budget (OMB) under Control Number 0575–0190.

B. Non-Discrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ocio.usda.gov/document/ad-3027,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov*.

Addendum: Capital Needs Assessment Process

A Capital Needs Assessment (CNA) provides a repair schedule for the property in its present condition, indicating repairs and replacements necessary for a property to function properly and efficiently over a span of 20 years.

The purpose of this Addendum is to provide clarification and guidance on the Rural Development CNA process. The document includes general instructions used in completing CNA reports, specific instructions on how to use the expected useful life tables, and a set of applicable forms including the Terms of Reference form; Systems and Conditions forms; and Evaluator's Summary forms.

1. Definitions

The following definitions are provided to clarify terms used in conjunction with the CNA process:

CNA Recipient: This will be who enters into the contract with the CNA Provider. The Recipient can be either the property owner or applicant/transferee.

''*As-Is*'' *CNA:* This type of CNA is prepared for an existing MFH property and reports the physical condition including all Section 504 Accessibility and Health and Safety items of the property based on that moment in time. This CNA can be useful for many program purposes other than the MPR Demonstration program such as: An ownership transfer, determining whether to offer pre-payment aversion incentive and evaluating or resizing the reserve account. The ''as-is'' report will include all major repairs and likely some minor repairs that are typically associated with the major work: Each major component, system, equipment item, etc. inside and outside; building(s); property; access and amenities in their present condition. A schedule of those items showing the anticipated repair or replacement timeframe and the associated hard costs for the ensuing 20-year term of the CNA serves as the basis or starting point in evaluating the underwriting that will be necessary to determine the feasibility and future viability of the property to continue serving the needs of eligible tenants.

''*Post Rehabilitation*'' *CNA:* This type of CNA builds on the findings of the accepted ''as-is'' CNA and is typically prepared for a project that will be funded for major rehabilitation. The Post Rehabilitation CNA is adjusted to reflect the work intended to be performed during the rehabilitation. The assessment must be developed from the rehabilitation project plans and any construction contract documents to reflect the full extent of the planned rehabilitation.

Life Cycle Cost Analysis (LCCA): A LCCA is an expanded version of a CNA and is defined at 7 CFR 3560.11. The LCCA will determine the initial purchase cost, the operation and maintenance cost, the ''estimated useful life'', and the replacement cost of an item selected for the project. The LCCA provides the borrower with the information on repair or replacement costs and timeframes over a 20-year period. It also provides information that will assist with a more informed component selection and can provide the borrower with a more complete financial plan based on the predictive maintenance needs associated with those components. If the newly constructed project has already been completed without any previous LCCA requirements, either an ''as-is'' CNA or LCCA can be provided to establish program mandated reserve deposits. An Architect or Engineer is the best qualified person(s) to prepare this report.

Consolidation: In some circumstances, RD may permit two or more properties to be consolidated as defined in 7 CFR 3560.410 when it is in the best interests of the Government. The CNA Recipient must consult with the RD loan official before engaging the CNA Provider in any case where the CNA intends to encompass more than a single (one) existing RD property to determine if a consolidated CNA may be acceptable for RD underwriting.

2. Contract Addendum

RD uses a Contract Addendum to supplement the basic CNA Agreement or ''Contract'', between the CNA Recipient and CNA Provider, with additional details and conditions. It can be found in *Attachment A, Addendum to Capital Needs Assessment Contract* and must accompany all contracts executed between the CNA Recipient and CNA Provider for CNAs used in RD transactions. If any conflicts arise between the ''Contract'' and ''Contract Addendum'', the ''Contract Addendum'' will supersede.

The Contract Addendum identifies the responsibilities and requirements for both the CNA Recipient and the CNA Provider. To assure proper completion of the contract documents the following key provisions must be completed:

a. The Contract Addendum will include the contract base amount for the CNA Provider's cost for services on page A–2, and provisions for additional services to establish the total price for the CNA.

b. Item I e, will require an itemized listing for any additional anticipated services and their unit costs including

future updates and revisions that may be required before the CNA is accepted by RD. *Note: Any cost for updating a CNA must be included, in the* ''*additional services*'' *subpart, of the original CNA Contract.*

c. The *selection criteria boxes* in II a, will identify the type of CNA being provided.

d. In III a, the required language for the blank on ''report format'' is: ''*USDA RD CNA Template, current RD version, in Microsoft Excel format*''. This format will import directly into the RD underwriting template for loan underwriting purposes.

3. Requirements and Statement of Work (SOW) for a CNA

Minimum requirements for a CNA acceptable to RD can be found in *Attachment B, Capital Needs Assessment Statement of Work.* This is supplemented by *Attachment C, Fannie Mae Physical Needs Assessment Guidance to the Property Evaluator.* To resolve any inconsistency in the two documents, Attachment B, the CNA SOW, will in all cases prevail over *Attachment C,* Fannie Mae Physical Needs Assessment Guidance to the Property Evaluator. (For example, on page C–2 of Attachment C, Fannie Mae defines the ''term'' as ''term of the mortgage and two years beyond''. For USDA, the ''term'' will be 20 years, as defined in the CNA SOW.)

Attachment B includes the required qualifications for the CNA Provider, the required SOW for a CNA assignment, and general distribution and review instructions to the CNA Provider. The CNA Providers must be able to report the current physical condition of the property and not base their findings on the financial condition of either the property or the CNA Recipient.

Attachment C is a three-part document RD has permission to use as reference to the CNA process throughout the RD MFH program efforts. The three key components of this Attachment are: (1) Guidance to the property evaluator; (2) expected useful life tables; and (3) a set of forms.

An acceptable CNA must appropriately address within the report and narrative all Accessibility Laws and Requirements that apply to Section 515 and Sections 514/516 MFH properties. The CNA Provider must assess how the property meets the requirements of accessibility to persons with disabilities in accordance the Uniform Federal Accessibility Standards (UFAS) and Section 504 Accessibility Requirements. It is the responsibility of the Provider to inspect and verify whether all accessibility features are compliant.

4. The CNA Review Process

A CNA used by RD will be reviewed by the designated RD CNA Reviewer with experience in construction, rehabilitation, and repair of MFH properties, especially as it relates to repair and replacement.

A CNA report must be obtained by the CNA Recipient from an *independent third-party CNA Provider that has no identity of interest* with the property owner, management agent, applicant/transferee or any other principle or affiliate defined in *7 CFR* 3560.11. The CNA Recipient will contract with the CNA Provider and is therefore the client of the provider. However, the CNA Recipient must consult with RD, before contracting with a CNA Provider to review *Guidance Regarding Contracting for a CNA.* The RD CNA Reviewer will evaluate a proposed agreement or engagement letter between the CNA Recipient and the CNA Provider using *Attachment G, Capital Needs Assessment Guidance to the Reviewer,* prior to reviewing any CNA report. Unacceptable CNA proposals, contracts or reports will be returned to the CNA Recipient for appropriate corrections before they will be used for any underwriting determinations.

The CNA Reviewer will also review the cost of the CNA contract. The proposed fee for the CNA must be approved as an eligible housing project expense under 7 CFR 3560.103 (c) for the agreement to be acceptable and paid using project funds. In most cases, the CNA service contract amount has not exceeded $3,500 based on the Agency's most recent cost analysis.

Borrowers and applicants are encouraged to obtain multiple bids in all cases. However, there is no Agency requirement to select the ''low bidder'' under this UL and the CNA Recipient may select a CNA Provider that will provide the best value, based on qualifications, as well as price after reviewing references and past work.

If the CNA is funded by the property's reserve account, a minimum of two bids is required if the CNA service contract amount is estimated to exceed $5,000 as specified in HB–2–3560, Chapter 4, Paragraph 4.17 B. If the CNA contract under this UL is funded by another source, or will be under $5,000, a single bid is acceptable.

If the proposed agreement is acceptable, the reviewer will advise the appropriate RD servicing official, who will in turn inform the CNA Recipient. If the proposed agreement is unacceptable, the reviewer will notify the servicing official, who will notify the CNA Recipient and the CNA Provider in writing and identify actions necessary to make the proposed CNA agreement acceptable to RD. Upon receipt of a satisfactory agreement, the RD CNA Reviewer should advise the appropriate RD servicing official or underwriting official to accept the proposal.

The CNA Reviewer will review the preliminary CNA report submitted to RD by the CNA Provider using Attachment G and write the preliminary CNA review report. During the CNA review process, the CNA Reviewer and underwriter will consult with the servicing field office most familiar with the property for their input and knowledge of the property. Any differences of opinion that exist regarding the findings must be mutually addressed by RD staff. If corrections are needed, the loan official will notify the CNA Recipient, in writing, of any revisions necessary to make the CNA report acceptable to RD. The CNA Reviewer will review the final CNA report and deliver it to the loan official. The final report must be signed by both the CNA Reviewer and the loan official (underwriter). Upon signature by both, this report becomes the ''accepted'' CNA indicating the actual condition of the property at the time of the CNA inspection—a ''snapshot'' in time—and will be marked ''Current Property Condition'' for indefinite retention in the borrower case file.

A CNA Provider should be fully aware of the intended use for the CNA because it can impact the calculations necessary to perform adequate accessibility assessments and can impact the acceptability of the report by RD. Unacceptable reports will not be used for any RD underwriting purposes even though they may otherwise be acceptable to the CNA Recipient or another third-party lender or participant in the transaction being proposed.

5. Guidance Regarding Contracting for a CNA

CNA Recipients are responsible for choosing the CNA Provider they wish to contract with, and for delivering an acceptable CNA to Rural Development. RD in no way guarantees the performance any Provider nor the acceptability of the Provider's work.

CNA Recipients are advised to request an information package from several CNA Providers and to evaluate the information before selecting a provider. At a minimum, the information package should include a list of qualifications, a list of references, a client list, and a sample CNA report. However, the CNA Recipient may request any additional information they feel necessary to

evaluate potential candidates and select a suitable provider for this service. Consideration for the type of CNA required should be part of the CNA Recipient's selection criteria and inserted into the contract language as well. The necessary skill set to perform the ''as-is'' versus the Post Rehabilitation CNA or a LCCA needs to be considered carefully. Knowledge of the accessibility laws and standards and the ability to read and understand plans and specifications should also be among the critical skill elements to consider.

Attachment A, Contract Addendum must be submitted to RD with the contract and signed by the CNA Recipient and CNA Provider. The proposed agreement with the CNA Recipient and CNA Provider must meet RD's qualification requirements for both the provider and the CNA SOW, as specified in *Attachment B, Capital Needs Assessment Statement of Work.* RD must review the proposed agreement between the CNA Recipient and the CNA Provider, and concur only if all of the RD requirements and conditions are met. (See the previous Section 3 of this UL, *The CNA Review Process.*)

Please note: It is in the CNA Recipient's best interest to furnish the CNA Provider with the most current and up-to-date property information for a more comprehensive and thorough CNA report. RD recommends that the CNA Recipient conduct a pre-inspection meeting with the Owner, Property Manager, maintenance persons familiar with the property, CNA Provider, and Agency Representatives at the site. This meeting will allow a forum to discuss specific details about the property that may not be readily apparent to all parties involved during the review process, as well as making some physical observations on-site. Certain issues that may not be evident to the CNA Provider due to weather conditions at the time of review should also be discussed and included in the report. Additionally, other issues that may need to be addressed include environmental hazards, structural defects, and complex accessibility issues. It is imperative that the Agency be fully aware of the current physical condition of the property at the time the CNA is prepared. An Agency representative must make every effort to attend the CNA Providers on-site inspection of the property unless the Agency has performed a physical inspection of the property within the previous 12 months.

This pre-inspection meeting also allows the CNA Provider to discuss with the CNA Recipient total number of units to be inspected, as well as identifying any specific units that will be inspected in detail. The minimum number of inspected units required by the Agency for an acceptable CNA is 50 percent. However, inspecting a larger number of units generally provides more accurate information to identify the specific line items to be addressed over the ''term'' being covered by the CNA report. CNA Recipients are encouraged to negotiate with the CNA Provider to achieve inspection of all units whenever possible. The ultimate goal for the CNA Recipient and CNA Provider, as well as the Agency, is to produce the most accurate ''baseline or snapshot'' of current physical property conditions for use as a tool in projecting future reserve account needs.

6. Revising an Accepted CNA During Underwriting (Applies to RD Actions)

During transaction underwriting and analysis, presentation of the information contained in the ''accepted'' CNA may need to be revised by RD to address financing and other programmatic issues. The loan underwriter and the CNA Reviewer will work together to determine if revisions are necessary to meet the financial and physical needs of the property, and established RD underwriting or servicing standards and principals. These may involve shifting individual repair line items reported in the CNA, moving work from year to year, or other adjustments that will improve cash flow. The revised underwriting CNA will be used to establish reserve funding schedules as well as operating budget preparation and analysis and will be maintained by RD as supporting documentation for the loan underwriting.

The initial CNA, prepared by the CNA Provider, will be maintained as an independent third-party record of the current condition of the property at the beginning of the 20-year cycle.

Original CNAs will be maintained in the case file, clearly marked as either ''Current Property Condition'' (''As-is''), ''Post Rehabilitation Condition'', or ''Revised Underwriting/Replacement Schedule'', as applicable. *Note:* The CNA Provider is not the appropriate party to ''revise'' a CNA which has already been approved by the CNA Recipient and concurred with by the Agency. The CNA Provider's independent opinion was the basis of the ''As is'' or ''Post Rehabilitation'' CNA. The CNA developed for underwriting may only be revised by RD staff during the underwriting process or as part of a post-closing servicing action.

7. Updating a CNA (Applies to ''As-is'' and ''Post-Rehabilitation'' That Have Not Been Accepted by RD)

A completed CNA more than a year old at the time of the RD CNA review and approval must be ''updated' prior to RD approval. Likewise, if at the time of underwriting the CNA is more than a year old (but less than two years old), it must be updated before the transaction can be approved.

To update a CNA, the CNA Provider must review property changes (repairs, improvements, or failures) that have occurred since the date of the original CNA site visit with the CNA Recipient, review costs and quantities, and submit an updated CNA for approval. However, if the site visit for the CNA occurred more than two years prior to the loan underwriting, the CNA Provider should perform a new site visit to verify the current project condition.

Once the CNA has been updated, the CNA Provider will include a statement noting ''This is an updated CNA of the earlier CNA dated _____,'' at the beginning of the CNA's Narrative section. The CNA Provider should reprint the CNA with a new date for the updated CNA, and provide a new electronic copy to the CNA Recipient and RD.

If the CNA age exceeds 2years at the time of the RD CNA review and approval, the CNA Provider will need to repeat the site visit process to re-evaluate the condition of the property. The original report can remain the basis of the findings.

8. Incorporating a Property's Rehabilitation Into a CNA

A CNA provides a repair schedule for the property in its present condition, indicating repairs and replacements necessary for a property to function properly and efficiently over a span of 20 years. It is not an estimate of existing rehabilitation needs, or an estimate of rehabilitation costs. If any rehabilitation of a MFH development is planned as part of the proposed transaction, a rehabilitation repair list (also called a ''Scope of Work'') must be developed independently based on the CNA repair schedule. This rehabilitation repair list may be developed by the CNA Recipient, a project Architect, or an outside party (such as the CNA Provider, when qualified) hired by the CNA Recipient.

The CNA Recipient must not use repair line-item costs taken from the CNA to develop the rehabilitation cost estimates for the rehabilitation loan, as these costs will not be accurate. The repair costs in a CNA are based on

estimated costs for the property. Typically, these costs include the labor, materials, overhead and profit, but do not include applicable ''soft costs''. For example, for CNA purposes, the probable cost is to send a repairman out, remove an appliance, and put a new one in its place. For rehabilitation cost estimates, the CNA Recipient typically intends to hire a general contractor to oversee and supervise the rehabilitation work, which is then considered a ''soft cost''. The cost of rehabilitation includes the costs for that general contractor, the general contractor's requirements, the cost of a project Architect (if one is used), tenant relocation (if needed), and interim financing (if used), which are considered ''soft costs'' attributed to the rehabilitation costs for the project.

If a ''Post Rehabilitation'' CNA is required and authorized by RD, a copy of the rehabilitation repair list or SOW must be provided to the CNA Provider. The CNA Provider will prepare a ''Post Rehabilitation'' CNA indicating what repairs are planned for the property in the coming 20 years based on conditions after the rehabilitation is completed. Items to be replaced during rehabilitation that will need to be replaced again within the 20 years, such as appliances, will be included in the ''Post Rehabilitation'' CNA. Items that will not need replacement during the coming 20 years, such as a new roof, will not need to be calculated in the ''Post Rehabilitation'' CNA. The line item should not be removed from the CNA, but the cost data should be zeroed out. Appropriate comments should be included in the CNA report to acknowledge the SOW or rehabilitation/repairs that were considered.

9. Repair and Replacement Schedule

A CNA is not a formal repair and replacement schedule and cannot be used as an exact replacement schedule. A CNA is an estimate of the anticipated replacement needs for the property over time, and the associated replacement costs. The goal of a CNA is to estimate the replacement times based on the Expected Useful Life (EUL) to assure funds are available to replace equipment as it is needed. Hopefully, materials will be well maintained and last longer than estimated in the CNA. However, the CNA cannot be used to mandate replacement times for the identified building components. The RD underwriter may find it necessary to adjust the proposed replacement schedule during the course of the underwriting to allow for an adequate Annual Deposit to Replacement Reserves (ADRR) payment that will sustain the property over a 20-year period and keep rents below the maximum rents that are allowed.

BILLING CODE 3410–XV–P

Attachment A

ADDENDUM TO THE CAPITAL NEEDS ASSESSMENT CONTRACT
(Between CNA Recipient and CNA Provider)

This ADDUNDUM to the CAPITAL NEEDS ASSESMENT (CNA) CONTRACT between _____ **(CNA Provider)** and **(CAN Recipient)** is entered intothis_____day of_, 20 _____(the Effective Date) for the property known as _____ **(Property)**.

DEFINITIONS

"Acceptance" means the act of an authorized representative of the United States Department of Agriculture (USDA), Rural Development by which the representativeapproves the Agreement and this Addendum.
"Agreement" means the contract entered into between the CNA Recipient and the CNA Provider to provide a CNA of the property. It includes the original document entered intobetween the parties, this Addendum, and any other document incorporated by the Agreement.
"CNA Report" means a report in general conformance with the *Statement of Work* that isattached hereto and the *Fannie Mae Physical Needs Assessment Guidance to the PropertyEvaluator*.
"**CNA Reviewer"** means a person assigned to review the CNA report on behalf ofUSDA, Rural Development program.
"CNA Provider" means the person or entity entering into the Agreement with the CNARecipient to perform all work required to provide a CNA of the property.
"CNA Recipient" means the person or persons who have or will have legal title and/or ownership of a property participating under USDA, Rural Development programs.
"Program" means any MFH program authorized by Section 514 or 515 of the Housing Act of 1949, as amended and administered by USDA, Rural Development.
"Property" means any structure(s), dwelling(s) and/or land that is the subject of any Multi- family Housing program administered by the U.S. Department of Agriculture, Rural Development, and for which a CNA is required by U.S. Department of Agriculture,Rural Development.
"USDA RD" means the United States Department of Agriculture, Rural Development.
"**Work"** means the *CNA Statement of Work* as attached hereto.

RECITALS

WHEREAS, the property known as_____**Property** is included in the program being administered by **USDA RD**.

WHEREAS, as a condition of participating in the program, the CNA Recipient is required to obtain a CNA for the Property, which has been prepared inaccordance with the Statement of Work; CNA Recipient and CNA Provider must agree to a Contract to prepare a CNA for the Property.

WHEREAS, CNA Provider and CNA Recipient are parties to that certain CNA Contract, dated _____, 20_, **Agreement**, pursuant to which the CNA Recipient has retained the services of CNA Provider to provide a CNA for the Property for the base Contract amount of $_____and for itemized "Additional

Services" as follows: (see listing inspection i.e. below,) in the amount of $_____ per item or service. The total Contract amount is $__.

WHEREAS, the parties hereby wish to incorporate into the **Agreement** andits Exhibits certain additional provisions as set forth below.

NOW, THEREFORE, in consideration of the promises and mutual covenantscontained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following additional terms and conditions as follows:

ADDITIONS TO THE AGREEMENT
(Between CNA Recipient and CNA Provider)

I. CNA RECIPIENT OBLIGATIONS

a. SUBMISSION OF CONTRACT FOR CONCURRENCE BY USDA RD

CNA Recipient will promptly submit to **USDA RD** for review and concurrence a copyof the executed **Agreement** and this Addendum.

b. NOTIFICATION OF CONCURRENCE OF AGREEMENT BY USDARD

Upon receiving notification from USDA RD of its concurrence of the Agreement, CNA Recipient will promptly furnish CNA Provider with evidence of this acceptance.

c. ACCESS TO THE PROPERTY

Owner must allow CNA Provider, CNA Recipient and; if requested, the CNA Reviewer, complete, timely and unconditional access to the Property and its premises for the purpose of conducting the inspections that are required for preparing the CNA.

d. FURNISHING PROPERTY INFORMATION

At least_____(number) day(s) prior to the commencement of the CNA inspection, CNA Recipient must furnish to the CNA Provider all information on any recent and/or immediate planned capital improvements to the Property,any recent and/or scheduled repairs, finalized maintenance schedules, and information on the existence of any known environmental hazards at the property. In addition, Owners must provide any available information on any current "Transition Plan" and "Self -Evaluation" addressing proposals for complying with all applicable Federal accessibility requirements, and other matters relevant to the CNA Statement of Work.

Specific items the CNA Recipient should provide the CNA Provider include:

1. Contact information for the Owner's representative at **USDA RD** (Name,address, telephone number, e-mail address, etc.).
2. Building-by-building breakdown of units by bedroom count and type (i.e.garden, townhouse, fully accessible) to aid in selection of units at time of inspection.
3. Any available plans or blueprints of development (as-built drawingspreferred).
4. Listing of capital expenditures for the Property over the past three to five yearsand maintenance expenditures over the last 12 months.
5. Maintenance logs to help identify any significant or systemic areas of concern.
6. Copies of invoices for any recently completed capital improvements and/orcopies of quotes for any pending/planned capital improvements.
7. A valid/current Section 504 Accessibility Self Evaluation/Transition Plan (nomore than three years old).
8. Any available capital/physical needs assessments (CNAs/PNAs) that werepreviously completed.
9. Any available structural or engineering studies that were previouslycompleted.
10. Any available reports related to lead-based paint testing or other environmental hazards (i.e. asbestos, mold, underground storage tanks, etc.) that were previously completed and/or related certifications if environmentalremediation has been completed.
11. Reports including, but not limited to: local Health Department inspections,soils analysis, USDA's last compliance review, or USDA's last security inspection.
12. If the CNA Recipient certifies below that (a) third-party funds have been committed for use in the transaction for which the CNA is required; and (b) **USDA RD** has communicated its acceptance or acknowledgement of the availability of these funds (whether by an award of points in a portfolio revitalization program or otherwise); and (c) these funds are to be used towards a rehabilitation program at the Property, the CNA Recipient will provide the CNA Provider with a copy of the proposed rehabilitation scopeand budget.

e. ADDITIONAL SERVICES

When a CNA exceeds the one-year duration beyond the original acceptance dateof the document, the report is required to be updated. The Contract should designate anticipated tasks and costs that would be necessary to update the CNAafter the one-year or two-year time frames have been exceeded. The Contract should include, at a minimum:

1. Identify Property where update is required.

2. Itemized list of possible tasks to be performed to accomplish the update:Time and materials

Interviews
Document reviews (photos, construction documents, contracts, etc.).
Additional site visit as required (travel).
3. Associated unit costs for each task required for the CNA Update.

II. CNA RECIPIENT'S CERTIFICATIONS – CNA Recipient hereby certifies asfollows:

a. STATUS OF PROPOSED CNA (check correct box)

☐ CNA Recipient **has** received a **commitment** for third-party funding for the revitalization transaction for which application was made. **The CNAProvider will create the CNA based on existing conditions "as is"**. CNA Recipient is responsible for the Scope of Work and budget for the proposed rehabilitation of the Property (typically obtained from a projectArchitect), incorporating any requirements of the third-party lender. TheCNA Provider will then revise their CNA based on the anticipated conditions "post rehabilitation" of the Property after the rehabilitation. Both CNAs will be provided to Rural Development.

☐ CNA Recipient **has requested or will request** third-party funds but has no commitment. If CNA Recipient does not have a commitment of third-party funds, CNA Reviewer agrees that it is within USDA RD's sole discretion to determine whether the CNA Provider should consider any rehabilitation Scope of Work and budget for a "post rehabilitation" CNA after conducting a CNA based on the Property's "as is" condition. USDARD will make such a determination on the likelihood of third-party funds being made available. CNA Provider should verify this decision with Rural Development prior to performing a "post rehabilitation" CNA.

☐ CNA Recipient does not anticipate third-party funds being utilized, or does not anticipate a rehabilitation at this time. In this case, the CNAProvider will conduct a normal review of the Property, not including/anticipating any rehabilitation, and base the CNA on the existing conditions at the Property.

NOTE: The CNA Recipient will not instruct the CNA Provider to perform a "post rehabilitation" CNA without approval from Rural Development.

b. COMPLIANCE WITH STATEMENT OF WORK

CNA Recipient must allow the CNA Provider to comply with the Statement of Work in creating and developing a CNA report that will incorporate and meet all terms, conditions and requirements as set forth in the attached Statement of Work. CNA Recipient must not impede or attempt to influence the CNA Provider's impartiality inapplying the CNA requirements and guidelines established by Rural Development in describing the physical condition and needs of the Property.

c. AVAILABILITY

CNA Recipient must be available to promptly discuss any draft or preliminary CNAreport with the CNA Provider and must address in writing to the CNA Reviewer anydesired revisions, corrections, comments or concerns the CNA Recipient may have relating to such report.

d. ADDRESSING DEFICIENCIES

CNA Recipient must promptly furnish to the CNA Provider USDA RD's CNA Review report. CNA Recipient will discuss any deficiencies observed by the CNA Reviewer and request that the deficiencies be addressed within five (5) working days. Should deficiencies not be addressed within five (5) working days, CNA Recipient may order the CNA Provider in writing to suspend, delay, or interrupt all or any part ofthe work under the Agreement that remains to be performed for such period of time until deficiencies identified by the CNA Reviewer have been satisfied.

e. PAYMENT

The CNA Recipient must pay the CNA Provider 50 percent of the negotiated contractamount for the base CNA Contract once the Contract for CNA services has been executed. If the CNA Recipient chooses to include and pay for additional services from the CNA Provider exceeding the negotiated base CNA Contract amount, then these services must be listed and the payment method addressed in the Contract between the CNA Recipient and CNA Provider. If funds for additional services will be withdrawn from the reserve account, then 50 percent of the base Contract amount along with the additional services will be paid once the contract for CNA services hasbeen executed.

Upon concurrence by the CNA Reviewer of the CNA Provider's final report (signatureof Reviewer and Underwriter required), the CNA Recipient will promptly satisfy and pay the remaining 50 percent balance of the base Contract amount and additional services if they are paid for out of the reserve account. Any remaining fees and/or dues owed to the CNA Provider pursuant to the terms of the Agreement will also be due upon the CNA Reviewer's concurrence of the CNA Provider's final report. Other payments must be subject to the schedule identified in the Agreement.

III. CNA PROVIDER'S OBLIGATIONS – (applies to "as-is" "updates" and"post rehabilitation")

a. CNA PROVIDER'S RESPONSIBILITY FOR WORK

The CNA Provider must furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work as described in the Statement ofWork, which is attached hereto. The format utilized for this report must be _____. (Write in "USDA RD CNA Template in Microsoft ExcelFormat" or similar electronic format.)

b. COMPLIANCE WITH STATEMENT OF WORK

CNA Provider will comply with the Statement of Work by creating and developing a CNA report that will incorporate and meet all terms, conditions and requirements as setforth in the attached Statement of Work.

c. DELIVERY OF PRELIMINARY CNA REPORT

CNA Provider must promptly provide to the CNA Recipient and USDA RD apreliminary CNA report.

d. AVAILABILITY TO DISCUSS CNA REPORT FINDINGS

CNA Provider must take any reasonable measures to be readily available to discuss and respond to any findings, concerns, comments, or revisions the CNA Reviewer mayhave regarding the preliminary CNA report.

e. SUBMISSION OF FINAL CNA REPORT

After receipt of the CNA Reviewer's report, the CNA Provider must promptly providethe CNA Recipient and USDA RD with a finalized CNA report. The finalized report will incorporate observations, comments and/or changes identified by the CNA Reviewer.

IV. CNA PROVIDER'S CERTIFICATIONS CNA Provider hereby certifies asfollows:

a. LICENSING AND COMPLIANCE

CNA Provider possesses valid and current licenses and certifications necessary to comply with the Statement of Work and as regulated by all applicable State, county,and/or local laws and/or ordinances.

b. CONFLICTS OF INTEREST

CNA Provider has no identity of interest as defined in 7 CFR part 3560 with CNA Recipient or Owner's Property or the management agency/company for the Property.

c. PROPERLY TRAINED

CNA Provider and any Provider personnel who will have actual responsibility for theProperty inspection and preparation of the CNA are properly trained and experienced in evaluating site and building systems, health and safety conditions, physical and structural conditions, environmental and accessibility conditions, and estimating costsfor repairing, replacing and improving site and building components.

d. PROFESSIONALLY EXPERIENCED

CNA Provider and any Provider personnel who will have actual responsibility for the Property inspection and preparation of the CNA are professionally experienced in preparing and providing CNA's for multifamily housing properties that are similar in scope and operation to those typically financed in USDA RD's Multi-Family Housingprogram.

e. KNOWLEDGEABLE OF CODES

CNA Provider and any Provider personnel who will have actual responsibility for theProperty inspection and preparation of the CNA are knowledgeable about applicable site and building standards and codes, including Federal, State and local requirementson environmental and accessibility issues.

f. DEBARMENT AND SUSPENSION

CNA Provider is not debarred or suspended from participating in Federally assisted programs and will comply with the requirements of 7 CFR part 3017 and 2 CFR part 417 or any successor regulation, pertaining to debarment or suspension of a personfrom participating in a Federal program or activity.

g. SIGNED CERTIFICATION

Include a written and signed certification by the CNA Provider that it meets all of the above qualifications for the proposed Agreement with the CNA Recipient for CNA services. [The CNA Provider's execution of this Addendum will constitute its "writtenand signed certification" that it meets these qualifications.]

V. MISCELLANEOUS

a. USDA RURAL DEVELOPMENT PROVISIONS

Upon request of the CNA Provider or CNA Recipient, USDA RD will make availablepertinent project data such as the reserve replacements for the last 2-3 years, budget summary of the last two years, and copies of Physical Inspections and Supervisory Visits for the Property, if available.

b. ASSIGNMENT OF CONTRACT

CNA Provider must not assign or transfer any interest in or performance of this Contract, without written authorization from the CNA Recipient and a USDA RDrepresentative.

c. ENTIRE AGREEMENT

If there are inconsistencies between any provision in this Addendum and any provisionin the Agreement, the provision in this Addendum must govern. No oral statements orrepresentations or prior written matter contradicting this instrument must have any force and effect.

d. GOVERNING LAW

All matters pertaining to this Addendum (including its interpretation, application, validity, performance and breach) in whatever jurisdiction action may be brought, must be governed by, construed and enforced in accordance with the laws of the Stateof_____. (Location of the Property)

e. HEADINGS

This Addendum must be governed by and interpreted as part of the Agreement and itsgeneral terms and conditions.

f. TERMS AND CONDITIONS

Except as expressly stated herein, all other terms and conditions of the Agreementmust remain in full force and effect.

IN WITNESS WHEREOF, the undersigned who are duly authorized to execute andenter into this Addendum, intending to be legally bound hereby, have executed this Addendum as of the date first written above.

Project:

_____

Project Location:

_____

_____ _____

CNA Recipient CNA Provider

By its:_____ By its: _____

(Title/Position) (Title/Position)

Concurred by:

The United States Department of Agriculture, Rural Development

_____ _____

Rural Development Representative Title/Position

Attachment B

CAPITAL NEEDS ASSESSMENT STATEMENT OF WORK

Nature of the Work

A Capital Needs Assessment (CNA) is a systematic assessment to determine a Property's physical capital needs over the next 20 years based upon the observed current physical conditions of a Property. The CNA report provides a year-by-year estimate of capital replacement costs over this 20-year period for use by the CNA Recipient and the U.S. Department of Agriculture (USDA) Rural Development (RD) personnel in planning the reserve account for replacements and other funding to cover these costs.

Note: RD will use the CNA report as a key source of information about expected capital needsat the Property and the timing of these needs. However, the CNA report is only an estimate of these needs and their timing. It should ***not*** *be viewed as the formal schedule for actual replacement of capital items. Replacement of capital items should occur when components reach the end of their actual useful life, which may occur earlier or later than estimated in the CNA report.*

Payment

The CNA Recipient must pay the CNA Provider 50 percent of the negotiated Contract amount for the base CNA Contract amount once the Contract for CNA services has been executed. If the CNA Recipient chooses to include and pay for additional services from the CNA Provider exceeding the negotiated base CNA Contract amount, then these services must be listed and the payment method addressed in the Contract between the CNA Recipient and CNA Provider. If funds for additional services will be withdrawn from the reserve account, then 50 percent of the base Contract amount along with the additional services will be paid once the Contract for CNA services has been executed.

Upon concurrence by the CNA Reviewer of the CNA Provider's final report (signature of Reviewer and Underwriter required), the CNA Recipient will promptly satisfy and pay the remaining 50 percent balance of the base Contract amount and additional services if they arepaid for out of the reserve account. Any remaining fees and/or dues owed to the CNA Provider pursuant to the terms of the Agreement will also be due upon the CNA Reviewer's concurrence of the CNA Provider's final report. Other payments must be subject to the schedule identified in the Agreement.

Qualifications

The CNA Provider must:

1. Possess valid and current licenses and certifications necessary to comply with the Statement of Work and as regulated by all applicable State, county and/or local lawsand/or ordinances.

2. Have no identity of interest as defined in 7 CFR part 3560, with CNA Recipient or owner's Property, or management agent. An architectural firm performing a CNA whichis also involved in the rehabilitation of the Property would be considered an Identity of Interest. For example: the Architect that performs the CNA assessment could overstate the conditions of the Property in order to inflate the rehabilitation scope, resulting in an increase to the Architect's compensation which is typically a percentage of theconstruction costs.

3. Be properly trained and experienced in evaluating site and building systems, health and safety conditions, physical and structural conditions, environmental and accessibility conditions, and estimating costs for repairing, replacing, and improving site and building components. (This applies to the CNA Provider or any Provider personnel who will have actual responsibility for the property inspection and preparation of the CNA.)

4. Be professionally experienced in preparing and providing CNAs for Multi-Family Housing properties that are similar in scope and operation to those typically financed in USDA RD's Section 515 program. (This applies to the CNA Provider or any Provider personnel who will have actual responsibility for the Property inspection and preparationof the CNA.)

5. Be knowledgeable about applicable site and building standards and codes including Federal, State and local requirements on environmental and accessibility issues. (Thisapplies to the CNA Provider or any Provider personnel who will have actual responsibility for the Property inspection and preparation of the CNA.)

6. Not be debarred or suspended from participating in Federally assisted programs and will comply with the requirements of 2 CFR parts 417 and 180 or any successor regulation, pertaining to debarment or suspension of a person from participating in a Federal program or activity.

Statement of Work

The CNA Provider must:

1. Perform a CNA in general conformance with the document: "Fannie Mae PhysicalNeeds Assessment Guidance to the Property Evaluator," except as modified herein.

2. Inspect the property. A minimum of **50 percent** (50 percent if less than 50 units) (45 percent if Property includes 50 – 99 units, 40 percent if the Property contains 100 or more units) of all dwelling units must be inspected in a non-intrusive manner. Consideration must be given to inspecting at least one unit per floor, per building, and per unit type (one-bedroom, two-bedroom, etc.) up to the threshold percentage. CNA Providers must ultimately be responsible for appropriate unit sampling but are encouraged to consult with site representatives to gather adequate information. This willhelp ensure that unit samples represent a cross-section of unit types and current physical conditions at the Property and are reflective of substantive immediate physical condition concerns.

All site improvements, common facilities (every central mechanical room, every laundry etc.), and building exteriors must be inspected. (ASTM guidelines, allowing for "representative observations" of major elements are not adequate in this regard. Although inspections are "non-intrusive", CNA Providers must include an inspection of crawlspaces and attics (when these spaces can be reasonably and safely accessed) in a number sufficient to formulate an opinion of the condition of those spacesand any work necessary). All units designated as fully accessible for the handicapped must be inspected. The inspection must include interviews with the CNA Recipient, applicant/transferee, management staff, and tenants as needed. It must also include consideration of all relevant Property information provided by the CNA Recipient, including:

- Contact information for the client's representative at Rural Development (Name,address, telephone number, e-mail address, etc.).
- Building-by-building breakdown of units by bedroom count and type (i.e. garden,townhouse, handicap accessible) to aid in selection of units at time of inspection.
- Any available plans or blueprints of development (as-built drawings preferred).
- Listing of capital expenditures for the Property over the past three to five years and maintenance expenditures over the last 12 months.
- Maintenance logs to help identify any significant or systemic areas of concern.
- Copies of invoices for any recently completed capital improvements and/or copies ofquotes for any pending/planned capital improvements.
- A valid/current Section 504 Accessibility Self-Evaluation/Transition Plan (**no morethan three years old**).
- Any available capital/physical needs assessments (CNAs/PNAs) that were previously completed.
- Any available structural or engineering studies that were previously completed.
- Any available reports related to lead-based paint testing or other environmental hazards(i.e. asbestos, mold, underground storage tanks, etc.) that were previously completed and/or related certifications if environmental remediation has been completed.
- Reports including but not limited to: local Health Department inspections, soilsanalysis, USDA's last Civil Rights compliance review, USDA's last security inspection.

- If the CNA Recipient certifies that: (a) third-party funds have been committed for use in the transaction for which the CNA is required; and (b) USDA RD has communicated its acceptance or acknowledgement of the availability of these funds(whether by an award of points in a portfolio revitalization program or otherwise); and (c) these funds are to be used towards a rehabilitation at the Property, the CNARecipient will provide the CNA Provider with a copy of the proposed rehabilitationscope and budget. Attachment J provides more rehabilitation requirements.

3. Prepare a report using forms developed by Rural Development or other similar documents. The report must be on an electronic worksheet in excel format commonlyused in the industry, or as prescribed elsewhere herein. The report must contain the following components, at a minimum:

a. Project Summary. Identification of the CNA Provider and CNA Recipient, and abrief description of the project, including the name, location, occupancy type (family/elderly) and unit mix.

b. Narrative. A detailed narrative description of the Property, including year the property was constructed or rehabilitated (of each phase if work completed in multiple phases), interior and exterior characteristics, conditions, materials and equipment, architectural and structural components, mechanical systems, etc. it must also include:

i. Number, types, and identification of dwelling units inspected and used as a basisfor the findings and conclusions in the report;

ii. An assessment of how the Property meets the requirements for accessibility topersons with disabilities;

a) The report must include any actions and estimated costs necessary to correct deficiencies in order for the Property to comply with applicable Federal, State, and local laws and requirements on Section 504 accessibility. The report must also include an opinion on the adequacy of any existing and approved Transition Plans for the Property in accordance with USDA RD requirements. CNA Providers mustnot assume that a Property built in accordance with accessibility standards prevailing at the time of original construction is "grandfathered" on accessibility requirements.
b) The CNA Provider must include in the final report an accessibility evaluation in accordance with all applicable Federal accessibility requirements and standards. CNA Providers are strongly encouraged to review Appendix 5 to HB-2-3560.

iii. An assessment of observed or potential on-site environmental hazards (e.g.,above or below ground fuel storage tanks, leaking electrical transformers);

Note: The narrative portion of the report must address and include any existing testing results for the presence of radon, lead in water, lead-based paint, and other environmental concerns. CNA Providers are not expected to conduct or commission any testing themselves. However, where test results provided by the CNA Recipient affirmatively point to hazards, the CNA Provider must inquire aboutsubsequent remediation steps and include cost allowances for any identified hazards not yet remediated.

iv. Recommendations for any additional professional reports as deemed necessaryby the CNA Provider, such as additional investigations on potential structural defects or environmental hazards;

Note: The narrative portion of the report must address each study or report necessary; why, and what expertise is needed so that the CNA Recipient can alleviate that issue, including estimates for repairs, prior to underwriting. It is not the CNA Provider's responsibility to estimate the cost of the study or repairs/ remediation necessary.

v. Needs of the Property funded or to be funded from a third-party (if any), such astax credits, including a brief description of the work, the source of funding, the year(s) the work is planned to be completed, and the total estimated costs in current dollars; and:

Note: For projects where the CNA Recipient advises the CNA Provider that third-party funding for rehabilitation is committed and the work will begin within 12 months, the CNA must address the existing conditions at the Property, ***and*** *the "post-rehabilitation" needs at the Property. An example would be a CNA Recipient who has submitted a pre-application to Rural Development for the Multifamily Preservation and Revitalization (MPR) Demonstration Program where Rural Development has awarded points to the application for third-party funding,and it has committed third-party funding. Under the MPR, a CNA Recipient who has applied for third-party funding for rehabilitation but does not have a commitment for this funding must have the CNA prepared based on conditions at the Property "as is," not "post rehabilitation". In these cases, consult with RuralDevelopment as to whether a "post rehabilitation" CNA should be done. When aCNA Recipient receives the funding commitment, and rehabilitation is planned within the next 12 months, the CNA Contract must be renegotiated to indicate thatrehabilitation is planned and specify that a "post rehabilitation" CNA should be prepared.*

In preparing CNAs for these properties, the CNA Provider should undertake the CNA on the basis that the third-party funded rehabilitation will occur as describedin the Scope of Work for the rehabilitation project provided by the CNA Recipient and determine the Property's "post-rehabilitation" capital needs over the next 20 years. In these cases, the CNA Provider is expected to review and understand the Scope of Work for planned rehabilitation funded from third-party sources, but aside from apparent substantive omissions is not required to comment on the planned rehabilitation.

If there is no evidence that third-party funding for rehabilitation has been committed (e.g., if rehabilitation is not indicated in the Rural Development MPR pre-application and/or Rural Development has not awarded points for it), then the CNA Provider must verify with the Rural Development contact prior to performinga "post rehabilitation" CNA. If no funds are committed, and Rural Development does not agree to a "post-rehabilitation" CNA, the CNA Provider may note the CNA Recipients rehabilitation proposal in the CNA but the report must be undertaken as though there will be no immediate rehabilitation. In these cases, theCNA must be based on the CNA Provider's independent professional opinion of current and future needs at the Property. (For example, if the CNA Recipient wishes for a rehabilitation, but has no funds allocated to perform one.)

vi. Acknowledgments (names and addresses of persons who: performed the inspection, prepared the report, and were interviewed during, or as part of theinspection).

c. Materials and Conditions. This component must be reported on a Microsoft Office Excel

© worksheet. The following major system groups must be assessed in the report: Site; Architectural; Mechanical and Electrical; and Dwelling Units. **ALL** materials and systems in the major groups must be assessed (not every specific material used in the construction of the Property), including the following items:

i. Item Description;

ii. Expected Useful Life (EUL). Data entries must be based on the EUL Table included in the "Fannie Mae Physical Needs Assessment Guidance to the PropertyEvaluator", unless otherwise explained in the report based upon the installation or most recent replacement date, quality, warranty, degree of maintenance or any other reasonable and documentable basis. Any EUL entry that varies from the Table must include an explanation in the "Comments" column. Any EUL that varies from the table by 25 percent or more must be adequately supported separately from spreadsheet (for example, provide the documentation or explanation in the Narrative section);

iii. Age. The actual age of the material or system;

iv. Remaining Useful Life (RUL). Any RUL entry that varies from the difference between the EUL and age must be explained in the "Comments" column. Any RUL entry that varies 2 years or more must be adequately supported separately from the spreadsheet (for example, provide the documentation or explanation in the "Narrative" section). Variances of more than 25 percent will not be accepted;

v. Condition. The current physical condition (excellent – good – fair – poor) of thematerial or system;

vi. Description of action needed (repair – replace – maintain construct – none); and,

vii. Comments or field notes that are relevant to the report.

d. Capital Needs. This component must be reported on a Microsoft Office Excel © worksheet. This component identifies all materials and systems for each of the four majorsystem groups to be repaired, replaced, or specially maintained. It must include the following items for such materials or systems:

i. Year or years when action is needed;

ii. Number of years to complete the needed action (duration of the repair work);

iii. Quantity and Unit of Measure. Any data entry that is not from a physical Property measurement or observation during the inspection must be explained in the report (contrary to ASTM guidance, lump sum allowancesmust be used only for capital projects, such as landscaping, that cannot readily be quantified); and,

iv. Estimated repair, replacement, or special maintenance unit cost and total cost in current (un-inflated) dollars for each line item. The report must identify the source(s) used for the cost data. Entries must include estimated costs for materials, labor (union or non-union wages, as appropriate), overhead & profit.

Consultant fees, and other associated costs may be incurred by the CNA Recipient when repair or replacement work involves extensive capital activities (e.g., a major landscaping or site drainage project). These activities are likely to include design costs, or the involvement of general contractors, with associated overhead and profit considerations. If the CNA Provider anticipates work will beaffected by these cost factors, notes should be added to the CNA spread sheet/report to explain the cost logic. Discussions with the CNA Recipient and the Agency will be necessary to confirm the proposed cost of these capital activities. CNA Providers using such standard cost sources must use costallocations that include overhead and profit.

Note: An estimated unit cost that is significantly different from an industry standard cost, such as R.S. Means or equivalent, must be adequately supported.

Generally, replacement actions must involve "in-kind" materials, unless a different material is more appropriate, approved by the State Historic Preservation Office, if applicable, and explained in the report. Exceptions must be made for components that are seen as inadequate (e.g. twenty gallon water heaters, prompting resident complaints) or below contemporary design/ construction standards (e.g. single- glazed windows in temperate climates). Rural Development also encourages the consideration of alternative technology and materials that offer the promise of reduced future capital and/or operating costs (more durable and/or less expensive to maintain over time, reduce utility expenses, etc.). CNA Providers are not expected to conduct quantitative cost-benefit analyses but must use sound professional judgment in this regard.

In addition to the exceptions described in the paragraph above, Rural Development may consider the inclusion of market-comparable amenities/upgrades (e.g. air conditioning in warm climates) proposed by the CNA Recipient when such features are essential to the successful operational and financial performance of the Property. Such items should be identified specifically in the CNA report as "CNA Recipient - recommended upgrades" and include an explanation of why these upgrades are necessary in supporting the financial and operational performance of the Property. Where included, CNA Provider comments on the feasibility and appropriateness of the upgrade are required.

v. The capital needs must be presented in two time frames:

a) Immediate Capital Needs. All critical health and safety deficiencies (e.g.inoperative elevator or central fire alarm system, missing/unsecured railings, blocked/inadequate fire egress, property-wide pest infestation) requiring corrective action in the immediate calendar year. Separately, the CNA Recipient must provide any repairs, replacements, and improvements currently being accomplished in a rehabilitation project, regardless of funding source, and anticipated to be completed within 12 months.

The CNA Recipient will includethe budget for any planned rehabilitation (e.g., rehabilitation proposed in the CNA Recipients pre-application to the MPR). CNA Provider can, but is not required, to offer comments about the rehabilitation budget. The CNA must notinclude minor, inexpensive repairs or replacements that are part of a prudent CNA Recipients operating budget. (If the aggregate cost for a material line item is less than $1,000, then the line item must not be included in the CNA.

An aggregate cost for a line item is an item which needs to be replaced in any given year, the cost exceeds the $1,000, and the item should be replaced in the one-year duration. **Applying a duration that exceeds one-year may decreasethe aggregate amount below the $1,000 threshold, thus circumventing the intent of the threshold to include a particular item in the CNA**.

Where immediate rehabilitation is proposed by the CNA Recipient using third-party funds, the CNA Provider must note the current condition and remaining effective useful lives of affected systems and components in an "as is" CNA.

b) Capital Needs over the Term. Such capital needs include significant maintenance, repairs, and replacement items required during subsequent twentycalendar years to maintain the Property's physical integrity and long term marketability. It must include repairs, replacements, and significant deferred maintenance items currently being planned and anticipated to be completed after the immediate calendar year and corrections for violations of applicable standards on environmental and accessibility issues. It must also include the needs described in paragraph 3.b.v. above in the appropriate year(s), if any, if these will not be completed within 12 months from the closing of the program revitalization transaction. The CNA must **not** include minor, inexpensive repairs or replacements that are part of a prudent Property owner's operating budget.

(If the aggregate cost for a material line item is less than $1,000, then the line item must not be included in the CNA. An aggregate cost for a line item is an item which needs to be replaced in any given year, the cost exceeds the $1,000, and the item should be replaced in the one-year duration. Applyinga duration that exceeds one-year may decrease the aggregate amount below the $1,000 threshold, thus circumventing the intent of the threshold to include aparticular item in the CNA.

Exceptions to these exclusions may be appropriate for very small properties, and/or for low cost items that may affect resident health andsafety (e.g., a damaged or misaligned boiler flue). For example, in smallprojects (total of 12 units or less), items exempted would be for materialline items less than $250, not $1,000. The report must be realistic and based on due diligence and consideration of the Property's condition, welfare of the tenants, and logical construction methods and techniques. The estimated unit costs and total costs to remedy the detailed needs must be provided in current (un-inflated) dollars.

Capital Needs over the term must be based on the actual remaining useful lives of the components and systems at hand. Aside from formal work that is accounted for in the "Immediate Capital Needs" section, capital activitiesmust not be "front-loaded.

Note: New components or upgrades addressed in a Property's rehabilitation may have long-term capital needs implications as well. Those items with expected useful lives of less than twenty years (e.g. air conditioners) also will need to be accounted for in Capital Needs over theTerm.

e. Executive Summary. This component must be reported on a MicrosoftOffice Excel © worksheet. It must include:

i. Summary of Immediate Capital Needs – the grand total cost of all majorsystem groups (in current dollars);

ii. Summary of Capital Needs Over the Term – the annual costs and grand totalcost of all major system groups (in current and inflated dollars). The inflation rate must be 3 percent; and,

iii. Summary of All Capital Needs – the grand total costs for the immediate and over the term capital needs (in current and inflated dollars). The grand total costs (in current and inflated dollars) per dwelling unit must also be included.

f. Appendices. This component must include a minimum 25 color digital photographs that describe: the Property's buildings (interior and exterior) and other facilities, specific material or system deficiencies, and the bathrooms and kitchens in the units accessible for the handicapped. Include a Property location map and other documentsas appropriate to describe the Property and support the findings and summaries in the report. The CNA Provider must provide some sort of visual documentation for each line item that cannot be clearly identified by a written description alone.

For instance,if an entrance needs to become handicap accessible, a picture of the entrance will helpthe CNA Recipient understand where the construction should take place. The CNA Recipient needs to be able to associate reserve account funds with the correct line items during the life of the CNA during the underwriting process.

4. Deliver the following:

a. A minimum of one electronic copy of the report must be delivered on a compact disk, or other acceptable electronic media, e.g. e-mail, to both the CNA Recipientand USDA RD for their review and written acceptance. To the greatest extent possible, delivery must be made within 15 business days of execution of the Agreement with the CNA Recipient.

b. If the report is not acceptable, the CNA Provider must make the appropriate changesin accordance with the review comments. A minimum of one electronic Excel copyof the revised report must be delivered on a compact disk or via e-mail to both the CNA Recipient and USDA RD for their review and written acceptance. The delivery must be made within 5 business days of receiving the review comments.

c. If the revised report is still not acceptable, additional revisions will be made andelectronic Excel copies delivered on compact disks or via e-mail to the CNA Recipient and USDA RD until the report is acceptable.

5. Be available for consultation with the CNA Recipient or USDA RD after writtenacceptance of the report on any of its contents.

6. The CNA Provider must **NOT** analyze the adequacy of the Property's existing or proposed replacement reserve account nor its deposits as a result of the capital needsdescribed in the report.

Attachment C

FANNIE MAE PHYSICAL NEEDS ASSESSMENTGUIDANCE TO THE PROPERTY EVALUATOR

1. Transfer of Project Ownership;
2. Loan Reamortization;
3. Loan Write-Down; or
4. Development of an Equity Loan Incentive or EquityLoan for a Sale to a Non-Profit Sponsor.
5. Facility Rehabilitation, including MPR
6. New Construction

Introduction

While many factors affect the soundness of a mortgage loan over time, one of the most significant is the physical condition of the Property – past, present and future. A prudent lender must be concerned with the past maintenance and improvements because they may indicate owner and management practices as well as expenses to be incurred in the future. The lender must be concerned with the condition of the Property at the time the loan is made, and over the term of the loan, because Property conditions may directly impact marketability to prospective tenants and the need for major expenditures may impact the economic soundness and value of the Property. The lender must also be concerned with the condition of the Property at the end of the loan term. If the Property has deteriorated, the owner may not be able to secure sufficient financing to pay off the loan at maturity.

Most lenders have always given some attention to physical conditions and needs of properties in their underwriting. However, the amount of attention, the data secured, the quality and analysisof that data, and the impact of this information on underwriting has varied widely. Indeed, many properties and the loans that they secure are now in trouble because of inadequate consideration of physical needs in the underwriting coupled with inadequate attention to Property maintenance which has diminished the marketability and overall value of the Property.

The guidance and forms in this package, together with the guidance provided to our lenders in our Delegated Underwriting and Servicing (DUS) and Multifamily Guides, is based upon a desire to see a more standardized approach to assessing the physical needs of properties that will be securing our loans. These documents attempt to respond to stated desires on the part of our lenders for a "level playing field" among competing lenders who may otherwise have different notions of the level of data and analysis required to assess a Property's physical condition. They also attempt to respond to the needs of Property evaluators who, desiring to produce the quantity and quality of information deemed necessary, need specific guidance to avoid the appearance of glossing over problems or providing material which is too detailed or complex to be usable by theunderwriters.

Attachment C

These documents are meant to provide useful guidance and tools to the evaluators. They cannot cover all situations and are not meant to be inflexible. They are designed to elicit the judgment of the evaluator (in a format which is useful to the underwriter), not to substitute for it. We welcome comments from evaluators in the field offices, as we did in developing this package, on improving either our forms or guidance so that this package can best serve the needs of both the evaluators and our lenders. If you have such comments, please contact:

April LeClair
Director of Multifamily Product Management
3900 Wisconsin Avenue, N.W.
Washington, D.C. 20016
(202) 752-7439.

Specific Guidance to the Property Evaluator

The purpose of the Physical Needs Assessment is to identify and provide cost estimates for the following key items:

- Immediate Physical Needs - repairs, replacements and significant maintenance itemswhich should be done immediately.
- Physical Needs Over the Term - repairs, replacements and significant maintenance itemswhich will be needed over the term of the mortgage and two years beyond.

As part of the process, instances of deferred maintenance are also identified.

The assessment is based on the evaluator's judgment of the actual condition of the improvements and the expected useful life of those improvements. It is understood that the conclusions presented are based upon the evaluator's professional judgment and that the actualperformance of individual components may vary from a reasonably expected standard and willbe affected by circumstances which occur after the date of the evaluation.

This package explains how to use the set of forms provided by Fannie Mae. It is important to recognize that the forms are intended to help the evaluator conduct a comprehensive and accurate assessment. They also present the results of that assessment in a relatively standard format which will be useful to the lender in making underwriting decisions. However, the formsshould not constrain the evaluator from fully presenting his or her concerns and findings. The forms should be used and supplemented in ways which facilitate the preparation and presentation of information useful to the lender regarding the physical needs of the Property.

The Systems and Conditions forms may be altered and/or computerized to serve the evaluators' needs so long as information is provided on the condition and Effective Remaining Life (ERL) of all components and the ERL is compared to the standard Expected Useful Life (EUL). The Summary forms may also be extended or computerized so long as the basic format is maintained.

Attachment C

Terms of Reference Form

The lender completes this form for the evaluator. It serves as a reference point for the assessment and provides the evaluator with basic information about the property and the term ofthe loan. Four additional topics are covered:

- *Sampling Expectations* - The lender's expectations about the number and/or percentage of dwelling units, buildings and specialized systems to evaluate may be stated. If there is no stated expectation, the evaluator should inspect sufficient units, buildings, and numbers of specialized systems to state *with confidence* the present and probable future condition of each system at the Property. The evaluator should provide a separate statement indicating the sampling systems used to ensure a determination of conditions and costs with acceptable accuracy. If a sampling Expectation is provided by the lender which is not adequate to achieve the requisite level of confidence, the evaluator should soadvise the lender.

Considerations in determining an adequate sample size are age and number of buildings (especially if the Property was developed in phases), total number of units, and variations in size, type and occupancy of units. Effective sampling is based on observing a sufficient numberof each significant category. Using the above criteria, categories could include *buildings by ageof each building* (e.g. inspect buildings in the 8-year old phase and in the 11-year old phase), *buildings by type* (e.g. rowhouse, L-shaped rowhouse, walkup, elevator) and/or *buildings by construction materials* (e.g. inspect the garden/flat roof/brick walls section and the garden/pitched roof/clapboard walls section). Dwelling units are separate categories from buildings. At a minimum, sampling is by unit size (0/1/2/3/4 bedrooms). There may be further categories if units are differently configured or equipped, or have different occupants (especially family or elderly). Generally, we would expect the percentage of units inspected to decrease as the total number of units increases. Systems which are not unit specific, such as boilers, compactors, elevators and roofs, will often have a 100 percent sample.

The overriding objective: SEE ENOUGH OF EACH UNIT TYPE AND SYSTEMTO BE ABLE TO STATE WITH CONFIDENCE THE PRESENT AND PROBABLE FUTURE CONDITON.

- *Market Issues* - In certain instances, market conditions may necessitate action on certainsystems. Examples are early appliance replacement or re-carpeting, new entry paving, special plantings, and redecorated lobbies. If the owner or lender has identified such anaction, the evaluator should include a cost estimation for such action and indicate what, if any, other costs would be eliminated by such action.

- *Work In Progress* - In some instances, work may be underway (which can be observed) orunder contract. When known by the lender, this will be noted. For purposes of the report, such work should be assumed to be complete, unless observed to be unacceptable in quality or scope.

- *Management-Reported Replacements* - In some instances, the Property ownership or management will provide the lender with information about prior repairs or replacementswhich have been completed in recent years. The lender may provide this information to the evaluator to assist in the assessment of these components. The evaluator should include enough units, buildings, or systems in the sample to reasonably verify thereported repairs or replacements.

Systems and Conditions Forms

It is the responsibility of the evaluator to assess the condition of every system which is presentat a Property. All conditions, except as noted below, requiring action during the life of the loanmust be addressed regardless of whether the action anticipated is a capital or operating expense.

To assist evaluators in reviewing all systems at a Property, four Systems and Conditions Forms are provided. Each lists a group of systems typically related by trade and/or location. The four forms are Site, Architectural, Mechanical and Electrical, and Dwelling Units. While the forms have several columns in which information may be recorded, *in many instances only the first three columns will be completed.* If the condition of a system is acceptable, the ERL exceeds the term of the mortgage by two years, and no action is required, no other columns need to be completed.

The report is not expected to identify minor, inexpensive repairs or other maintenance items which are clearly part of the Property owner's current operating pattern and budget so long as these items appear to be taken care of on a regular basis. Examples of such minor operating items are occasional window glazing replacement and/or caulking, modest plumbing repairs, and annual boiler servicing. However, the evaluator *should* comment on such items in the report if they do not appear to be routinely addressed or are in need of immediate repair.

The report is expected to address infrequently occurring "big ticket" maintenance items, suchas exterior painting, all deferred maintenance of any kind, and repairs or replacements which normally involve significant expense or outside contracting. While the evaluator should noteany environmental hazards seen in the course of the inspection, environment-related actions, such as removal of lead-based paint, will be addressed in a separate report prepared by an environmental consultant.

Attachment C

Using the Systems and Conditions Forms

Purpose

The forms can be used both to record actual observations at a specific location and for an overall summary. For example, the Architectural form can be used for a specific building (orgroup or identical buildings) as well as for summarizing all information for buildings at a Property. The same is true for the Dwelling Unit form. An unlabeled form is included which can be used as a second page for any of the Systems and Conditions Forms.

In some instances, the evaluator will note components which, while they may continue to be functional, may reduce marketability of the Property. For example, single-door refrigerators or appliances in outmoded colors may have such an impact in some properties. The evaluator should note these items, discuss them with the lender, and provide separate estimates of the cost to replace such items if requested.

Items EUL

Each of the four forms has a number of frequently-occurring systems and components listed.This list represents only the most frequently observed and is not meant to be all inclusive.

Every system present at the Property must be observed and recorded. Any system not listed on the form may be included in the spaces labeled "Other". Note that the assessment includes the systems and components in both residential and non-residential structures. Thus, garages, community buildings, management and maintenance offices, cabanas, pools, commercial space, and other non-residential buildings and areas are included.

The EUL figure which appears in parentheses after the "Item" is taken from the "Expected Useful Life Table" provided. This table provides standard useful lives of many components typically found in apartment complexes. Where the parentheses do not contain a number, it is because there are various types of similar components with differing economic lives. The evaluator should turn to the "Expected Useful Life Table" and select, and insert, the appropriate EUL number. If the EUL will; without question, far exceed the term of the mortgage plus two years, the EUL number need not be inserted.

Note: It is recognized that the "Expected Useful Life Table" represents only one possible judgment of the expected life of the various components. If we receive substantial material to the effect that one or more of the estimates are inappropriate, we will make adjustments. Until such changes are made, the Tables provide a useful and consistent standard for all evaluators touse. They avoid debate on what the appropriate expected life is and permit focus on the evaluator's judgment of the effective remaining life of the actual component in place, as discussed below.

Age

The evaluator should insert the actual Age of the component or may insert "OR" for original. If the actual age is unknown, an estimate is acceptable. If there is a range in Age (for example, components replaced over time), the evaluator may note the range (i.e., 5-7 years) or may use several lines for the same system, putting a different Age of that system on each line.

Condition

This space is provided to indicate the Condition of the component, generally excellent, good,fair, or poor, or a similar and *consistent* qualitative evaluation.

Effective Remaining Life

This space is provided for the evaluator to indicate the remaining life of the component as is.For standard components with standard maintenance, the "Expected Useful Life Table" provided by the lender could be used to determine ERL by deducting the Age from EUL. However, this should not be done automatically. A component with unusually good originalquality or exceptional maintenance could have a longer life. On the other hand, if the component has been poorly maintained or was of below standard original quality, the useful lifecould be shorter than expected. *The evaluator applies his or her professional judgment in making a determination of the* ERL.

If the ERL *is longer than the term of the loan plus two years, no deferred maintenance exists, and no action needs to be taken during the life of the loan, no other columns need to be filled out.* The only exception may be Diff? (Difference), as discussed below. This should be notedwhen the evaluator's estimate of the ERL varies by more than two years from the standard estimate.

Diff? (Difference)

The Age of the component should be deducted from the EUL in parentheses and the answer compared to the ERL estimated by the evaluator. Where there is a difference of over two years, the evaluator should insert a footnote number in the DIFF? (Difference) column and supply, in an attached list of footnotes, a brief statement of why, in his or her judgment, the ERL of the component varies from the standard estimate. This approach provides consistency among evaluators while making best of the evaluators' professional judgment.

Action

If any Action is required - immediately, over the life of the loan or within two years thereafter - the Action should be recorded as repair, replacer or maintain. Repair is used when only a part of an item requires action, such as the hydraulics and/or controls of a compactor. Replace is used when the entire item is replaced. Maintain is us where special, non0routine maintenance is required, such as the sandblasting of a swimming pool. In cases where a repair or maintenance may be needed now, and replacement or further maintenance may be needed later, separate lines may be used to identify the separate actions and timing.

Now?

If the item involves a threat to the immediate health and safety of the residents, clearly affects curb appeal, will result in more serious problems if not corrected, or should otherwise be accomplished as part of an immediate repair, maintenance or replacement program, this space should be checked. Replacements which may be needed in year one, but do not require immediate attention, need not be checked.

Deferred Maintenance (DM)

The DM space is marked in any instances where current management practice is clearly inadequate and the owner's attention should be called to the item, even if no major expenditureor significant labor may be required.

Quantity

For items requiring action, the evaluator should note the "Quantity" of the system, with the applicable unit of measure entered (each, unit, square feet, square yards, linear feet, lump sum, etc.).

Field Notes

This space, as well as attachments may be used to record the type of component (16cf, fros. free, Hotpoint), the problem (valves leaking) or other information (consider replacement for marketing purposes, replace 30 percent per year, work in progress, etc.) that the evaluator will need to complete the "Evaluator's Summary".

Sample Form

The following example from the Dwelling Unit Systems and Conditions form illustrates howthis form is properly used. The example presumes an 11 story building containing 1 and 2 bedroom units. There are 100 units. The age of the building is 9 years. The term of the proposed loan is 7 years.

ITEM (EUL)	AGE	COND	ERL	DIFF?	ACTION	NOW?	DM?	QUANTITY	NOTES
Countertop/ Sinks (10)	9	EX	10+	1	-	-	-	- ea.	Corian Stainless Steel
Refrigerator (15)	9	Good	6	-	REPL	-	-	100ea	Hot point 16cf. ff 20%/yr @ YR 5
Disposal (5)	0-9	Good	0-5	-	REPL	-		100ea	20%/yr. @ YR 1 OPTE
Bath Fixtures (20)	9	Good	11+	-	-	-	-	-	Dated Looking Repair - Now
Ceiling 04 Stack ( )	9	Hater Damage	-	-	Repair	Yes	-	10ea	Plumbing Leak

Countertop/Sinks are 9 years old. (The entry could also be "OR"). Condition isexcellent, with an ERL of 10 years. This is significantly different from the anticipated ERL of 1 (a EUL of 10 years minus an Age of 9 years). Therefore, there is a footnote entry "1" in the Diff? (Difference) column. The footnote willindicate that this item is made of an exceptionally durable material (Corian), along with a top quality stainless steel sink. The evaluator's estimate of an ERLof 10 years + is beyond the term of +2. No capital need would be reported.

Refrigerators are also original, reported as 16 cf frost free Hotpoint. Replacementis expected around the ERL, noted as 20 percent annually and beginning in the fifth year of the loan when the refrigerators are 14 years old.

Disposals range from new to original (Age = 0-9). Twenty percent per year replacements will be needed starting in year 1. The evaluator notes that disposalsappear to be replaced as part of the project's normal operations.

Bath fixtures are original, and in good condition. No replacement is expected to be required during the term +2 years. The Notes indicates that they are "datedlooking," which may prompt a market consideration for replacement.

Ceiling is a special entry. The "04" stack of units has experienced water damage to ceiling from major plumbing leak. This is noted for repair NOW. As this apparently occurs in all 10 units in this stack and; therefore, is likely to have morethan a modest cost, this action would be reported on the Immediate Physical Needssummary form.

Evaluator's Summary Forms

Two separate forms are used to summarize the evaluator's conclusions from the Systems and Conditions Forms. One summarizes Immediate Physical Needs and the other summarizes the Physical Needs Over the Term +2 years.

Evaluator's Summary: Immediate Physical Needs

All of the items for which NOW? is checked are transferred to this form. This form provides for the listing of Items, Quantity, Unit Cost and Total Cost of each. The Item and Quantity are transferred directly from the Systems and Conditions form.

Unit Cost - This is the cost per unit (sf, ea, lf, etc.) in current dollars to implement the required action. The source of the cost estimate should be listed in a separate attachment. The sources may include a third-party estimation service (e.g., R.S. Means: *Repair and Remodeling Cost Data*), actual bid or Contract prices for the property, estimates from contractors or vendors, the evaluator's own cost files, or published supplier sources.

Total Cost - This is the result of multiplying the quantity times the unit cost. It is expressed in current year dollars.

Deferred Maintenance (DM) - If the item evidence deferred maintenance, this column is checked.

Comments - the comments column, or an attachment, should clearly provide information on the location and the nature of problem being addressed for each item. The information should be adequate for the owner to begin to implement the action.

Evaluator's Summary: Physical Needs Over the Term

Those items not listed on the Immediate Physical Needs form, but for which action is anticipated during the term of the loan plus two years, are listed on the form. The item and Quantity are transferred directly from the Systems and Conditions form. The Unit Cost is calculated in the same manner as on the Immediate Physical Needs form. An attachment should be provided which gives any necessary information on the location of action items andthe problem being addressed for each item. The information should be adequate for the ownerto begin to implement the action.

Cost by Year - the result of multiplying the quantity times the unit cost, in current dollars, is inserted in the column for the year in which the action is expected to take place. Generally, the ERL estimate provided by the evaluator on the Systems and Conditions will indicate the Action year. For example, if the evaluator has indicated that the ERL of the parking lot paving is 4 years, the cost, in current dollars, is inserted in Year 4. If the items are likely to be done over a number of years, the costs, in current dollars should be spread over the appropriate period. For example, if the ERL of the refrigerators is estimated to be 4 years, or 3-5 years, one third of the cost of replacing the refrigerators may appear in each of years 3, 4, and 5.

Total Uninflated - After inserting all of the appropriate action items, the evaluator should totalthe items for each year.

Total Inflated - The evaluator should multiply the Total Uninflated times the factor provided to produce the Total Inflated.

Total Inflated All Pages - On the last sheet, the evaluator should include the Total InflatedDollars for that page and all prior pages.

Cumulative Total All Pages - On the last sheet, the evaluator should insert the Total Inflated Dollars of that year and all prior years.

Special Repair and Replacement Requirements

While performing a Property Inspection, the evaluator must be aware that certain building materials and construction practices may cause properties to experience (or to develop in a short time period) problems that can be corrected only with major repairs or replacements. The following identifies some specific construction related problems; however, the evaluator must be aware that other construction related problems may be found in any Property and should be identified. If any of the following requirements are not met or if the evaluator determines that the following conditions (or others) are present, *the evaluator must contact the lender immediately to discuss the timing as well as the cost of the repairs or replacements.* The evaluator should ensure that any of these conditions are thoroughly addressed in the Physical Needs Assessment.

Minimum Electrical Capacity - Each apartment unit must have sufficient electrical capacity (amperage) to handle the number of electrical circuits and their use within an apartment. Therefore, the evaluator must determine, based on referencing the National Electric Code as well as local building codes, what is the minimum electrical service needed. In any event, thatservice must not be less than 60 amperes.

Electrical Circuit Overload Protection - All apartment unit circuits, as well as electrical circuits elsewhere in an apartment complex, must have circuit breakers as opposed to fuses ascircuit overload protection.

Aluminum Wiring - In all cases, where aluminum wiring runs from the panel to the outlets of a unit, the evaluator's inspection should ascertain that the aluminum wiring connections (outlets, switches, appliances, etc.) are made to receptacles rated to accept aluminum wiring or that corrective repairs can be done immediately by the owner.

Fire Retardant Treated Plywood - While performing the roof inspection, the evaluator should investigate whether there is any indication that fire-retardant treated plywood was used in the construction of the roof (primarily roof sheathing). This inspection should focus on sections of the roof that are subjected to the greatest amount of heat (e.g., areas that are not shaded or that are poorly ventilated) and; if possible, to inspect the attic for signs of deteriorating fire- retardant treated plywood or plywood that is stamped with a fire rating.

Our concern is that certain types of fire-retardant treated plywood rapidly deteriorates when exposed to excessive heat and humidity or may cause nails or other metal fasteners to corrode. Common signs of this condition include a darkening of the wood and the presence of a powder-like substance, warping of the roof and the curling of the shingles. Fire-retardant treated plywood is most likely to be in townhouse properties or other properties with pitched, shingled roofs that were constructed after 1981 and that are located in States east of the Mississippi River and some southwestern States.

Attachment C

Narrative Conclusion and Attachments

A complete narrative summary of the Property and its components is not required. However, the evaluator should supply a concise summary of the conclusions reached concerning the overall condition of the Property, its future prospects, and the quality of the current maintenance programs. *Any items affecting the health and safety of residents should be clearlyflagged.*

The summary should include a discussion of the sampling approach used, discussed above, and any market issues which the evaluator believes it may be appropriate to address or which were noted by the lender.

The narrative, the forms use and the attachments (footnotes explaining Differences, information regarding sources of costs, and, if necessary, information needed to identify the location and type of problem addressed in the Evaluator's Summary: Physical Needs Over the Term) shouldbe supplied.

Attachment D

CNA e-Tool Estimated Useful Life Table

This table lists the recommended average useful life of the categories of assets that should be considered in a Capital Needs Assessment. If an observed item is not listed, it should be assigned to the most closely related category. The Standard EUL for a component type is fixed. The user may estimate the Remaining Useful Life of any existing component independent of the Standard EUL by entering the assessed RUL in the appropriate space on the Components tab of the Excel Assessment Tool and by justifying the assessed RUL in the adjacent comment box. When identifying an alternative toan existing component the user may specify an EUL for the alternative which differs from the Standard EUL for that component type but must enter an explanation in the Notes space on the Alternatives tab of the Tool. Each specific component assessed is given a free-form description by the needs assessor and this description is the "component ID" or component name which may be more specific than the "Component Type", e.g (a particular kind, size, etc of refrigerator, not just any refrigerator.)

Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
3					**System Description and Observations**			
	3.1				**Overall General Description**			
	3.2				**Site Systems**			Need Category
		3.2.1			**Topography**			
		3.2.2			**Storm Water Drainage**			Need Item
			3.2.2.1		Catch basins, inlets, culverts	50	50	All items not color coded
			3.2.2.2		Marine or stormwater bulkhead	35	35	are "Component Type"
			3.2.2.3		Earthwork, swales, drainways, erosion controls	50	50	names.
			3.2.2.4		Storm drain lines	50	50	
			3.2.2.5		Stormwater mgmt ponds	50	50	
			3.2.2.6		Fountains, pond aerators	15	15	
		3.2.3			**Access and Egress**			Need Item
			3.2.3.1		Security gate - lift arm	10	10	
			3.2.3.2		Security gate - rolling gate	15	15	
		3.2.4			**Paving, Curbing and Parking**			Need Item
			3.2.4.1		Asphalt Pavement	25	25	
			3.2.4.2		Asphalt Seal Coat	5	5	
			3.2.4.3		Concrete Pavement	50	50	
			3.2.4.4		Curbing, Asphalt	25	25	
			3.2.4.5		Curbing, Concrete	50	50	
			3.2.4.6		Parking, Gravel Surfaced	15	15	
			3.2.4.7		Permeable Paving Systems (brick, concrete pavers)	30	30	
			3.2.4.8		Striping and Marking	15	15	
			3.2.4.9		Signage, Roadway / Parking	15	15	

CNA e-Tool Estimated Useful Life Table

This table lists the recommended average useful life of the categories of assets that should be considered in a Capital Needs Assessment. If an observed item is not listed, it should be assigned to the most closely related category. The Standard EUL for a component type is fixed. The user may estimate the Remaining Useful Life of any existing component independent of the Standard EUL by entering the assessed RUL in the appropriate space on the Components tab of the Excel Assessment Tool and by justifying the assessed RUL in the adjacent comment box. When identifying an alternative toan existing component the user may specify an EUL for the alternative which differs from the Standard EUL for that component type but must enter an explanation in the Notes space on the Alternatives tab of the Tool. Each specific component assessed is given a free-form description by the needs assessor and this description is the "component ID" or component name which may be more specific than the "Component Type", e.g (a particular kind, size, etc of refrigerator, not just any refrigerator.)

Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
			3.2.4.10		Carports, wood frame	30	30	
			3.2.4.11		Carports, metal frame	40	40	
		3.2.5			**Flatwork (walks, plazas, terraces, patios)**			Need Item
			3.2.5.1		Asphalt	25	25	
			3.2.5.2		Concrete	50	50	
			3.2.5.3		Gravel	15	15	
			3.2.5.4		Permeable Paving (brick, concrete pavers)	30	30	
		3.2.6			**Landscaping and Appurtenances**			Need Item
			3.2.6.1		Fencing, chain-link	40	40	
			3.2.6.2		Fencing, wood picket	15	20	
			3.2.6.3		Fencing, wood board (=>1"x 6")	20	25	
			3.2.6.4		Fencing, wrought Iron	60	60	
			3.2.6.5		Fencing, steel or aluminum	20	25	
			3.2.6.6		Fencing, concrete Masonry unit (CMU)	30	30	
			3.2.6.7		Fencing, PVC	15	20	
			3.2.6.8		Signage, Entrance/Monument	25	25	
			3.2.6.9		Mail Kiosk	15	20	
			3.2.6.10		Retaining Walls, heavy block (50-80 lb)	60	60	
			3.2.6.11		Retaining Walls, reinforced concrete masonry unit (CMU)	40	40	
			3.2.6.12		Retaining Walls, treated timber	25	25	
			3.2.6.13		Storage sheds	30	30	
		3.2.7			**Recreational Facilities**			Need Item
			3.2.7.1		Sport Court- asphalt	25	25	
			3.2.7.2		Sport Court- synthetic	15	20	

CNA e-Tool Estimated Useful Life Table

This table lists the recommended average useful life of the categories of assets that should be considered in a Capital Needs Assessment. If an observed item is not listed, it should be assigned to the most closely related category. The Standard EUL for a component type is fixed. The user may estimate the Remaining Useful Life of any existing component independent of the Standard EUL by entering the assessed RUL in the appropriate space on the Components tab of the Excel Assessment Tool and by justifying the assessed RUL in the adjacent comment box. When identifying an alternative toan existing component the user may specify an EUL for the alternative which differs from the Standard EUL for that component type but must enter an explanation in the Notes space on the Alternatives tab of the Tool. Each specific component assessed is given a free-form description by the needs assessor and this description is the "component ID" or component name which may be more specific than the "Component Type", e.g (a particular kind, size, etc of refrigerator, not just any refrigerator.)

Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
			3.2.7.3		Sport Court-hardwood	50	50	
			3.2.7.4		Tot Lot (playground equipment)	10	15	
			3.2.7.5		Tot Lot- lose ground cover	3	5	
			3.2.7.6		Pool Deck	15	15	
			3.2.7.7		Pool/Spa Plastic Liner	8	8	
			3.2.7.8		Pool/Spa pumps and equipment	10	10	
			3.2.7.9		Decks-treated lumber	20	20	
			3.2.7.10		Decks-composite	50	50	
		3.2.8			**Site Utilities**			
			3.2.8.1		**Site Utilities-Water**			Need item
				3.2.8.1.1	Water Mains/Valves	50	50	
				3.2.8.1.2	Water Tower	50	50	
				3.2.8.1.3	Irrigation System	25	25	
			3.2.8.2		**Site Utilities-Electric**			Need item
				3.2.8.2.1	Electric distribution center	40	40	
				3.2.8.2.2	Electric distribution lines	40	40	
				3.2.8.2.3	Transformer	30	30	
				3.2.8.2.4	Emergency Generator	25	25	
				3.2.8.2.5	Solar Photovoltaic panels	15	15	
				3.2.8.2.6	Photovoltaic Inverters	10	10	
				3.2.8.2.7	Pole mounted lights	25	25	
				3.2.8.2.8	Ground lighting	10	10	
				3.2.8.2.9	Building Mounted Lighting	10	10	
				3.2.8.2.10	Building Mounted High Intensity Discharge (HID) Lighting	10	20	

CNA e-Tool Estimated Useful Life Table

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
			3.2.8.3		**Site Utilities-Gas**			Need Item
				3.2.8.3.1	Gas Main	40	40	
				3.2.8.3.2	Gas Supply Lines	40	40	
				3.2.8.3.3	Site Propane, Storage & Distribution	35	35	
				3.2.8.3.4	Gas lights/fire pits	20	20	
			3.2.8.4		**Site Utilities-Sewer**			Need Item
				3.2.8.4.1	Sanitary Sewer lines	50	50	
				3.2.8.4.2	Sanitary waste treatment system	40	40	
				3.2.8.4.3	Lift Station	50	50	
			3.2.8.5		**Site Utilities-Trash**			Need Item
				3.2.8.5.1	Dumpsters	15	15	
				3.2.8.5.2	Compactors (exterior, commercial grade)	20	20	
				3.2.8.5.3	Recycling containers/equipment	15	15	
				3.2.8.5.4	Composting, organic recycling equipment	10	10	
	3.3				**Building Frame & Envelope**			Need Category
		3.3.1			**Foundation**			Need Item
			3.3.1.1		Slab, reinforced concrete	100	100	
			3.3.1.2		Slab, post tensioned	100	100	
			3.3.1.3		Continuous reinforced concrete footer and CMU stem wall	100	100	
			3.3.1.4		Piers, reinforced concrete footer and CMU pier	100	100	
			3.3.1.5		Piers, treated timber post/pole	40	40	
			3.3.1.6		Foundation Waterproofing	40	40	
			3.3.1.7		Foundation suction, drainage, groundwater, radon gas controls, pumps, sumps, equip. failure alarms	10	10	

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		3.3.2			**Building Frame**			
			3.3.2.1		**Framing System, Floors & Walls**			Need Item
				3.3.2.1.1	Wood, timbers, dimensioned lumber, laminated beams, trusses	100	100	
				3.3.2.1.2	Tie downs, clips, braces, straps, hangers, shear walls/panels	75	75	
				3.3.2.1.3	Steel, beams, trusses	100	100	
				3.3.2.1.4	Reinforced concrete	100	100	
				3.3.2.1.5	Reinforced masonry, concrete masonry units (CMUs)	100	100	
				3.3.2.1.6	Solid Masonry (obsolete)	100	100	
			3.3.2.2		**Crawl Spaces, Envelope Penetrations**			Need Item
				3.3.2.2.1	Sealed crawl space system	40	40	
				3.3.2.2.2	Vents, screens, covers	30	30	
				3.3.2.2.3	Vapor Barrier (VDR) ground or underfloor	30	30	
				3.3.2.2.4	Penetrations, caulking/sealing	15	15	
				3.3.2.2.5	Crawl space, (de)pressurization, fans, pumps, sumps, equipment failure alarms	10	10	
			3.3.2.3		**Roof Frame & Sheathing**			Need Item
				3.3.2.3.1	Wood frame and board or plywood sheathing	75	75	
				3.3.2.3.2	Tie downs, clips, braces, straps, hangers	75	75	
				3.3.2.3.3	Steel frame and sheet metal or insulated panel sheathing	100	100	
				3.3.2.3.4	Reinforced concrete deck	100	100	
			3.3.2.4		**Flashing & Moisture Protection**			Need Item
				3.3.2.4.1	Caulking and Sealing	15	15	
				3.3.2.4.2	Concrete/Masonry Sealants	10	10	
				3.3.2.4.3	Wood waterproofing and sealants	10	10	

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				3.3.2.4.4	Building wraps & moisture resistant barriers	50	50	
				3.3.2.4.5	Paints and stains, exterior	8	8	
			3.3.2.5		**Attics & Eaves**			Need Item
				3.3.2.5.1	Screened gable end or soffit Vents	30	30	
				3.3.2.5.2	Roof vents, passive	40	40	
				3.3.2.5.3	Roof Vents, powered	20	20	
			3.2.2.6		**Insulation**			Need Item
				3.3.2.6.1	Loose fill, fiber glass, cellulose, mineral wool	50	50	
				3.3.2.6.2	Batts, blankets, rolls, fiber glass or mineral wool	60	60	
				3.3.2.6.3	Rigid foam board	60	60	
				3.3.2.6.4	Sprayed foam	60	60	
			3.3.2.7		**Exterior Stairs, Rails, Balconies/Porches, Canopies**			Need Item
				3.3.2.7.1	Exterior Stairs, wood frame/stringer	30	30	
				3.3.2.7.2	Exterior Stair Tread-wood	15	15	
				3.3.2.7.3	Exterior Stairs-steel frame/stringer	40	40	
				3.3.2.7.4	Exterior Stair Tread-metal, concrete filled	20	20	
				3.3.2.7.5	Exterior Stairs, Concrete	50	50	
				3.3.2.7.6	Fire escapes, metal	50	50	
				3.3.2.7.7	Balcony/Porch, wood frame	25	25	
				3.3.2.7.8	Balcony/Porch, steel frame or concrete	40	40	
				3.3.2.7.9	Balcony/Porch, wood decking	20	20	
				3.3.2.7.10	Balcony/Porch, composite decking	50	50	
				3.3.2.7.11	Railings, wood	20	20	
				3.3.2.7.12	Railings, metal	50	50	

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				3.3.2.7.13	Railings, composite	50	50	
				3.3.2.7.14	Canopy, Concrete	50	50	
				3.3.2.7.15	Canopy, Wood/Metal	40	40	
			3.3.2.8		**Exterior Doors & Entry Systems**			Need Item
				3.3.2.8.1	Unit Entry Door, Exterior, solid wood/metal clad	25	30	
				3.3.2.8.2	Common Exterior Door, aluminum and glass	30	30	
				3.3.2.8.3	Common Exterior Door, solid wood /metal clad	25	25	
				3.3.2.8.4	Storm/Screen Doors	5	10	
				3.3.2.8.5	Sliding Glass Doors	25	30	
				3.3.2.8.6	French or Atrium Doors, wood/metal clad	25	30	
				3.3.2.8.7	Automatic Entry Doors	30	30	
				3.3.2.8.8	Commercial Entry Systems	50	50	
				3.3.2.8.9	Overhead Door	30	30	
				3.3.2.8.10	Automatic Opener, overhead door	20	20	
		3.3.3			**Façades or Curtainwall**			
			3.3.3.1		**Sidewall System**			Need Item
				3.3.3.1.1	Aluminum Siding	40	40	
				3.3.3.1.2	Vinyl Siding	25	25	
				3.3.3.1.3	Cement Board Siding	45	45	
				3.3.3.1.4	Plywood/Laminated Panels	20	20	
				3.3.3.1.5	Exterior Insulation Finishing System (EIFS)	30	30	
				3.3.3.1.6	Stucco, over wire mesh/lath	50	50	
				3.3.3.1.7	Metal/Glass Curtain Wall	40	40	
				3.3.3.1.8	Precast Concrete Panel (tilt-up)	60	60	

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				3.3.3.1.9	Brick/block veneer	60	60	
				3.3.3.1.10	Stone Veneer	50	50	
				3.3.3.1.11	Glass Block	50	50	
				3.3.3.1.12	Cedar/Redwood shakes, clapboard	50	50	
				3.3.3.1.13	Pine board, clapboard	50	50	
			3.3.3.2		**Windows**			Need Item
				3.3.3.2.1	Wood, (dbl, sgl hung, casement, awning, sliders)	35	45	
				3.3.3.2.2	Wood, fixed pane, picture	40	45	
				3.3.3.2.3	Aluminum	35	40	
				3.3.3.2.4	Vinyl	30	30	
				3.3.3.2.5	Vinyl/Alum Clad Wood	50	50	
				3.3.3.2.6	Storm/Screen Windows	7	15	
		3.3.4			**Roofing and Roof Drainage**			
			3.3.4.1		**Sloped Roofs**			Need Item
				3.3.4.1.1	Asphalt Shingle	20	20	
				3.3.4.1.2	Metal	50	50	
				3.3.4.1.3	Slate shingle	75	75	
				3.3.4.1.4	Clay/cementitious barrel tile	60	60	
				3.3.4.1.5	Wood Shingle, Cedar Shakes/Shingles	25	25	
			3.3.4.2		**Low Slope/Flat Roofs**			Need Item
				3.3.4.2.1	Low slope-Built-up Roof, with gravel finish	20	20	
				3.3.4.2.2	Low slope-Built-up Roof, no mineral or gravel finish	10	10	
				3.3.4.2.3	Low slope-Adhered rubber membrane, (EPDM)	15	15	
				3.3.4.2.4	Low slope-Thermoplastic membrane, (TPO, vinyl)	15	15	

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				3.3.4.2.5	Low slope-Rubberized/elastomeric white/cool roof	15	15	
			3.3.4.3		**Roof Drainage, Trim & Accessories**			Need Item
				3.3.4.3.1	Gutters/Downspouts, aluminum	20	20	
				3.3.4.3.2	Gutters/Downspouts, copper	50	50	
				3.3.4.3.3	Low slope-roof drains, scuppers	30	30	
				3.3.4.3.4	Soffits, Wood, Vinyl, Metal	20	20	
				3.3.4.3.5	Fascia, Wood, Vinyl	20	20	
				3.3.4.3.6	Roof Hatch	30	30	
				3.3.4.3.7	Service Door	30	30	
				3.3.4.3.8	Roof Skylight	30	30	
	3.4				**Mech.-Elect.-Plumbing**			Need Category
		3.4.1			**Plumbing**			
			3.4.1.1		**Water Supply and Waste Piping**			Need Item
				3.4.1.1.1	PVC/CPVC pipe, supply and waste	75	75	
				3.4.1.1.2	Copper/brass hard pipe, supply	75	75	
				3.4.1.1.3	Copper Tube, supply	50	50	
				3.4.1.1.4	Galvanized pipe, supply	40	40	
				3.4.1.1.5	Cast iron sanitary waste	75	75	
				3.4.1.1.6	Domestic Cold Water Pumps	20	20	
				3.4.1.1.7	Sewage Ejectors	50	50	
				3.4.1.1.8	Commercial Sump Pump	20	20	
				3.4.1.1.9	Residential Sump Pump	15	15	
				3.4.1.1.10	Water Softener/Filtration	15	15	
			3.4.1.2		**Domestic Water Heating**			Need Item

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				3.4.1.2.1	DHW circulating pumps	15	15	
				3.4.1.2.2	DHW storage tanks	15	15	
				3.4.1.2.3	Exchanger, in tank or boiler	15	15	
				3.4.1.2.4	External tankless heater, gas or electric	20	20	
				3.4.1.2.5	Solar hot water	20	20	
				3.4.1.2.6	Residential hot water heater, gas or electric	12	15	
				3.4.1.2.7	Flue, gas water heaters	35	35	
				3.4.1.2.8	Boilers, Oil Fired, Sectional	25	25	
				3.4.1.2.9	Boilers, Gas Fired, Sectional	25	25	
				3.4.1.2.10	Boilers, Oil/ Gas/ Dual Fuel, Low MBH	30	30	
				3.4.1.2.11	Boilers, Oil/ Gas/ Dual Fuel, High MBH	40	40	
				3.4.1.2.12	Boilers, Gas Fired Atmospheric	25	25	
				3.4.1.2.13	Boilers, Electric	20	20	
				3.4.1.2.14	Boiler Blowdown and Water Treatment	25	25	
				3.4.1.2.15	Boiler Room Pipe Insulation	25	25	
				3.4.1.2.16	Boiler Room Piping	50	50	
				3.4.1.2.17	Boiler Room Valves	25	25	
				3.4.1.2.18	Boiler Temperature Controls	15	15	
				3.4.1.2.19	Heat Exchanger	35	35	
			3.4.1.3		**Fixtures**			Need Item
				3.4.1.3.1	Faucets & valves	15	20	
				3.4.1.3.2	Bath tubs & sinks, cast iron	75	75	
				3.4.1.3.3	Bubs tubs & sinks, enameled or stainless steel, fiberglass	40	40	
				3.4.1.3.4	Bath tubs & sinks, porcelain	50	50	

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				3.4.1.3.5	Toilets/bidets/urinals	40	40	
				3.4.1.3.6	Flush valves	10	15	
				3.4.1.3.7	Tub/shower units or integrated assemblies	30	30	
		3.4.2			**Centralized HVAC Systems**			
			3.4.2.1		**Centralized Heating/Cooling Equipment**			Need Item
				3.4.2.1.1	Boilers, Oil Fired, Sectional - Centralized	25	25	
				3.4.2.1.2	Boilers, Gas Fired, Sectional - Centralized	25	25	
				3.4.2.1.3	Boilers, Oil/ Gas/ Dual Fuel, Low MBH - Centralized	30	30	
				3.4.2.1.4	Boilers, Oil/ Gas/ Dual Fuel, High MBH - Centralized	40	40	
				3.4.2.1.5	Boilers, Gas Fired Atmospheric - Centralized	25	25	
				3.4.2.1.6	Boilers, Electric - Centralized	20	20	
				3.4.2.1.7	Boiler Blowdown and Water Treatment - Centralized	25	25	
				3.4.2.1.8	Boiler Room Pipe Insulation - Centralized	25	25	
				3.4.2.1.9	Boiler Room Piping - Centralized	50	50	
				3.4.2.1.10	Boiler Room Valves - Centralized	25	25	
				3.4.2.1.11	Boiler Temperature Controls - Centralized	15	15	
				3.4.2.1.12	Heat Exchanger - Centralized	35	35	
				3.4.2.1.13	Combustion Air, Duct with Fixed Louvers	30	30	
				3.4.2.1.14	Combustion Air, Motor Louvers and Duct	25	25	
				3.4.2.1.15	Combustion Waste Flue	40	40	
				3.4.2.1.16	Cooling tower	25	25	
				3.4.2.1.17	Chilling plant	20	20	
				3.4.2.1.18	Steam supply station	50	50	
				3.4.2.1.19	Free standing chimney	50	50	

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			3.4.2.2		**Centralized Heat/Air/Fuel Distribution**			Need Item
				3.4.2.2.1	Fuel oil/propane storage tanks	40	40	
				3.4.2.2.2	Remediate/remove abandoned tanks/fuel lines	100	100	
				3.4.2.2.3	Fuel transfer system	25	25	
				3.4.2.2.4	Gas/oil distribution lines	50	50	
				3.4.2.2.5	Gas meter	40	40	
				3.4.2.2.6	2 pipe/4 pipe hydronic distribution-above grade	50	50	
				3.4.2.2.7	2 pipe/4 pipe hydronic distribution-in ground	25	25	
				3.4.2.2.8	Hydronic/Water Circulating Pumps	20	20	
				3.4.2.2.9	Hydronic/Water Controller	20	20	
				3.4.2.2.10	Radiation-steam/hydronic (baseboard or freestanding radiator)	50	50	
				3.4.2.2.11	Fan Coil Unit, Hydronic	30	30	
				3.4.2.2.12	Central exhaust fans/blowers	20	20	
		3.4.3			**Decentralized and Split HVAC Systems**			
			3.4.3.1		**Dwelling/Common Area HVAC Equipment**			Need Item
				3.4.3.1.1	Electric heat pump, condenser, pad or rooftop	15	15	
				3.4.3.1.2	Electric AC condenser, pad or rooftop	15	15	
				3.4.3.1.3	Electric furnace/air handler	20	20	
				3.4.3.1.4	Gas furnace/air handler	20	20	
				3.4.3.1.5	Hydronic heat/electric AC air handler	25	25	
				3.4.3.1.6	Hydronic feed electric heat pump/air handler	25	25	
				3.4.3.1.7	Wall mounted electric/gas heater	25	25	
				3.4.3.1.8	Electric baseboard heater	30	30	
				3.4.3.1.9	PTAC Thruwall (packaged terminal air conditioning)	15	15	

CNA e-Tool Estimated Useful Life Table

This table lists the recommended average useful life of the categories of assets that should be considered in a Capital Needs Assessment. If an observed item is not listed, it should be assigned to the most closely related category. The Standard EUL for a component type is fixed. The user may estimate the Remaining Useful Life of any existing component independent of the Standard EUL by entering the assessed RUL in the appropriate space on the Components tab of the Excel Assessment Tool and by justifying the assessed RUL in the adjacent comment box. When identifying an alternative toan existing component the user may specify an EUL for the alternative which differs from the Standard EUL for that component type but must enter an explanation in the Notes space on the Alternatives tab of the Tool. Each specific component assessed is given a free-form description by the needs assessor and this description is the "component ID" or component name which may be more specific than the "Component Type", e.g (a particular kind, size, etc of refrigerator, not just any refrigerator.)

Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.4.3.1.10	Window or thru-wall air conditioners	10	10	
				3.4.3.1.11	Package HVAC roof top	15	15	
				3.4.3.1.12	Air filtration/humidity control devices (humidifiers, HRV's)	20	20	
				3.4.3.1.13	Duct, rigid sheet metal, insulated if not in conditioned space	35	35	
				3.4.3.1.14	Duct, flexible, insulated	20	20	
				3.4.3.1.15	Duct, sealing-mastic or UL 181A or 181B tape.	20	20	
				3.4.3.1.16	Diffusers, registers	20	20	
				3.4.3.1.17	Fireplace, masonry & firebrick, masonry chimney	75	75	
				3.4.3.1.18	Fireplace, factory assembled	35	35	
				3.4.3.1.19	Fireplace insert, stove	50	50	
				3.4.3.1.20	Chimneys, metal, and chimney covers	35	35	
			3.4.3.2		**HVAC Controls**			Need Item
				3.4.3.2.1	Dwelling/common area thermostat	15	20	
				3.4.3.2.2	Heat sensors	15	15	
				3.4.3.2.3	Outdoor temperature sensor	10	10	
		3.4.4			**Electrical**			
			3.4.4.1		**Electric Service & Metering**			Need Item
				3.4.4.1.1	Building service panel	50	50	
				3.4.4.1.2	Building meter	40	40	
				3.4.4.1.3	Tenant meters, meter panel	40	40	
			3.4.4.2		**Electrical Distribution**			Need Item
				3.4.4.2.1	Tenant electrical panel	50	50	
				3.4.4.2.2	Unit/building wiring	50	50	
			3.4.4.3		**Electric Lighting & Fixtures**			Need Item

CNA e-Tool Estimated Useful Life Table

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.4.4.3.1	Switches & outlets	35	35	
				3.4.4.3.2	Lighting - exterior entry	15	20	
				3.4.4.3.3	Lighting- interior common space	25	30	
				3.4.4.3.4	Lighting - Tenant Spaces	20	25	
				3.4.4.3.5	Door bells, chimes	20	25	
			3.4.4.4		**Telecommunications Equipment**			Need Item
				3.4.4.4.1	Satellite dishes/antennae	20	20	
				3.4.4.4.2	Telecom panels & controls	20	20	
				3.4.4.4.3	Telecom cabling & outlets	20	20	
	3.5				**Vertical Transportation**			Need Category
		3.5.1			**Elevators/Escalators**			Need Item
			3.5.1.1		Electrical switchgear	50	50	
			3.5.1.2		Electrical wiring	30	30	
			3.5.1.3		Elevator controller, call, dispatch, emergency	10	20	
			3.5.1.4		Elevator cab, interior finish	10	20	
			3.5.1.5		Elevator cab, frame	35	50	
			3.5.1.6		Elevator, machinery	20	30	
			3.5.1.7		Elevator, shaftway doors	10	20	
			3.5.1.8		Elevator, shaftway hoist rails, cables, traveling	20	25	
			3.5.1.9		Elevator, shaftway hydraulic piston and leveling	20	25	
			3.5.1.10		Escalators	50	50	
	3.6				**Life Safety/Fire Protection**			Need Category
		3.6.1			**Sprinklers and Standpipes**			Need Item
			3.6.1.1		Building fire suppression sprinklers, standpipes	50	50	

CNA e-Tool Estimated Useful Life Table

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
			3.6.1.2		Fire pumps	20	20	
			3.6.1.3		Fire hose stations	50	50	
			3.6.1.4		Fire extinguishers	10	15	
		3.6.2			**Alarm, Security & Emergency Systems**			Need Item
			3.6.2.1		Tenant space alarm systems	10	15	
			3.6.2.2		Residential smoke detectors	5	7	
			3.6.2.3		Call station	10	15	
			3.6.2.4		Emergency/auxiliary generator	25	25	
			3.6.2.5		Emergency/auxiliary fuel storage tank	25	25	
			3.6.2.6		Emergency lights, illuminated signs	5	10	
			3.6.2.7		Smoke and fire detection system, central panel	15	15	
			3.6.2.8		Buzzer/intercom, central panel	20	20	
			3.6.2.9		Tenant buzzer / intercom /secured entry system	20	20	
		3.6.3			**Other Systems**			Need Item
			3.6.3.1		Pneumatic Lines and Controls	30	30	
			3.6.3.2		Auto-securing doors/entries/lock down	30	30	
	3.7				**Interior Elements**			
		3.7.1			**Interiors-Common Areas**			Need Category
			3.7.1.1		**Finished walls, ceilings, floors**			Need Item
				3.7.1.1.1	Drywall - Common	35	40	
				3.7.1.1.2	Plaster - Common	50	50	
				3.7.1.1.3	Paints, stains, clear finishes, interior - Common	15	20	
				3.7.1.1.4	Wallpapers - Common	15	20	
				3.7.1.1.5	Wall tile, ceramic, glass, natural stone - Common	35	50	

CNA e-Tool Estimated Useful Life Table

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.7.1.1.6	Floor tile, ceramic, natural stone - Common	40	50	
				3.7.1.1.7	Concrete/Masonry/Terrazzo - Common	75	75	
				3.7.1.1.8	Hardwood floor (3/4" strip or parquet) - Common	50	50	
				3.7.1.1.9	Wood floor, laminated/veneered - Common	20	25	
				3.7.1.1.10	Resilient tile or sheet floor (vinyl, linoleum) - Common	15	20	
				3.7.1.1.11	Carpet - Common	6	10	
				3.7.1.1.12	Acoustic tile/drop ceiling - Common	15	20	
			3.7.1.2		**Millwork (doors, trim, cabinets, tops)**			Need Item
				3.7.1.2.1	Interior, hollow core doors - Common	20	25	
				3.7.1.2.2	Interior doors, solid core, wood, metal clad, fire rated	30	35	
				3.7.1.2.3	Door trim - Common	20	30	
				3.7.1.2.4	Wall trim (base, chair rail, crown moldings) - Common	30	35	
				3.7.1.2.5	Passage & lock sets - Common	15	20	
				3.7.1.2.6	Bifold & sliding doors - Common	15	20	
				3.7.1.2.7	Cabinets & vanities - Common	20	25	
				3.7.1.2.8	Tops, granite, natural stone, engineered stone - Common	50	50	
				3.7.1.2.9	Tops, solid surface, stainless steel - Common	40	50	
				3.7.1.2.10	Tops, plastic laminates, wood - Common	15	25	
				3.7.1.2.11	Vanity tops, cultured marble, molded acrylic, fiber glass - Common	25	35	
			3.7.1.3		**Appliances**			Need Item
				3.7.1.3.1	Refrigerator/freezer - Common	15	15	
				3.7.1.3.2	Range, cook top, wall oven - Common	20	25	
				3.7.1.3.3	Range hood - Common	20	25	
				3.7.1.3.4	Microwave - Common	10	10	

CNA e-Tool Estimated Useful Life Table

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.7.1.3.5	Disposal (food waste) - Common	7	10	
				3.7.1.3.6	Compactors (interior, residential grade) - Common	7	10	
				3.7.1.3.7	Dishwasher - Common	10	15	
				3.7.1.3.8	Clothes washer/dryer - Common	10	15	
			3.7.1.4		**Specialties**			Need Item
				3.7.1.4.1	Interior Mail Facility	20	25	
				3.7.1.4.2	Common area bath accessories (towel bars, grab bars, toilet stalls, etc.)	7	12	
				3.7.1.4.3	Mirrors & medicine cabinets - Common	20	25	
				3.7.1.4.4	Closet/storage specialties, shelving - Common	20	25	
				3.7.1.4.5	Common area interior stairs	50	50	
				3.7.1.4.6	Common area railings	15	25	
				3.7.1.4.7	Bath/kitchen vent/exhaust fans - Common	15	15	
				3.7.1.4.8	Ceiling fans - Common	15	15	
				3.7.1.4.9	Window treatments, drapery rods, shades, blinds, etc. - Common	15	25	
				3.7.1.4.10	Indoor recreation and fitness equipment	10	15	
				3.7.1.4.11	Entertainment centers, theatre projection and seating	15	25	
		3.7.2			**Interiors-Dwelling Units**			Need Category
			3.7.2.1		**Finished walls, ceilings, floors**			Need Item
				3.7.2.1.1	Drywall	35	40	
				3.7.2.1.2	Plaster	50	50	
				3.7.2.1.3	Paints, stains, clear finishes, interior	10	15	
				3.7.2.1.4	Wallpapers	10	15	
				3.7.2.1.5	Wall tile, ceramic, glass, natural stone	30	40	
				3.7.2.1.6	Floor tile, ceramic, natural stone	40	50	

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.7.2.1.7	Concrete/Masonry/Terrazzo	75	75	
				3.7.2.1.8	Hardwood floor (3/4" strip or parquet)	50	50	
				3.7.2.1.9	Wood floor, laminated/veneered	15	20	
				3.7.2.1.10	Resilient tile or sheet floor (vinyl, linoleum)	15	20	
				3.7.2.1.11	Carpet	6	10	
				3.7.2.1.12	Acoustic tile/drop ceiling	15	20	
			3.7.2.2		**Millwork (doors, trim, cabinets, tops)**			Need Item
				3.7.2.2.1	Interior, hollow core doors	20	25	
				3.7.2.2.2	Interior doors, solid core, wood, metal clad	30	35	
				3.7.2.2.3	Door trim	20	30	
				3.7.2.2.4	Wall trim (base, chair rail, crown moldings)	25	35	
				3.7.2.2.5	Passage & lock sets	12	20	
				3.7.2.2.6	Bifold & sliding doors	12	20	
				3.7.2.2.7	Cabinets & vanities	20	25	
				3.7.2.2.8	Tops, granite, natural stone, engineered stone	50	50	
				3.7.2.2.9	Tops, solid surface, stainless steel	40	50	
				3.7.2.2.10	Tops, plastic laminates, wood	15	25	
				3.7.2.2.11	Vanity tops, cultured marble, molded acrylic, fiber glass	25	35	
			3.7.2.3		**Appliances**			Need Item
				3.7.2.3.1	Refrigerator/freezer	12	15	
				3.7.2.3.2	Range, cook top, wall oven	15	25	
				3.7.2.3.3	Range hood	15	25	
				3.7.2.3.4	Microwave	10	10	
				3.7.2.3.5	Disposal (food waste)	7	10	

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.7.2.3.6	Compactors (interior, residential grade)	7	10	
				3.7.2.3.7	Dishwasher	10	15	
				3.7.2.3.8	Clothes washer/dryer	10	15	
			3.7.2.4		**Specialties**			Need Item
				3.7.2.4.1	Bath accessories (towel bars, grab bars, etc.)	7	12	
				3.7.2.4.2	Mirrors & medicine cabinets	15	25	
				3.7.2.4.3	Closet/storage specialties, shelving	15	25	
				3.7.2.4.4	Interior stairs	50	50	
				3.7.2.4.5	Stair and loft railings	20	25	
				3.7.2.4.6	Bath/kitchen vent/exhaust fans	15	15	
				3.7.2.4.7	Ceiling fans	10	15	
				3.7.2.4.8	Window treatments, drapery rods, shades, blinds, etc.	10	20	
4					**Additional Considerations**			Need Category
	4.1				**Environmental Items (not elsewhere defined)**			Need Item
		4.1.1			Environmental remediation alarms	5	5	
		4.1.2			Environmental remediation pumps & equipment	5	5	
		4.1.3			Mold-treat-remediate	100	100	
		4.1.4			Pest Control/Integrated Pest Management Plan	1	1	
	4.2				**Lead based paint (LBP), asbestos**			Need Item
		4.2.1			LBP inspection	100	100	
		4.2.2			**Lead based paint abatement**			
			4.2.2.1		LBP encapsulation (abatement)	20	20	
			4.2.2.2		LBP removal	100	100	
		4.2.3			**Lead based paint interim controls**			

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
			4.2.3.1		LBP hazard interim control	6	6	
			4.2.3.2		LBP Encapsulation (interim control)	6	6	
		4.2.4			**Asbestos**			
			4.2.4.1		Asbestos encapsulation (abatement)	10	10	
			4.2.4.2		Asbestos Removal	100	100	
	4.3				**Commercial Tenant Improvements**			Need Item
		4.3.1			Owner provided item(s) (specify)	5	5	
		4.3.2			Owner provided $ allowance (specify)	5	5	

Attachment E

CAPITAL NEEDS ASSESSMENT REPORT

	GENERAL NOTES:
A	Reviews of preliminary Capital Needs Assessment (CNA) reports should be based on: 1. The Statement of Work referenced in the written Agreement with the Provider. 2. Rural Development case file, such as property records and inspection reports. 3. Latest available cost data published by RS Means. 4. Rural Development guidelines. 5. Fannie Mae guidelines.
B	The reviewer should give special attention to the line items with the highest total costs.
C	The reviewer should be careful to note whether all systems or components that should be included have indeed been included in the report.
D	If all review items are answered "YES", the Provider should be advised to finalize the CNA with no or only a few minor changes.
E	Any review items answered "NO" should be explained in writing to the Provider in sufficient detail for clarity and appropriate actions taken.
F	The final report should be reviewed to verify that any minor changes and items answered with a "NO" in the first review have been satisfactorily addressed or corrected.
G	When item "D" is completed, the CNA Reviewer should advise the appropriate Rural Development official that the CNA should be accepted as the final report.

	REVIEW ITEMS:	PRIMARY BASIS *	YES	NO
1	Is the report in the required format?	1		
2	Does the report fully describe the property?	1		
3	Are photographs provided to generally describe the property's buildings and other facilities?	1		
4	Does the report identify who performed the on-site inspection?	1		
5	Does the report identify who prepared the report?	1		
6	Was an adequate number of dwelling units inspected?	1		
7	Is the length of the study period adequate?	1		
8	Is the list of property components complete?	5		
9	Is the list divided into the appropriate major system groups?	1		
10	Are the existing property components accurately described?	2		
11	Are the expected useful lifetimes of the components reasonably accurate?	5		
12	Are the reported ages of the components reasonably accurate?	2		
13	Is the current condition of each component accurately noted?	2		
14	Are the effective remaining lifetimes of components correctly calculated?	5		
15	Are proposed corrective actions appropriately identified?	1		
16	Are critical immediate repairs appropriately identified?	1		
17	Are items being replaced with "in-kind" materials when appropriate?	1		

18	Are the component quantities reasonably accurate?	2		
19	Are photographs provided to describe deficiencies?	1		
	REVIEW ITEMS:	PRIMARY BASIS *	YES	NO
20	Does the report adequately address environmental hazards and other relevant environmental issues?	1		
21	Does the report adequately address accessibility issues?	1		
22	Does the report address any existing accessibility transition plans and their adequacy?	1		
23	Are photographs provided to describe existing kitchens and bathrooms in the fully accessible units?	1		
24	Are the proposed years for repair or replacement reasonable?	5		
25	Are the repair/replacement durations appropriate and reasonable?	5		
26	Are the detailed estimated repair and replacement costs calculated in current dollars?	1		
27	Are the estimated repair and replacement costs reasonable?	3		
28	Are the sources for cost data explained in the report?	1		
29	Is the projected inflation rate appropriate?	1		
30	Have the costs in current and inflated dollars been totaled for each year?	1		
31	Have the costs for each year and grand totals been correctly calculated?	5		
32	Does the data in the report narrative and summary charts match?	5		
33	Does the report exclude routine maintenance, operation, and low cost expenses?	4		
34	Does the report include all deficiencies known to Rural Development?	2		
35	Does the report include all other relevant data or information known to Rural Development?	2		

Attachment F

SAMPLE CAPITAL NEEDS ASSESSMENT REVIEW REPORT
[Review of Preliminary/Final CNA Report]

Property Name and Location:

CNA Provider:

CNA Reviewer:

Date of Preliminary / Final CNA Report:

Date of Review:

Reviewer's Comments:

-
-
-

Purpose / Intended Use / Intended User of Review:

- The purpose of this CNA review assignment is to render an opinion as to the completeness, adequacy, relevance, appropriateness, and reasonableness of the workunder review relative to the requirements of Rural Development.
- The intended use of the review report is to help meet Rural Development loan underwriting requirements for permanent financing under the Section 515 MPRdemonstration program. The review is not intended for any other use.
- The intended user of the review is only Rural Development.

Scope of Review:

The scope of the CNA review process involved the following procedures:

- The review included a reading/analysis of the following components from the CNAreport and the additional due diligence noted. The contents from the CNA work filewere not reviewed. The components that were reviewed are:
  - Date of the Report
  - Narrative
  - Description of Improvements
  - Photographs of the Subject Property

- Capital Needs Summary
- Systems and Conditions Forms
- Critical Needs Forms
- Capital Needs over the Term Forms

- This is a desk review, and the reviewer has not inspected the subject Property.
- The reviewer has/has not confirmed data contained within the CNA report.

Review Conclusion:

In the reviewer's opinion, given the scope of the work under review:

- The subject CNA *meets/does not meet* the reporting requirements ofRural Development.
- The data *appears/does not ap*pear to be adequate and relevant.
- The CNA methods and techniques used *are/are not* appropriate.
- The analyses, opinions, and conclusions *are/are not* appropriate and reasonable.
- This is a review report on a *preliminary/final* CNA report. The *preliminary/final* CNA report is subject to review discussions between Rural Development and the CNA Recipient of the subject Property and between the CNA Recipient and the CNAProvider. The CNA Recipient is the CNA Provider's client, and only the client can instruct the CNA Provider to revise the *preliminary/final* report. To be acceptable to Rural Development, the final CNA report should address any errors or deficiencies identified in the *Reviewer's Comments* section of this review report.

CNA PROVIDER TO INSERT IN MEMO FORMAT THEIR WRITTEN REPORT AND THEN HAVE SIGNATURE PAGE BELOW FOR REVIEWER AND UNDERWRITER/LOAN OFFICIAL TO SIGN.

Signed by:

(CNA Reviewer)	(Underwriter / Loan Official)

(Please note: for the CNA Review Report of the preliminary CNA, only the CNA Reviewer needs tosign the report on behalf of Rural Development. For the CNA Review Report of the final CNA, the CNA Reviewer and the Underwriter/Loan Official must sign the report. This is to encourage discussion between the Agencies parties, so that both the CNA Reviewer and the Underwriter are involved in the process of accepting the final CNA for the Property.)

Attachment G

Capital Needs Assessment Guidance to the Reviewer

AGREEMENT TO PROVIDE CAPITAL NEEDS ASSESSMENT

	GENERAL NOTES:
A	Reviews of proposed agreements for Capital Needs Assessments (CNA) should be based on Rural Development and other Rural Development -recognized guidelines.
B	If all review items are answered "NO", the reviewer should advise the appropriate Rural Development official that the Agreement should be accepted.
C	Any review items answered with a "YES" should be explained in writing to the proposed Provider in sufficient detail for clarity and appropriate actions to be taken.
D	If all review items answered with a "YES" are satisfactorily addressed or corrected by the proposed Provider, the reviewer should advise the appropriate Rural Development official that the Agreement should be accepted.
E	If any review items answered with a "YES" cannot be satisfactorily addressed or corrected by the proposed CNA Provider, the reviewer should advise the appropriate Rural Development official that the Agreement should NOT be accepted.

	REVIEW ITEMS:	YES	NO
1	Does the proposed Agreement omit Rural Development's Addendum to CNA Contract?		
2	Does the proposed Agreement omit Rural Development's CNA Statement of Work?		
3	Is there any evidence or indication that the proposed CNA Provider has an identity of interest, as defined in 7 CFR part 3560?		
4	Is there any evidence or indication that the proposed CNA Provider is NOT trained in evaluating site and building systems, and health, safety, physical, structural, environmental and accessibility conditions?		
5	Is there any evidence or indication that the proposed CNA Provider is NOT trained in estimating costs for repairing, replacing, and improving site and building components?		
6	Is there any evidence or indication that the proposed CNA Provider is NOT experienced in providing CNAs for MFH properties that are similar to those in the Section 515 Program?		
7	Is there any evidence or indication that the proposed CNA Provider is NOT knowledgeable of site, building and accessibility codes and standards?		
8	Is there any evidence or indication that the proposed CNA Provider is debarred or suspended from participating in Federally-assisted programs?		
9	Does the proposed fee appear to be unreasonable?		

CAPITAL NEEDS ASSESSMENT REPORT

	GENERAL NOTES:
A	Reviews of preliminary Capital Needs Assessment (CNA) reports should be based on: 1. The Statement of Work referenced in the written agreement with the provider 2. Rural Development case file, such as property records and inspection reports 3. Latest available cost data published by RS Means
B	The reviewer should give special attention to the line items with the highest total costs.
C	The reviewer should be careful to note whether all systems or components that should be included have indeed been included in the report.
D	If all review items are answered "YES", the Provider should be advised to finalize the CNA with no or only a few minor changes.
E	Any review items answered with a "NO" should be explained in writing to the Provider in sufficient detail for clarity and appropriate actions taken.
F	The final report should be reviewed to verify that any minor changes and items answered with a "NO" in the first review have been satisfactorily addressed or corrected.
G	When item "D" is completed, the CNA Reviewer should advise the appropriate Rural Development official that the CNA should be accepted as the final report.

	REVIEW ITEMS:	**PRIMARY BASIS ***	**YES**	**NO**
1	Is the report in the required format?	1		
2	Does the report fully describe the property?	1		
3	Are photographs provided to generally describe the property's buildings and other facilities?	1		
4	Does the report identify who performed the on-site inspection?	1		
5	Does the report identify who prepared the report?	1		
6	Was an adequate number of dwelling units inspected?	1		
7	Is the length of the study period adequate?	1		
8	Is the list of property components complete?	5		
9	Is the list divided into the appropriate major system groups?	1		
10	Are the existing property components accurately described?	2		
11	Are the expected useful lifetimes of the components reasonably accurate?	5		
12	Are the reported ages of the components reasonably accurate?	2		
13	Is the current condition of each component accurately noted?	2		
14	Are the effective remaining lifetimes of components correctly calculated?	5		
15	Are proposed corrective actions appropriately identified?	1		
16	Are critical immediate repairs appropriately identified?	1		
17	Are items being replaced with "in-kind" materials when appropriate?	1		

18	Are the component quantities reasonably accurate?	2		
19	Are photographs provided to describe deficiencies?	1		
	REVIEW ITEMS:	**PRIMARY BASIS ***	**YES**	**NO**
20	Does the report adequately address environmental hazards and other relevant environmental issues?	1		
21	Does the report adequately address accessibility issues?	1		
22	Does the report address any existing accessibility transition plans and their adequacy?	1		
23	Are photographs provided to describe existing kitchens and bathrooms in the fully accessible units?	1		
24	Are the proposed years for repair or replacement reasonable?	5		
25	Are the repair/replacement durations appropriate and reasonable?	5		
26	Are the detailed estimated repair and replacement costs calculated in current dollars?	1		
27	Are the estimated repair and replacement costs reasonable?	3		
28	Are the sources for cost data explained in the report?	1		
29	Is the projected inflation rate appropriate?	1		
30	Have the costs in current and inflated dollars been totaled for each year?	1		
31	Have the costs for each year and grand totals been correctly calculated?	5		
32	Does the data in the report narrative and summary charts match?	5		
33	Does the report exclude routine maintenance, operation, and low-cost expenses?	4		
34	Does the report include all deficiencies known to Rural Development?	2		
35	Does the report include all other relevant data or information known to Rural Development?	2		

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022–05252 Filed 3–14–22; 8:45 am]

BILLING CODE 3410–XV–C

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that the Tennessee Advisory Committee to the Commission will hold two virtual (online) meetings on Wednesday, April 13, 2022, at 11:00 a.m.–1:00 p.m. (CT) and on Wednesday, April 27, 2022 at 11:00 a.m.–1:00 p.m. (CT). The purpose of the meetings is for the Committee to hear testimony regarding Voting Rights in the state of Tennessee.

DATES: The meetings will be held on:

Wednesday, April 13, 2022, 11:00 a.m. CT, *https://civilrights.webex.com/civilrights/j.php?MTID=m6b44009fa84fafca92fa4fb38e35cdd6*

Join via phone: 800–360–9505 USA Toll Free; Access Code: 2764 248 5508 #

Wednesday, April 27, 2022, 11:00 a.m. CT, *https://civilrights.webex.com/civilrights/j.php?MTID=m890258a2a8dff46faf2be6ca9d4e1285*

Join via phone: 800–360–9505 USA Toll Free; Access Code: 2762 495 9020#

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (434) 515–0204. Records and documents discussed during the meeting will be available for

public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, April 13, 2022 and April 27, 2022; 11:00 a.m. (CT)

1. Welcome & Roll Call
2. Panel—Voting Rights in Tennessee
3. Public Comment
4. Adjourn

Dated: March 9, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–05389 Filed 3–14–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Tennessee Advisory Committee to the Commission will convene by conference call on Wednesday, March 23, 2022, at 11:00 a.m. (CT). The purpose is to plan the Committee's upcoming briefings.

DATES: The meeting will be held on: Wednesday, March 23, 2022, 11:00 a.m. CT.

Join from the meeting link *https://civilrights.webex.com/civilrights/j.php?MTID=mfeb08f21298d47855e4eeb0398c0264b.*

Join via phone: 800–360–9505 USA Toll Free; Access Code: 2761 284 4248 #.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, March 23, 2022; 11:00 a.m. (CT)

1. Welcome & Roll Call
2. Chair's Comments
3. Briefing Planning
4. Briefing Guidelines
5. Next Steps
6. Public Comment
7. Adjourn

Dated: March 9, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–05390 Filed 3–14–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Virginia Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; revision to meeting access code.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** on Friday, March 4, 2022, concerning a briefing of the Virginia Advisory Committee. The document contained the incorrect meeting access code.

FOR FURTHER INFORMATION CONTACT: Sarah Villanueva, *svillanueva@usccr.gov,* (310) 474–7102.

Correction: In the **Federal Register** on Monday, Friday, March 4, 2022, in FR Document Number 2022–04628, second column on page 12425, correct the meeting access code to: 2760 681 1173.

Dated: March 10, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–05440 Filed 3–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–77–2021]

Foreign-Trade Zone (FTZ) 18—San Jose, California; Authorization of Production Activity; Lam Research Corporation (Wafer Fabrication Equipment, Subassemblies, and Related Parts), Fremont, Hayward, Livermore, Newark, and Tracy, California

On November 10, 2021, Lam Research Corporation submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 18F, in Fremont, Hayward, Livermore, Newark, and Tracy, California.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 66522, November 23, 2021). On March 10, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: March 10, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–05407 Filed 3–14–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–909]

Barium Chloride From India: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable March 15, 2022.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold and Harrison Tanchuck, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue

NW, Washington, DC 20230; telephone: (202) 482–1221 and (202) 482–7421, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2022, the Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of barium chloride from India.[1] Currently, the preliminary determination is due no later than April 7, 2022.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner[2] makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On March 8, 2022, the petitioner submitted a timely request that Commerce postpone the preliminary CVD determination.[3] The petitioner stated that it requests postponement ''. . . so that Petitioner's counsel can analyze and comment upon the responses of the respondent company and the Government of India to Commerce's Countervailing Duty Questionnaire.''[4] In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* June 13, 2022.[5] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: March 9, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–05427 Filed 3–14–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Barium Chloride from India: Initiation of Countervailing Duty Investigation,* 87 FR 7094 (February 8, 2022).

[2] The petitioner is Chemical Products Corporation.

[3] *See* Petitioners' Letter, ''Countervailing Duty Investigation of Barium Chloride from India: Petitioner's Request for Extension of Time for Preliminary Determination,'' dated March 8, 2022.

[4] *Id.*

[5] Postponing the preliminary determination to 130 days after initiation would place the deadline on Saturday, June 11, 2022. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of* ''*Next Business Day*'' *Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–900, C–821–830]

Granular Polytetrafluoroethylene Resin From India and the Russian Federation: Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing countervailing duty orders on granular polytetrafluoroethylene (PTFE) resin from India and the Russian Federation (Russia).

DATES: Applicable March 15, 2022.

FOR FURTHER INFORMATION CONTACT: Joshua Simonidis (India) or George Ayache (Russia), AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0608 or (202) 482–2623, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 2022, Commerce published in the **Federal Register** its affirmative final determinations in the countervailing duty investigations of granular PTFE resin from India and Russia.[1] On March 8, 2022, the ITC notified Commerce of its final affirmative determinations, pursuant to sections 705(b)(1)(A)(i) and 705(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of subsidized imports of granular PTFE resin from India and Russia, and of its determination that critical circumstances do not exist with respect to imports of granular PTFE resin from India.[2]

Scope of the Orders

The product covered by these orders is granular PTFE resin from India and Russia. For a complete description of the scope of these orders, *see* the Appendix to this notice.

Countervailing Duty Orders

On March 8, 2022, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determinations in these investigations, in which it found that an industry in the United States is materially injured by reason of subsidized imports of granular PTFE resin from India and Russia. Therefore, in accordance with section 705(c)(2) of the Act, Commerce is issuing these countervailing duty orders. Because the ITC determined that imports of granular PTFE resin from India and Russia are materially injuring a U.S. industry, unliquidated entries of such merchandise from India and Russia, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties on unliquidated entries of granular PTFE resin from India and Russia. With the exception of entries occurring after the expiration of the provisional measures period and before the publication of the

[1] *See Granular Polytetrafluoroethylene Resin from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 87 FR 3765 (January 25, 2022) (*India Final Determination*); *see also Granular Polytetrafluoroethylene Resin from the Russian Federation: Final Affirmative Countervailing Duty Determination,* 87 FR 3764 (January 25, 2022) (*Russia Final Determination*).

[2] *See* ITC Notification Letter, Investigation Nos. 701–TA–663–664 and 731–TA–1555–1556 (March 8, 2022) (ITC Notification).

ITC's final affirmative injury determinations, as further described below, countervailing duties will be assessed on unliquidated entries of granular PTFE resin from India and Russia entered, or withdrawn from warehouse, for consumption on or after July 6, 2021, the date of publication of the *Preliminary Determinations* in the **Federal Register**.[3]

Critical Circumstances

With regards to the ITC's negative critical circumstances determination on imports of granular PTFE resin from India discussed above, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of granular PTFE resin from India, entered or withdrawn from warehouse, for consumption on or after April 7, 2021 (*i.e.,* 90 days prior to the date of publication of the preliminary determination), but before July 6, 2021 (*i.e.,* the date of the publication of the preliminary determination for this investigation).

Suspension of Liquidation and Cash Deposits

In accordance with section 706 of the Act, Commerce will direct CBP to reinstitute the suspension of liquidation of granular PTFE resin from India and Russia, effective the date of publication of the ITC's notice of final determinations in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determinations in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below. These instructions suspending liquidation will remain in effect until further notice. The all-others rate applies to all producers or exporters not specifically listed below.

Country	Company	Subsidy rate (percent)
India	Gujarat Fluorochemicals Limited[4].	31.89
	All Others	31.89
Russia ..	Joint Stock Company ''HaloPolymer''[5].	2.53
	All Others	2.53

Provisional Measures

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. In the underlying investigations, Commerce published the *Preliminary Determinations* on July 6, 2021.[6] Therefore, entries of granular PTFE resin from India and Russia made on or after November 3, 2021, and prior to the date of publication of the ITC's final determination in the **Federal Register**, are not subject to the assessment of countervailing duties due to Commerce's discontinuation of the suspension of liquidation.

In accordance with section 703(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of granular PTFE resin from India and Russia entered, or withdrawn from warehouse, for consumption on or after November 3, 2021, the date on which the provisional countervailing duty measures expired, through the day preceding the date of publication of the ITC final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC final injury determinations in the **Federal Register**.

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[7] On September 27, 2021, Commerce also published the notice titled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[8] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[9]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [10]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,* the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

[3] *See Granular Polytetrafluoroethylene Resin from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 86 FR 35479 (July 6, 2021); *see also Granular Polytetrafluoroethylene Resin from the Russian Federation: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 86 FR 35476 (July 6, 2021) (collectively, *Preliminary Determinations*).

[4] Commerce found the following companies to be cross-owned with Gujarat Fluorochemicals Limited: Inox Leasing Finance Limited and Inox Wind Limited. *See India Final Determination.*

[5] Commerce found the following companies to be cross-owned with Joint Stock Company ''HaloPolymer'': Limited Liability Company ''HaloPolymer Kirovo-Chepetsk,'' Joint Stock Company ''HaloPolymer Perm,'' and URALCHEM JSC. *See Russia Final Determination.*

[6] *See Preliminary Determinations.*

[7] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[8] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[9] *Id.*

[10] This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [11] Accordingly, as stated above, the petitioners and foreign governments should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list for those orders for which they qualify as an interested party. Pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notifications to Interested Parties

This notice constitutes the countervailing duty orders with respect to granular PTFE resin from India and Russia pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: March 9, 2022.

Lisa W. Wang,

Assistance Secretary for Enforcement and Compliance.

Appendix—Scope of the Orders

The product covered by these orders is granular polytetrafluoroethylene (PTFE) resin. Granular PTFE resin is covered by the scope of these orders whether filled or unfilled, whether or not modified, and whether or not containing co-polymer, additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for granular PTFE resin is C2F4, and the Chemical Abstracts Service (CAS) Registry number is 9002–84–0.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by filling, modifying, compounding, packaging with another product, or performing any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the granular PTFE resin.

The product covered by these orders does not include dispersion or coagulated dispersion (also known as fine powder) PTFE.

PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of these orders.

Granular PTFE resin is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 3904.61.0010. Subject merchandise may also be classified under HTSUS subheading 3904.69.5000. Although the HTSUS subheadings and CAS Number are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2022–05419 Filed 3–14–22; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See Final Rule,* 86 FR at 52335.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–143]

Freight Rail Coupler Systems and Certain Components Thereof From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that freight rail coupler systems and certain components thereof (freight rail couplers) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less-than-fair value (LTFV). The period of investigation is January 1, 2021, through June 30, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 15, 2022.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on October 25, 2021.[1] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are freight rail coupler systems and certain components thereof from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] In November 2021, we received timely scope comments from two interested parties,[5]

[1] *See Freight Rail Coupler Systems and Certain Components Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 86 FR 58864 (October 25, 2021) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Freight Rail Coupler Systems and Certain Components Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[4] *See Initiation Notice,* 86 FR 58865.

[5] *See* Strato Inc. (Strato)'s Letter, ''Strato Scope Comments: Antidumping & Countervailing Duty Investigation of Freight Rail Coupler Systems and Components Thereof from the People's Republic of China,'' dated November 8, 2021; *see also* Wabtec Corporation's (Wabtec's) Letter, ''Certain Freight Rail Coupler Systems and Components Thereof from the People's Republic of China: Comment on

Continued

as well as timely rebuttal scope comments from the petitioner.[6] In February and March 2022, at our request,[7] we received additional information, as well as additional comments, from interested parties regarding merchandise under consideration attached to rail cars.[8] Because this information was submitted in close proximity to this preliminary determination, we intend to evaluate it and issue a decision regarding the scope of this investigation after this preliminary determination.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, we have preliminarily relied upon facts otherwise available, with adverse inferences (AFA) for the China-wide entity. The China-wide entity includes both companies selected for individual examination, because they failed to respond to Commerce's questionnaire, and all other exporters who responded to Commerce's quantity and value (Q&V) questionnaire, because they failed to submit a separate rate application, as instructed in the *Initiation Notice*.[9] Because no companies are eligible for a rate separate from the China-wide entity, all exporters of Chinese freight rail couplers are preliminarily found to be part of the China-wide entity. We assigned the highest margin alleged in the petition (*i.e.,* 147.11 percent) to the China-wide entity as AFA, pursuant to sections 776(a) and (b) of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,* Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation.[10] Policy Bulletin 05.1 describes this practice.[11] In this case, because no companies qualified for a separate rate, producer/exporter combination rates were not calculated for this preliminary determination.[12]

Preliminary Determination

Commerce preliminarily determines that the following estimated dumping margins exist:

Exporter/producer	Estimated dumping margin (percent)	Estimated dumping margin adjusted for export subsidy offset(s) (percent)
China-Wide Entity	147.11	116.70

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above, as follows: (1) For all Chinese exporters of subject merchandise, the cash deposit rate will be equal to the estimated dumping margin established for the China-wide entity; and (2) for all third-county exporters of subject merchandise, the cash deposit rate is also the cash deposit rate applicable to the China-wide entity. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). As discussed in the Preliminary Decision Memorandum, we made no adjustment for domestic subsidy pass-through. As further explained in the Preliminary Decision Memorandum, we made an adjustment for export subsidies found in the companion CVD investigation.[13] The adjusted rate may be found in the ''Preliminary Determination'' section chart above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average

the Proposed Scope of the Investigation,'' dated November 8, 2021.

[6] The petitioner is the Coalition of Freight Coupler Producers. *See* Petitioner's Letter, ''Freight Rail Car Coupler Systems and Certain Components Thereof from the People's Republic of China: Rebuttal Scope Comments,'' dated November 18, 2021.

[7] *See* Commerce's Letter, ''Less-Than-Fair Value Investigation of Freight Rail Coupler Systems and Certain Components Thereof from the People's Republic of China: Request for Additional Scope Comments,'' dated February 11, 2022.

[8] *See* Strato's Letter, ''Response to Scope Questions: Antidumping and Countervailing Duty Investigation of Freight Rail Coupler Systems and Certain Components Thereof from the People's Republic of China (A–570–143/C–570–144),'' dated February 22, 2022; *see also* Wabtec's Letter, ''Certain Freight Rail Coupler Systems and Components Thereof from the People's Republic of China: Additional Scope Comments'' dated February 22, 2022; *see also* Petitioner's Letter, ''Freight Rail Car Coupler Systems and Certain Components Thereof from the People's Republic of China: Petitioner's Response to Request for Scope Comments,'' dated February 22, 2022; *see also* Strato's Letter, ''Strato, Inc., Reply to Petitioners Response to Scope Questions: Antidumping and Countervailing Duty Investigation of Freight Rail Coupler Systems and Certain Components Thereof from the People's Republic of China (A–570–143/C–570–144),'' dated March 1, 2022; *see also* Wabtec's Letter, ''Certain Freight Rail Coupler Systems and Components Thereof from the People's Republic of China: Rebuttal Scope Comments,'' dated March 1, 2022; *see also* Petitioner's Letter, ''Freight Rail Car Coupler Systems and Certain Components Thereof from the People's Republic of China: Petitioner's Rebuttal Response to Strato and Wabtec's Additional Scope Comments,'' dated March 1, 2022.

[9] *See Initiation Notice,* 86 FR at 58868 (''Commerce requires that respondents from China submit a response to both the Q&V questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate-rate status'').

[10] *See Initiation Notice,* 86 FR 58868.

[11] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[12] *See* Preliminary Decision Memorandum.

[13] *See* Preliminary Decision Memorandum at 11–12.

dumping margin calculated in this preliminary determination unadjusted for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily determined that all companies are part of the China-wide entity and assigned as AFA to the China-wide entity a rate that is based solely on the margin alleged in the petition, there are no calculations to disclose.

Verification

Because the mandatory respondents in this investigation did not provide information requested by Commerce by the established deadline and Commerce preliminarily determines in accordance with section 776(b) of the Act that each of the mandatory respondents has been uncooperative, verification will not be conducted.

Public Comment

Case briefs or other written comments on non-scope matters may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[15]

All interested parties will have the opportunity to submit case and rebuttal briefs on the post-preliminary scope determination. The deadline to submit case briefs on the post-preliminary scope decision will be seven days after the signature date of the post-preliminary scope determination memorandum. Rebuttal scope briefs (which are limited to issues raised in the scope briefs) may be submitted no later than seven days after the deadline for the scope briefs. For all scope briefs and rebuttals thereto, parties must file identical documents simultaneously on the records of the ongoing AD and CVD freight rail coupler investigations. No new factual information or business proprietary information may be included in either scope briefs or rebuttal scope briefs.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: March 8, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The scope of this investigation covers freight rail car coupler systems and certain components thereof. Freight rail car coupler systems are composed of, at minimum, four main components (knuckles, coupler bodies, coupler yokes, and follower blocks, as specified below) but may also include other items (*e.g.,* coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The components covered by the investigation include: (1) E coupler bodies; (2) E/F coupler bodies; (3) F coupler bodies; (4) E yokes; (5) F yokes; (6) E knuckles; (7) F knuckles; (8) E type follower blocks; and (9) F type follower blocks, as set forth by the Association of American Railroads (AAR). The freight rail coupler components are included within the scope of the investigation when imported individually, or in some combination thereof, such as in the form of a coupler fit (a coupler body and knuckle assembled together), independent from a coupler system.

Subject freight rail car coupler systems and components are included within the scope whether finished or unfinished, whether imported individually or with other subject or non-subject components, whether assembled or unassembled, whether mounted or unmounted, or if joined with non-subject merchandise, such as other non-subject system parts or a completed rail car. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various components. When a subject coupler system or subject components are mounted on or to other non-subject merchandise, such as a rail car, only the coupler system or subject components are covered by the scope.

The finished products covered by the scope of this investigation meet or exceed the AAR specifications of M–211, ''Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler Parts'' or AAR M–215 ''Coupling Systems,'' or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject coupler systems and components, whether fully assembled, unfinished or finished, or attached to a rail car, is the country where the subject coupler components were cast or forged. Subject merchandise includes coupler components as defined above that have been further processed or further assembled, including those coupler components attached to a rail car in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various components. The inclusion, attachment, joining, or assembly of non-subject components with subject components or coupler systems either in the country of manufacture of the in-scope product or in a third country does not remove the subject

[14] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

components or coupler systems from the scope.

The coupler systems that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished rail cars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.5000 if imported as an Instrument of International Traffic. These HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–05381 Filed 3–14–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–899, A–821–829]

Granular Polytetrafluoroethylene Resin From India and the Russian Federation: Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing antidumping duty orders on granular polytetrafluoroethylene (PTFE) resin from India and the Russian Federation (Russia).

DATES: Applicable March 15, 2022.

FOR FURTHER INFORMATION CONTACT: Alexis Cherry at (202) 482–0607 (India); and Jaron Moore at (202) 482–3640 (Russia); AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 2022, Commerce published in the **Federal Register** its affirmative final determinations in the less-than-fair-value (LTFV) investigations of granular PTFE resin from India and Russia.[1] On March 8, 2022, the ITC notified Commerce of its final determinations, pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of granular PTFE resin from India and Russia, and of its determination that critical circumstances do not exist with respect to dumped imports of granular PTFE resin from India.[2]

Scope of the Orders

The product covered by these orders is granular PTFE resin from India and Russia. For a complete description of the scope of these orders, *see* the Appendix to this notice.

Antidumping Duty Orders

On March 8, 2022, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determinations in these investigations, in which it found that an industry in the United States is materially injured by reason of imports of granular PTFE resin from India and Russia.[3] Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing these antidumping duty orders. Because the ITC determined that imports of granular PTFE resin from India and Russia are materially injuring a U.S. industry, unliquidated entries of such merchandise from India and Russia, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of granular PTFE resin from India and Russia. With the exception of entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determinations, as further described below, antidumping duties will be assessed on unliquidated entries of granular PTFE resin from India and Russia entered, or withdrawn from warehouse, for consumption, on or after September 2, 2021, the date of publication of the *Preliminary Determinations* in the **Federal Register**.[4]

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of granular PTFE resin from India, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of the subject merchandise from India entered, or withdrawn from warehouse, for consumption on or after June 4, 2021 (*i.e.,* 90 days prior to the date of the publication of the *India Preliminary Determination*), but before September 2, 2021 (*i.e.,* the date of publication of the *India Preliminary Determination*).

Continuation of Suspension of Liquidation

Except as noted in the ''Provisional Measures'' section of this notice, in accordance with section 736 of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of granular PTFE resin from India and Russia. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins indicated in the tables below, adjusted by the export subsidy offset. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit

[1] *See Granular Polytetrafluoroethylene Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 87 FR 3772 (January 25, 2022); *see also Granular Polytetrafluoroethylene Resin from the Russian Federation: Final Determination of Sales at Less Than Fair Value,* 87 FR 3774 (January 25, 2022).

[2] *See* ITC Notification Letter, Investigation Nos. 701–TA–663–664 and 731–TA–1555–1556 (Final) dated March 8, 2022 (ITC Notification Letter).

[3] *Id.*

[4] *See Granular Polytetrafluoroethylene Resin from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 49299 (September 2, 2021) (*India Preliminary Determination*); and *Granular Polytetrafluoroethylene Resin from the Russian Federation: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 49297 (September 2, 2021) (*Russia Preliminary Determination*) (collectively, *Preliminary Determinations*).

equal to the rates listed below. The relevant all-others rate applies to all producers or exporters not specifically listed.

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that account for a significant proportion of exports of granular PTFE resin from India and Russia, Commerce extended the four-month period to six months in these investigations. Commerce published the *Preliminary Determinations* on September 2, 2021.[5]

The extended provisional measures period, beginning on the date of publication of the *Preliminary Determinations,* ended on February 28, 2022. Therefore, in accordance with section 733(d) of the Act and our practice,[6] Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of granular PTFE resin from India and Russia entered, or withdrawn from warehouse, for consumption after February 28, 2022, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determinations in the **Federal Register**.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

India

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Gujarat Fluorochemicals Limited	13.09	10.01
All Others	13.09	10.01

Russia

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
HaloPolymer OJSC[7]	17.99	17.36
All Others	17.99	17.36

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice titled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL—Annual Inquiry Service List.''[11]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,* the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.''[12] Accordingly, as stated above, the petitioners and foreign governments

[5] *See India Preliminary Determination* and *Russia Preliminary Determination.*

[6] *See, e.g., Certain Corrosion-Resistant Steel Products from India, India, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390, 48392 (July 25, 2016).

[7] The final rate applies to subject merchandise produced by HaloPolymer Kirovo-Chepetsk, LLC, HaloPolymer Perm, OJSC, and Limited Liability Company First Fluoroplastic Plant and exported by either Limited Liability Company Trading House HaloPolymer or HaloPolymer OJSC.

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

[11] This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Final Rule,* 86 FR 52335.

should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list for those orders for which they qualify as an interested party. Pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the antidumping duty orders with respect to granular PTFE resin from India and Russia pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These antidumping duty orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: March 9, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Orders

The product covered by these orders is granular polytetrafluoroethylene (PTFE) resin. Granular PTFE resin is covered by the scope of these orders whether filled or unfilled, whether or not modified, and whether or not containing co-polymer, additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for granular PTFE resin is C2F4, and the Chemical Abstracts Service Registry number is 9002–84–0.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by filling, modifying, compounding, packaging with another product, or performing any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the granular PTFE resin.

The product covered by these orders does not include dispersion or coagulated dispersion (also known as fine powder) PTFE.

PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of these orders.

Granular PTFE resin is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 3904.61.0010. Subject merchandise may also be classified under HTSUS subheading 3904.69.5000. Although the HTSUS subheadings and CAS Number are provided for convenience and Customs purposes, the written description of the scope is dispositive.

[FR Doc. 2022–05420 Filed 3–14–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Community Resilience Data Collections

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 16, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Nina Argent, NIST, Management Analyst, at *PRAcomments@doc.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jennifer Helgeson, Economist, NIST, 100 Bureau Drive, MS 8603, Gaithersburg, MD 20899–1710, telephone 240–672–2575, or via email to *jennifer.helgeson@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Through acts such as the National Construction Safety Team Act (NCSTA), the National Windstorm Impact Reduction Act (NWIRA) and the NIST Organic Act, among others, as well as the President's Climate Action Plan (2013), NIST conducts research and develops guidance and other related tools to promote and enhance the safety and well-being of people in the face of a hazard event. With this in mind, NIST proposes to conduct a number of data collection efforts within the topic areas of disaster and failure studies and community resilience and sustainability, including studies of specific disaster events (*e.g.,* wildfire, urban fire, structure collapse, hurricane, earthquake, tornado, and flood events), assessments of community resilience and sustainability, and evaluations of the usability and utility of NIST resilience guidance or other products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, and focus groups. NIST will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. The results of the data collected will be used to decrease negative impacts of disasters on society, and, in turn, increase community resilience within the U.S. communities. Steps will be taken to protect confidentiality of respondents in each activity covered by this request.

This notice pertains to both a revision and an extension of a previously approved submission. The NIST Engineering Laboratory utilizes this clearance to conduct research in support of topic areas of disaster and failure studies and community resilience (including studies of specific disaster events such as wildfire, urban fire, structure collapse, hurricane, earthquake, tornado, and flood events).

This type of research is directly related to a range of disasters which are unpredictable in their number during a given year. Additionally, some disasters may require multiple studies resulting in multiple collections. Therefore, in light of the recent increases in the number of severe disaster events and the growing trend of disasters occuring outside of their typical season, NIST is requesting to increase the ICR Annual Response allotment from 20,000 to 25,000 Responses; and the ICR Annual Hours allotment from 15,000 to 18,000. NIST assures that no changes will be made to any of the individual information collection requests that have been approved for use.

II. Method of Collection

NIST will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. NIST may also utilize observational techniques to collect this information.

III. Data

OMB Control Number: 0693–0078.
Form Number(s): None.
Type of Review: Regular submission. Revision.
Affected Public: Individuals or households; first responders; weather forecasters; members of the media; water, power, transportation, and communications infrastructure operators; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal government; Federal government; Standards-making bodies; Universities.
Estimated Number of Respondents: 25,000.
Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire may be 15 minutes or 2 hours to participate in an interview.
Estimated Total Annual Burden Hours: 18,000.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

NIST invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–05417 Filed 3–14–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patents External Quality Survey

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0057 (Patents External Quality Survey). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: Written comments must be submitted on or before May 16, 2022.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information:

- *Email: InformationCollection@uspto.gov.* Include '0651–0057 comment' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to David Fitzpatrick, Management Analyst, Office of Patent Quality Assurance, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–0525; or by email at *David.Fitzpatrick@uspto.gov,* with ''0651–0057 comment'' in the subject line. Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

This United States Patent and Trademark Office (USPTO) Quality Survey is an instrument designed to measure opinions about the services that USPTO provides its patent application customers. The results from this voluntary survey will assist USPTO in guiding improvements and enhancements in the future. The USPTO conducts the Patents External Quality Survey as part of its quality improvement efforts under E.O. 14058, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government* (Dec. 13, 2021). This survey narrows the focus of customer satisfaction to examination quality and uses a longitudinal, rotating panel design to assess changes in customer perceptions and to identify key areas for examiner training and opportunities for improvement. The USPTO surveys patent agents, attorneys, and other individuals from large domestic corporations (including those with 500+ employees), small and medium-size businesses, independent inventors, and universities and other non-profit research organizations. This survey does not include foreign entities.

The USPTO random sample used in this survey is drawn from the Patent Application and Location Management (PALM) database. The sample population is drawn from the top filing firms and entities that have filed more than 5 patent applications in a 12-month period. This ongoing survey is generally conducted twice a year. USPTO uses a rotating panel design where participants will take the survey twice in back-to-back survey periods. Half the participants in each survey period are new, completing the survey for the first time, and half are returning to complete the survey for a second time. This design allows a precise measurement of changes in customer experience over time.

The Patents External Quality Survey is primarily a web-based survey, although respondents can also complete the survey via paper and mail if they prefer. The content of both versions is identical. Potential respondents are sent either an email or mailed pre-survey letter, depending on noted preferences for contact. At the beginning of each survey period, respondents are provided instructions for accessing and completing the survey electronically. After a specified response period, a survey packet containing the

questionnaire, a separate cover letter prepared by the Deputy Commissioner for Patents, and a postage-paid, pre-addressed return envelope are mailed to all sample members that have not yet submitted a response. Sampled members receiving a paper survey can still complete the survey electronically if they prefer. Reminder/thank you postcards and telephone calls are used to encourage response from sample members.

Method of Collection

The survey may be submitted electronically or in paper form via postal mail.

II. Data

OMB Control Number: 0651–0057.
Form(s):
• PTO/2325 (Patents External Quality Survey).
Type of Review: Extension and revision of a currently approved information collection.
Affected Public: Private sector.
Respondent's Obligation: Voluntary.
Estimated Number of Annual Respondents: 1,875 respondents.

Estimated Number of Annual Responses: 3,100 responses.

Estimated Time per Response: The USPTO estimates that it will take the public between 2 minutes (0.03 hours) and 10 minutes (.17 hours) to complete a response in this information collection. This includes the time to gather the necessary information, answer the survey prompts, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 444 hours.

Estimated Total Annual Respondent Hourly Cost Burden: $193,140.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [1] (f)	Estimated annual respondent cost burden (e) × (f) = (g)
1	Patents External Quality Survey (One survey within a single year).	1,250	1	1,250	0.17 (10 minutes)	213	$435	$92,655
2	Patents External Quality Survey (Two surveys within same year).	625	2	1,250	0.17 (10 minutes)	213	435	92,655
3	Non-Response Follow-up Survey Card.	Same respondents as item 1 and 2.	1	600	0.03 (2 minutes) ...	18	435	7,830
	Total	1,875	.....	3,100	.....	444	.....	193,140

[1] 2021 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg F–27. The USPTO uses the average billing rate for intellectual property attorneys in private firms which is $435 per hour. (*https://www.aipla.org/home/news-publications/economic-survey*).

Estimated Total Annual Respondent Non-hourly Cost Burden: $0. There are no capital start-up, maintenance costs, recordkeeping costs, filing fees, or postage costs associated with this information collection. The USPTO covers the costs of all survey materials and provides postage-paid, pre-addressed return envelopes for the surveys that are returned by mail.

III. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2022–05472 Filed 3–14–22; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2021–HQ–0015]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-*

alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exchange Employee Travel Files; OMB Control Number 0702–0131.

Type of Request: Revision.

Number of Respondents: 250.

Responses per Respondent: 1.

Annual Responses: 250.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 125.

Needs and Uses: This information collection is required to process all official Continental United States and Outside the Continental United States Exchange Permanent Change of Station requests for Exchange employees and their dependents/family members. The data collected assists the Exchange Human Resources Travel personnel in determining eligibility of the employee and/or dependents to travel, obtain passports, visas, and authorizing any travel expense reimbursement.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: March 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2022–05435 Filed 3–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2021–HQ–0018]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Army Sex Offender Information; Department of the Army Form 190–45–SG (Army Law Enforcement Reporting and Tracking System); OMB Control Number 0702–0128.

Type of Request: Revision.

Number of Respondents: 120.

Responses per Respondent: 1.

Annual Responses: 120.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 40.

Needs and Uses: The information collection requirement is necessary for the Department of the Army, Office of the Provost Marshal General to obtain and record the sex offender registration information of those sex offenders who reside or are employed on an Army installation. Registered sex offenders are defined as any person who is either registered or required to register as a sex offender by any law, regulation or policy of the United States, the Department of Defense, the Army, a State, U.S. territory, or tribal government. All registered sex offenders who reside or are employed on an Army installation will submit their registration information with the installation Provost Marshal Office. The information collected is entered into the Army Law Enforcement Reporting and Tracking System and used by Army law enforcement to ensure the sex offender is compliant with any court order restrictions.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals or households.

Frequency: As required.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: March 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2022–05441 Filed 3–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2022–HQ–0006]

Proposed Collection; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Army and Air Force Exchange Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of

the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 16, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Army & Air Force Exchange Service, Office of the General Counsel, Compliance Division, ATTN: Ms. Teresa Schreurs, 3911 South Walton Walker Blvd., Dallas, TX 75236–1598 or call the Exchange Compliance Division at 800–967–6067.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exchange Accounts Receivable Files; CRC 7429395, Exchange Form 6450–005; OMB Control 0702–0137.

Needs and Uses: The information collection requirement is necessary to process, monitor, and post audit accounts receivables to the Army and Air Force Exchange Service; to administer the Federal Claims Collection Act and to answer inquiries pertaining thereto as well as collection of indebtedness and determination of customer's eligibility to cash checks at Exchange facilities.

Affected Public: Individuals or households.

Annual Burden Hours: 43,461.55.

Number of Respondents: 869,231.

Responses per Respondent: 1.

Annual Responses: 869,231.

Average Burden per Response: 3 minutes.

Frequency: On occasion.

Respondents are Exchange patrons, potential patrons, or past patrons who are indebted to the Exchange. This may include dishonored checks, deferred payment plans, home layaway, pecuniary liability claims and credit.

Dated: March 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–05453 Filed 3–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2022–HQ–0005]

Proposed Collection; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Installation Management Command, G1 Passport Services Division/DoD Passport and Visa, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 16, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Installation Management Command, G1 Passport Services Division/DoD Passport and Visa, 9301 Chapek Road, Fort Belvoir, VA 22060, ATTN: Mr. Edmund T. Snead, (703) 545–9531, or email: *edmund.t.snead.civ@army.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Passport and Passport Agent Services, Authorization to Apply for a ''No-Fee'' Passport and/or Request for Visa; DD Form 1056; OMB Control Number 0702–0134.

Needs and Uses: The information collection requirement is necessary to obtain and record the personally identifiable information of official passport and/or visa applicants. This information is used to process, track, and verify no-fee passport and visa applications and requests for additional visa pages, Status of Forces Agreement endorsement, Multinational Force and Observers.

Affected Public: Individuals or households.

Annual Burden Hours: 175,000.

Number of Respondents: 175,000.

Responses per Respondent: 1.

Annual Responses: 175,000.

Average Burden per Response: 60 minutes,

Frequency: On occasion.

Respondents are DoD civilian and military personnel, and eligible accompanying family members traveling on official government orders to a country requiring a no-fee passport and/or visa. Authorization to apply for no-fee passport is granted to those who can verify U.S. citizenship and legitimate official travel needs. Authorization to request a visa may also be granted to non U.S. citizen family members, whose names are listed on the sponsor's official travel orders. The information collected on this form is shared with the Department of State and the designated foreign embassies.

Dated: March 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–05452 Filed 3–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0030]

Proposed Collection; Comment Request

AGENCY: Defense Counterintelligence and Security Agency (DCSA), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Counterintelligence and Security Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 16, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Counterintelligence and Security Agency, Systems Management Branch, 27130 Telegraph Road, Quantico, VA 22134, ATTN: Ms. Whitney Abbott, or call 571–305–6073.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: National Industrial Security Program Contracts Classification System; DD Form 254; OMB Control Number 0704–0567.

Needs and Uses: Pursuant to 48 CFR 27, in conjunction with subpart 4.4 of the Federal Acquisition Regulation, contracting officers shall determine whether access to classified information may be required by a contractor during contract performance. DoD Components shall use the DD Form 254, ''Contract Security Classification Specification,'' as an attachment to contracts or agreements requiring access to classified information by U.S. contractors. The DD Form 254 is used to identify the classified areas of information involved in a contract and the specific items of information that require protection. The National Industrial Security Program (NISP) Contract Classification System (NCCS) is the electronic repository for the DD Form 254. NCCS expedites the processing and distribution of contract classification specifications for contracts requiring access to classified information. NCCS also has a built-in automated process for the Request for Approval to Subcontract and provides workflow support for the Facility Clearance Request and National Interest Determination processes.

Affected Public: Business or other for profit.

Annual Burden Hours: 28,800.

Number of Respondents: 8,000.

Responses per Respondent: 6.

Annual Responses: 48,000.

Average Burden per Response: 36 minutes.

Frequency: On occasion.

Respondents are cleared contractor facilities in the National Industrial Security Program under the security cognizance of DCSA. Pursuant to security classification guidance in 32 CFR part 117, NISP contractors must provide contract security classification specifications with any contract or agreement that they propose or award. DD Form 254 is the official vehicle for providing this information. A respondent submits completed DD Form 254 with any attachments to the applicable subcontractor and to the DoD NISP Cognizant Security Office for evaluation. Once the DD Form 254 is submitted, it is reviewed by Government Security personnel to ensure access language is present. Following review, Government Contracting Officers certify and release the DD Form 254 to the Industry Commercial and Government Entity referenced within the DD Form 254.

Dated: March 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–05454 Filed 3–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0031]

Proposed Collection; Comment Request

AGENCY: Defense Health Agency (DHA), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 16, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket

number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Medical Benefits and Reimbursement Section, Health Plan Design Branch, TRICARE Health Plan Division, Defense Health Agency, 16401 E. Centretech Parkway, Aurora, CO 80011, Erica Ferron, 303–676–3626.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Childbirth and Breastfeeding Support Demonstration Survey; OMB Control Number 0720–CBDS.

Needs and Uses: The Childbirth and Breastfeeding Support Demonstration Survey is necessary to solicit information from TRICARE beneficiaries who have given birth in the specified reporting period (initial survey for beneficiaries who gave birth in calendar year 2021, with follow on surveys sent to beneficiaries who give birth each calendar year quarter through the end of 2026, with the final survey sent in early 2027). Approximately 100,000 TRICARE beneficiaries give birth each year; about 60 percent of those births occur in private sector care and the other 40 percent in direct care (military treatment facilities). The survey is mandated by Section 746 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283, enacted on January 1, 2021).

Affected Public: Individuals or households.

Annual Burden Hours: 2,400.

Number of Respondents: 16,000.

Responses per Respondent: 1.

Annual Responses: 16,000.

Average Burden per Response: 9 minutes.

Frequency: On occasion.

Dated: March 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–05460 Filed 3–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0029]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 16, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Logistics Agency, U.S./Canada Joint Certification Office, DLA Logistics Information Service-BFC, Attn: Christopher Nozicka, Federal Center, 74 Washington Ave. N, Battle Creek, MI 49017–3084; or call (269) 961–7056.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Militarily Critical Technical Data Agreement; DD Form 2345; OMB Control Number 0704–0207.

Needs and Uses: The information collection requirement is necessary as a basis for certifying enterprises or individuals to have access to DoD export-controlled militarily critical technical data subject to the provisions of 32 CFR 250. Enterprises and individuals that need access to unclassified DoD-controlled militarily critical technical data must certify on DD Form 2345, Militarily Critical Technical Data Agreement, that data will be used only in ways that will inhibit unauthorized access and maintain the protection afforded by U.S. export control laws. The information collected is disclosed only to the extent consistent with prudent business practices, current regulations, and statutory requirements and is so indicated on the Privacy Act Statement of DD Form 2345.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions.

Annual Burden Hours: 2,666.67.

Number of Respondents: 8,000.

Responses per Respondent: 1.

Annual Responses: 8,000.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

Dated: March 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2022–05449 Filed 3–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0080]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of

information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Status of the Forces Survey of Active Duty Members; OMB Control Number 0704–0624.

Type of Request: Revision.

Number of Respondents: 16,500.

Responses per Respondent: 1.

Annual Responses: 16,500.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 5,500 hours.

Needs and Uses: The purpose of the Status of the Forces Survey (SOFS) of Active Duty Members is to assess the attitudes and opinions of active duty members and to provide key metrics to the OUSD(P&R). Results of this and subsequent surveys are used to provide direct feedback on key strategic indicators such as satisfaction and retention. These indicators provide primary data on personnel career plans, retention decisions, morale, commitment, and quality of life and historically provide the ability to evaluate the impact of policies and programs with regard to readiness and retention. The surveys are benchmarks by which senior DoD officials can track trends over time. Data from the surveys will be presented to the OUSD(P&R), Military Departments, Congress, and DoD policy and program offices. Analysis will include the Office of People Analytics' (OPA) standard products: A tabulation volume (a set of relative frequency distributions of each question, and cross-tabulations of survey questions by key stratifying variables), briefing slides and reports highlighting key findings, and a statistical methodology report. Ad hoc analyses requested by the policy office sponsors and other approved organizations may be conducted as needed and based on available staff. These projects take approximately one year to complete, including assessment design and development, fielding and administration, and data analysis and reporting. In addition, as mandated by the National Defense Authorization Act for Fiscal Year 2016, Title VI, Subtitle F, Subpart 661, the Defense Manpower Data Center, now OPA, fields a financial literacy and preparedness survey within the SOFS annually. Results will be used by the Service Secretaries to evaluate and update financial literacy training and will be submitted in a report to the Committees on Armed Services of the Senate and the House of Representatives.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: March 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2022–05442 Filed 3–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0130]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Workplace and Gender Relations Survey of Military Members; OMB Control Number 0704–0615.

Type of Request: Extension.

Number of Respondents: 204,300.

Responses per Respondent: 1.

Annual Responses: 204,300.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 102,150 hours.

Needs and Uses: The legal requirements for the Workplace and Gender Relations (WGR) surveys of military members can be found in the following:

- 10 U.S.C., Section 481
- Ronald W. Reagan National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2005
- Public Law 111–383, Section 1631
- NDAA for FY 2013, Section 570
- 10 U.S.C., Section 2358

Sexual assault, sexual harassment, and gender discrimination remain a major concern across the DoD and for members of Congress. In February 2004, the OUSD(P&R) testified before the Senate Armed Services Committee on the prevalence of sexual assault in the DoD and the programs and policies planned to address the issues. In accordance with legislative requirements, the OUSD(P&R) issued memoranda to the Services that provide DoD policy guidance on sexual assault that included a new standard definition, response capability, training requirements, response actions, and reporting guidance throughout the Department. The Sexual Assault and Prevention Response Office supported implementation of the new policy and requires data to assess the prevalence of sexual assault in the Department and

the effectiveness of the programs they have implemented.

The WGR surveys will assess the attitudes and opinions of military members on issues relating to sexual harassment, gender discrimination, and sexual assault, as well as the culture and climate of the units/organizations in which individuals serve. It will provide the policy offices of the USD(P&R) with current data on (1) the positive and negative trends for professional and personal relationships between Service members; (2) the specific types of assault that have occurred and the number of times in the preceding year; (3) the effectiveness of DoD policies designed to improve professional relationships between male and female Service members; (4) the effectiveness of current processes for complaints, reports, and investigations; and, (5) specific issues related to sexual harassment, sexual assault, and gender discrimination that may inform the Department's prevention and response efforts.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: March 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–05436 Filed 3–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0046]

Submission for OMB Review; Comment Request

AGENCY: The Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Homeowners Assistance; DD Form 1607; OMB Control Number 0704–0463.

Type of Request: Reinstatement with change.

Number of Respondents: 15.

Responses per Respondent: 1.

Annual Responses: 15.

Average Burden per Response: 1 hour.

Annual Burden Hours: 15.

Needs and Uses: In accordance with Section 3374 of U.S. Code title 42; the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5); 32 CFR part 239; and DoD Directive 4165.50E, ''Homeowners Assistance Program (HAP),'' the DoD provides funds to financially compensate eligible members of the Armed Forces who incur a wound, injury, or illness in the line of duty during a deployment in support of the Armed Forces on or after September 11, 2001; wounded DoD and Coast Guard civilian homeowners reassigned in furtherance of medical treatment or rehabilitation or due to medical retirement in connection with a disability incurred in the performance of his or her duties during a forward deployment occurring on or after September 11, 2001 in support of the Armed Forces; and surviving spouses of fallen warriors who move within two years of the death of such employee or member. Additionally, during the times of Base Realignment and Closure, the HAP program can be authorized to assist civilian and active duty homeowners who are impacted by the closure or realignment of their job duties. Priority access to the funds goes to surviving spouses of those killed during deployment and those who were wounded, injured, or ill during deployment on or after September 11, 2001. HAP applicants use DD Form 1607, ''Application for Homeowner's Assistance Program (HAP),'' to apply for HAP benefits.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: March 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2022–05439 Filed 3–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0007]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 16, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to 390 San Carlos Rd., Ste. A, Pensacola, FL 32508–5508, ATTN: Navy Flight Demonstration Squadron, or call Ms. Sonya Martin at 703–614–7585.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Navy Flight Demonstration Squadron (Blue Angels) Backseat Rider Programs; OPNAV Forms 5720/13, 5720/14, 5720/15; OMB Control Number 0703–0073.

Needs and Uses: This information collection requirement is necessary to medically clear and coordinate with individuals selected through the Key Influencer (KI) program and media personnel so that they may participate in backseat flights at Blue Angels' air shows and demonstrations. Flying these candidates, in coordination with media presence, is intended to promote the Navy and Marine Corps as professional and exciting organizations in which to serve.

Affected Public: Individuals or households.

OPNAV Forms 5720/13 and 5720/14

Annual Burden Hours: 30.

Number of Respondents: 30.

Responses per Respondent: 2.

Annual Responses: 60.

Average Burden per Response: 30 minutes.

OPNAV Form 5270/15

Annual Burden Hours: 120.

Number of Respondents: 240.

Responses per Respondent: 1.

Annual Responses: 240.

Average Burden per Response: 30 minutes.

Total

Annual Burden Hours: 150.

Number of Respondents: 270.

Annual Responses: 300.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Respondents are persons selected through the KI program, credentialed media representatives and local air show liaisons. The completed forms certify that the selected individuals are physically fit to fly and that the Blue Angels Public Affairs staff are able to coordinate flight information with respondents. If these forms are not completed, Blue Angels' staff cannot be readily assured of the physical fitness, qualifications and contact information of respondents. Having these forms reviewed by medical personnel and public affairs staff is essential in maintaining the safety and integrity of the Navy Flight Demonstration Backseat Rider process and program.

Dated: March 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–05451 Filed 3–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0037]

Agency Information Collection Activities; Comment Request; William D. Ford Federal Direct Loan Program (Direct Loan Program) Promissory Notes and Related Forms

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before May 16, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0037. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jon Utz, 202–377–4040.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the

Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan Program (Direct Loan Program) Promissory Notes and related forms.

OMB Control Number: 1845–0007.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 9,862,685.

Total Estimated Number of Annual Burden Hours: 4,021,665.

Abstract: The Direct Subsidized Loan and Direct Unsubsidized Loan Master Promissory Note (Subsidized/Unsubsidized MPN) serves as the means by which an individual agrees to repay a Direct Subsidized Loan and/or Direct Unsubsidized Loan.

The Direct PLUS Loan Master Promissory Note (PLUS Loan MPN) serves as the means by which an individual applies for and agrees to repay a Direct PLUS Loan. If a Direct PLUS Loan applicant is determined to have an adverse credit history, the applicant may qualify for a Direct PLUS Loan by obtaining an endorser who does not have an adverse credit history. The Endorser Addendum serves as the means by which an endorser agrees to repay the Direct PLUS Loan if the borrower does not repay it.

An MPN is a promissory note under which a borrower may receive loans for a single or multiple academic years. The MPN explains the terms and conditions of the loans that are made under the MPN.

The Direct Consolidation Loan Application and Promissory Note (Consolidation Note) serves as the means by which a borrower applies for a Direct Consolidation Loan and promises to repay the loan. It also explains the terms and conditions of the Direct Consolidation Loan. The Consolidation Note Instructions explain to the borrower how to complete the Consolidation Note. The Consolidation Additional Loan Listing Sheet provides additional space for a borrower to list loans that he or she wishes to consolidate. The Consolidation Request to Add Loans serves as the means by which a borrower may add other loans to an existing Direct Consolidation Loan within a specified time period. The Consolidation Loan Verification Certificate serves as the means by which the U.S. Department of Education obtains the information needed to pay off the holders of the loans that the borrower wants to consolidate.

This revision updates the Subsidized/Unsubsidized MPN and the Consolidation Note by removing information related to the 150% Subsidized Usage Limit requirements. This previous statutory provision was repealed by the Free Application for Federal Student Aid (FAFSA) Simplification Act, part of the part of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), and no longer applies to borrowers of Direct Subsidized Loans and Direct Consolidation Loans. There are no proposed changes to the PLUS MPN or to any of the other forms included in this submission.

Dated: March 10, 2022.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–05462 Filed 3–14–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–675–000.

Applicants: UGI Mt. Bethel Pipeline Company, LLC.

Description: Annual Retainage Mechanism Filing for 2021 of UGI Mt. Bethel Pipeline Company, LLC.

Filed Date: 2/28/22.

Accession Number: 20220228–5464.

Comment Date: 5 p.m. ET 3/14/22.

Docket Numbers: RP22–680–000.

Applicants: PGPipeline LLC.

Description: Compliance filing: PGPipeline LLC NAESB Compliance Filing to be effective 6/1/2022.

Filed Date: 3/8/22.

Accession Number: 20220308–5030.

Comment Date: 5 p.m. ET 3/21/22.

Docket Numbers: RP22–682–000.

Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing: Alliance Housekeeping Filing to be effective 4/9/2022.

Filed Date: 3/9/22.

Accession Number: 20220309–5008.

Comment Date: 5 p.m. ET 3/21/22.

Docket Numbers: RP22–683–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Compliance filing: Midcontinent Express Pipeline LLC submits tariff filing per 154.203: Annual Report of Operational Purchases and Sales 2022 to be effective N/A.

Filed Date: 3/9/22.

Accession Number: 20220309–5019.

Comment Date: 5 p.m. ET 3/21/22.

Docket Numbers: RP22–684–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Conexus Energy, LLC to be effective 4/1/2022.

Filed Date: 3/9/22.

Accession Number: 20220309–5024.

Comment Date: 5 p.m. ET 3/21/22.

Docket Numbers: RP22–685–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate Agreement Filing—ConocoPhillips Company to be effective 4/1/2022.

Filed Date: 3/9/22.

Accession Number: 20220309–5026.

Comment Date: 5 p.m. ET 3/21/22.

Docket Numbers: RP22–686–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—Freepoint Commodities LLC to be effective 4/1/2022.

Filed Date: 3/9/22.

Accession Number: 20220309–5028.

Comment Date: 5 p.m. ET 3/21/22.

Docket Numbers: RP22–687–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate Agreement Filing—Hartree Partners, LP to be effective 4/1/2022.

Filed Date: 3/9/22.
Accession Number: 20220309–5031.
Comment Date: 5 p.m. ET 3/21/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified Comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP22–633–001.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.205(b): RAM 2022 Amendment to be effective 4/1/2022.
Filed Date: 03/08/2022.
Accession Number: 20220308–5062.
Comment Date: 5 p.m. ET 3/21/22.

Docket Numbers: RP22–654–001.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.205(b): CCRM 2022—MCRM Amendment Filing to be effective 4/1/2022.
Filed Date: 03/08/2022.
Accession Number: 20220308–5052.
Comment Date: 5 p.m. ET 3/21/22.

Docket Numbers: RP20–1060–008.
Applicants: Columbia Gas Transmission, LLC.
Description: Compliance filing: Settlement Compliance Filing RP20–1060 et al. to be effective 2/25/2022.
Filed Date: 3/8/22.
Accession Number: 20220308–5016.
Comment Date: 5 p.m. ET 3/21/22.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified Comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–05421 Filed 3–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–46–000.
Applicants: AltaGas Brush Energy, Inc., Clarion Energy LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of AltaGas Brush Energy, Inc.
Filed Date: 3/9/22.
Accession Number: 20220309–5048.
Comment Date: 5 p.m. ET 3/30/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1962–020; ER11–3635–018; ER16–2297–017; ER16–2506–016; ER17–582–012; ER17–583–012; ER18–2182–013; ER21–183–004; ER21–1506–004; ER21–1519–003; ER21–1532–003; ER21–1682–003; ER21–2117–004; ER21–2118–004; ER21–2225–004; ER21–2293–005; ER21–2296–004; ER21–2641–003; ER21–2674–003; ER21–2699–005.
Applicants: Minco Wind Energy III, LLC, Borderlands Wind, LLC, Quinebaug Solar, LLC, Ensign Wind Energy, LLC, Fish Springs Ranch Solar, LLC, Irish Creek Wind, LLC, Dodge Flat Solar, LLC, Little Blue Wind Project, LLC, Elora Solar, LLC, Quitman II Solar, LLC, Cool Springs Solar, LLC, Shaw Creek Solar, LLC, Nutmeg Solar, LLC, Minco IV & V Interconnection, LLC, Whitney Point Solar, LLC, Westside Solar, LLC, Oliver Wind III, LLC, Osborn Wind Energy, LLC, Hatch Solar Energy Center I, LLC, High Winds, LLC.
Description: Notice of Change in Status of High Winds, LLC, et al.
Filed Date: 3/3/22.
Accession Number: 20220303–5264.
Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER12–2498–020; ER12–2499–020; ER20–2671–002; ER17–382–005; ER17–383–005; ER17–384–005; ER13–764–020; ER14–1927–008; ER18–1416–004; ER11–4055–010; ER12–1566–014; ER14–1548–013; ER16–1327–003; ER21–425–002; ER12–199–019; ER17–2141–003; ER17–2142–003; ER11–3987–015; ER16–1325–003; ER16–1326–003; ER18–855–004; ER14–1775–008; ER10–1252–015; ER18–2303–002; ER18–2305–002; ER18–2306–002; ER18–2308–002; ER18–2309–002; ER18–2310–002; ER18–2311–002; ER19–813–002; ER15–2653–002; ER21–848–002; ER10–1246–015.
Applicants: Consolidated Edison Energy, Inc., Battle Mountain SP, LLC, Campbell County Wind Farm, LLC, Broken Bow Wind II, LLC,SF Wind Enterprises, LLC, Rose Wind Holdings, LLC, Rose Creek Wind, LLC, K&K Wind Enterprises, LLC, Garwind, LLC, Bobilli BSS, LLC, Adams Wind Farm, LLC, Consolidated Edison Solutions, Inc., SEP II, LLC, Panoche Valley Solar, LLC, Mesquite Solar 3, LLC, Mesquite Solar 2, LLC, Mesquite Solar 1, LLC, Great Valley Solar 2, LLC, Great Valley Solar 1, LLC, Coram California Development, L.P., Copper Mountain Solar 5, LLC, Copper Mountain Solar 4, LLC, Copper Mountain Solar 3, LLC, Copper Mountain Solar 2, LLC, Copper Mountain Solar 1, LLC,CED Wistaria Solar, LLC,CED White River Solar 2, LLC,CED White River Solar, LLC, CED Ducor Solar 3, LLC, CED Ducor Solar 2, LLC, CED Ducor Solar 1, LLC, Water Strider Solar, LLC, Alpaugh North, LLC, Alpaugh 50, LLC.
Description: Notice of Non-Material Change in Status of Alpaugh 50, LLC, et al. under ER12–2498, et al.
Filed Date: 3/3/22.
Accession Number: 20220303–5258.
Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER17–2341–007; ER17–1671–003; ER18–713–005; ER17–2453–006; ER17–157–005; ER16–38–010; ER16–39–009; ER15–1218–012; ER15–2224–005; ER18–1775–004; ER17–1672–003; ER16–2501–006; ER16–2502–006; ER14–2666–005; ER20–2888–004; ER21–1350–001; ER21–630–001;
Applicants: CA Flats Solar 130, LLC, 325MK 8ME LLC, Citadel Solar, LLC, Townsite Solar, LLC, Avalon Solar Partners, LLC, Tropico, LLC, Nicolis, LLC, Gulf Coast Solar Center III, LLC, 64KT 8me LLC, Solar Star Colorado III, LLC, Solar Star California XIII, LLC, Kingbird Solar B, LLC, Kingbird Solar A, LLC, Moapa Southern Paiute Solar, LLC, Imperial Valley Solar 3, LLC, CA Flats Solar 150, LLC, Gulf Coast Solar Center II, LLC.
Description: Notice of Non-Material Change in Status of CA Flats Solar 130, LLC, et al.
Filed Date: 3/3/22.
Accession Number: 20220303–5262.
Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER21–1297–001; ER13–1562–009; ER20–1910–001; ER20–1911–001; ER20–1915–002; ER20–1916–002; ER12–1931–010; ER10–2504–011; ER12–610–011; ER13–338–009; ER19–592–004.
Applicants: Valentine Solar, LLC, Shiloh IV Lessee, LLC, Shiloh III Lessee, LLC, Shiloh Wind Project 2, LLC, Pacific Wind Lessee, LLC, Maverick

Solar 4, LLC, Maverick Solar, LLC, Desert Harvest II LLC, Desert Harvest, LLC, Catalina Solar Lessee, LLC, BigBeau Solar, LLC.

Description: Notice of Change in Status of Big Beau Solar, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5269.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER22–1229–000.

Applicants: MATL LLP.

Description: Compliance filing: Resubmittal of Compliance FIling Order 676–J (RM05–5) to be effective 12/31/9998.

Filed Date: 3/9/22.

Accession Number: 20220309–5040.

Comment Date: 5 p.m. ET 3/30/22.

Docket Numbers: ER22–1230–000.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 2022–03–09 PSC WAPA NOC-Malta SS Maint 319–0.0.0 to be effective 3/10/2022.

Filed Date: 3/9/22.

Accession Number: 20220309–5060.

Comment Date: 5 p.m. ET 3/30/22.

Docket Numbers: ER22–1231–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Dothan Solar (Dothan Solar & Storage) LGIA Filing to be effective 2/23/2022.

Filed Date: 3/9/22.

Accession Number: 20220309–5085.

Comment Date: 5 p.m. ET 3/30/22.

Docket Numbers: ER22–1232–000.

Applicants: Basin Electric Power Cooperative.

Description: § 205(d) Rate Filing: Basin Electric Amendment to Balancing Authority Services Agreement with WAPA–RMR to be effective 5/9/2022.

Filed Date: 3/9/22.

Accession Number: 20220309–5090.

Comment Date: 5 p.m. ET 3/30/22.

Docket Numbers: ER22–1234–000.

Applicants: Northern States Power Company, a Wisconsin corporation, Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: Northern States Power Company, a Wisconsin corporation submits tariff filing per 35.13(a)(2)(iii: 2022 Interchange Agreement Annual Filing to be effective 1/1/2022.

Filed Date: 3/9/22.

Accession Number: 20220309–5124.

Comment Date: 5 p.m. ET 3/30/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–05423 Filed 3–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–32–000]

PJM Interconnection, L.L.C.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On February 28, 2022, the Commission issued an order in Docket No. EL22–32–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether PJM Interconnection, L.L.C.'s existing Financial Transmission Right (FTR) Credit Requirement is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *PJM Interconnection, L.L.C.,* 178 FERC ¶ 61,146 (2021).

The refund effective date in Docket No. EL22–32–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–32–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: March 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–05424 Filed 3–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–113–000]

Alliance Pipeline, L.P.; Supplemental Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Three Rivers Interconnection Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review

On February 10, 2022 the staff of the Office of Energy Projects issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Three Rivers Interconnection Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review.* It has come to our attention that intended recipients may not have received the aforementioned notice. As such, we are

issuing this Supplemental Notice of Scoping Period.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Three Rivers Interconnection Project (Project) involving construction and operation of facilities by Alliance Pipeline, L.P. (Alliance) in Grundy County, Illinois. The Commission will use this EIS in its decision-making process to determine whether the Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' By notice issued on September 20, 2021 in Docket No. CP21–113–000, the Commission opened an initial scoping period that ran through October 19, 2021. The EIS will address the concerns raised since issuance of the September 20, 2021 notice in this proceeding. Therefore, if you submitted comments on this Project to the Commission during one of the previous scoping periods, you do not need to file those comments again.

This notice announces the extension of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. By this notice, the Commission requests public comments on the scope of issues to address in the environmental document, including comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on April 8, 2022. Comments may be submitted in written or oral form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Alliance provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–113–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project, the Project Purpose and Need, and Expected Impacts

Alliance proposes to construct and operate about 2.9 miles of 20-inch-diameter natural gas transmission pipeline and associated facilities. This pipeline would connect Alliance's existing interstate natural gas transmission system with the CPV Three Rivers Energy Center; and as proposed, would transport up to 210 million standard cubic feet per day of natural gas. According to Alliance, the project is necessary to provide the CPV Three Rivers Energy Center with access to a natural gas supply source. The general location of the Project facilities is shown in appendix 1.[1]

Based on the environmental information provided by Alliance, construction of the proposed facilities would disturb about 42.8 acres of land. Following construction, Alliance would maintain about 17.7 acres of land to operate the Project facilities; the remaining acreage would be restored.

Based on a review of Alliance's proposal and public comments received during scoping, Commission staff has identified several expected impacts that deserve attention in the EIS. The proposed pipeline would cross the Illinois River via a horizontal

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

directional drill and would impact wetlands and agricultural lands. The Project would result in impacts on noise and air quality; and would ultimately result in the emission of greenhouse gases. The proposed pipeline would also be located in an area considered to be an environmental justice community. Lastly, the proposed pipeline would be located in the vicinity of a facility regulated by the Nuclear Regulatory Commission, which could require the completion of a safety analysis.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics and environmental justice;
- air quality and noise;
- climate change; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[3] Alternatives currently under consideration include the no-action alternative, meaning the Project is not implemented, system alternatives, and pipeline route alternatives.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission initiated section 106 consultation for the Project in the notice issued on September 20, 2021 with the applicable State Historic Preservation Office(s), and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.[4] This notice is a continuation of section 106 consultation for the Project. The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Schedule for Environmental Review

On April 12, 2021, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in June 2022.

Issuance of Notice of Availability of the final EIS—September 16, 2022

90-Day Federal Authorization Decision Deadline [5]—December 15, 2022

In the event that a safety analysis is required, additional time may be necessary to consider the results of that analysis. If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. The U.S. Environmental Protection Agency and the Nuclear Regulatory Commission have agreed to participate as cooperating agencies in the development of the EIS. Other agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

TABLE OF FEDERAL AND FEDERALLY DELEGATED PERMITS

Permit	Agency
Certificate of Public Convenience and Necessity	FERC.
Clean Water Act Section 404	U.S. Army Corps of Engineers.
Rivers and Harbors Act Section 10	U.S. Army Corps of Engineers.
Clean Water Act Section 408	U.S. Army Corps of Engineers.
Endangered Species Act Consultation	U.S. Fish and Wildlife Service.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] 40 CFR 1508.1(z).

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

[5] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

TABLE OF FEDERAL AND FEDERALLY DELEGATED PERMITS—Continued

Permit	Agency
Clean Water Act Section 401	Illinois Environmental Protection Agency.
National Historic Preservation Act Section 106	Illinois Preservation Services.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the Project which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP21–113–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (Appendix 2).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP21–113–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: March 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–05425 Filed 3–14–22; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 75169]

Open Commission Meeting Wednesday, March 16, 2022

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, March 16, 2022, which is scheduled to commence at 10:30 a.m. Due to the current COVID–19 pandemic and related agency telework and headquarters access policies, this meeting will be in an electronic format and will be open to the public only on the internet via live feed from the FCC's web page at *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	WIRELINE COMPETITION	*Title:* Preventing Digital Discrimination (GN Docket No. 22–69). *Summary:* The Commission will consider a Notice of Inquiry that would commence a proceeding to prevent and eliminate digital discrimination and ensure that all people of the United States benefit from equal access to broadband internet access service, consistent with Congress's direction in the Infrastructure Investment and Jobs Act.
2	WIRELINE COMPETITION	*Title:* Resolving Pole Replacement Disputes (WC Docket No. 17–84). *Summary:* The Commission will consider a Second Further Notice of Proposed Rulemaking that would seek comment on questions concerning the allocation of pole replacement costs between utilities and attachers and ways to expedite the resolution of pole replacement disputes.
3	WIRELINE COMPETITION	*Title:* Selecting Final Round of Applicants for Connected Care Pilot Program (WC Docket No. 18–213). *Summary:* The Commission will consider a Public Notice announcing the fourth and final round of selections for the Commission's Connected Care Pilot Program to provide Universal Service Fund support for health care providers making connected care services available directly to patients.
4	MEDIA	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter.
5	INTERNATIONAL	*Title:* National Security Matter. *Summary:* The Commission will consider a national security matter.

* * * * *

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Dated: March 9, 2022.

Marlene Dortch,

Secretary.

[FR Doc. 2022–05458 Filed 3–14–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 87 FR 12168.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, March 8, 2022 at 10:00 a.m. and its continuation at the conclusion of the open meeting on March 10, 2022.

CHANGES IN THE MEETING: This meeting also discussed: Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques. Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

CONTACT FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2022–05501 Filed 3–14–22; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 14, 2022.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Northeast Kansas Bancshares, Inc., Overland Park, Kansas;* to acquire The Bank of Orrick, Orrick, Missouri.

B. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *First Artesia Bancshares, Inc., Artesia, New Mexico;* to acquire Southwest United Bancshares, Inc., and thereby indirectly acquire United Bank of El Paso del Norte, both of El Paso, Texas.

Board of Governors of the Federal Reserve System, March 10, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–05470 Filed 3–14–22; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0297; Docket No. 2022–0001; Sequence No. 2]

Information Collection; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: General Services Administration (GSA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

DATES: Submit comments on or before May 16, 2022.

ADDRESSES: Submit comments identified by Information Collection 3090–0297 via *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–0297, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0297, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0297'' on your attached document.

Instructions: Please submit comments only and cite Information Collection 3090–0297, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr./Ms. Sheev Davé, Office of Customer Experience, GSA, at 816–349–1536, or via email at *customer.experience@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study.

Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results. The Digital Government Strategy released by the White House in May, 2012 drives agencies to have a more customer-centric focus. Because of this, GSA anticipates an increase in requests to use this generic clearance, as the plan states that: A customer-centric principle charges us to do several things: Conduct research to understand the customer's business, needs and desires; ''make content more broadly available and accessible and present it through multiple channels in a program-and device-agnostic way; make content more accurate and understandable by maintaining plain language and content freshness standards; and offer easy paths for feedback to ensure we continually improve service delivery.

The customer-centric principle holds true whether our customers are internal (*e.g.,* the civilian and military federal workforce in both classified and unclassified environments) or external (*e.g.,* individual citizens, businesses, research organizations, and state, local, and tribal governments).''

B. Annual Reporting Burden

Respondents: 500,000.
Responses per Respondent: 1.
Total Annual Responses: 500,000.
Hours per response: 60.446 minutes.
Total Burden hours: 32,970.72.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0297, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, in all correspondence.

Beth Anne Killoran,

Deputy Chief Information Officer.

[FR Doc. 2022–05406 Filed 3–14–22; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund Burkina Faso Ministry of Health; Cancellation

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the cancellation of an award of approximately $450,000 for Year 1 of funding to the Burkina Faso Ministry of Health.

DATES: The notice of award was cancelled on March 10, 2022.

FOR FURTHER INFORMATION CONTACT: Trong Ao, Center for Global Health, Centers for Disease Control and Prevention, CDC Ghana Office, US Embassy, 24 Fourth Circular Road Cantonments, Accra Ghana, Telephone: 800–232–6348, E-Mail: *tfa8@cdc.gov.*

SUPPLEMENTARY INFORMATION: On March 8, 2022 CDC announced a single-source award will support the Burkina Faso Ministry of Health to implement HIV strategic information and laboratory strengthening activities in Burkina Faso (87 FR 12966). This award is cancelled in its entirety.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–05565 Filed 3–11–22; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), Subcommittee for Dose Reconstruction Reviews (SDRR), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Subcommittee for Dose Reconstruction Reviews (SDRR) of the Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below.

DATES: The meeting will be held on April 20, 2022, 11:00 a.m. to 4:00 p.m., EDT. Written comments must be received on or before April 13, 2022.

ADDRESSES: You may submit comments by mail to: Sherri Diana, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcomed to listen to the meeting by joining the audio conference (information below). The audio conference line has 150 ports for callers.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226, Telephone: (513) 533–6800, Email: *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC.

The charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 13889 on March 22, 2020, and will terminate on March 22, 2022.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. SDRR was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters To Be Considered: The agenda will include discussions on the following dose reconstruction program quality management and assurance activities: Dose reconstruction cases under review from Set 30, possibly including cases involving the Hanford site and discussion of changes in SDRR selection criteria based on SC&A document, ''Summary Dose Reconstruction Information,'' dated December 20, 2021. Agenda items are subject to change as priorities dictate. For additional information, please contact Toll Free 1 (800) CDC–INFO.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–05428 Filed 3–14–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC). This is a virtual meeting and is open to the public, limited by the capacity of the conference webinar which is 2,000 participants. Pre-registration is required. Time will be available for public comment.

DATES: The meeting will be held on April 11, 2022, from 10:00 a.m. to 4:30 p.m., EDT. The public may submit written comments from March 15, 2022 through April 18, 2022.

ADDRESSES: Zoom Virtual Meeting. If you would like to attend the virtual meeting, please pre-register by accessing the link at *https://dceproductions.zoom.us/webinar/register/WN_Mi3IYbnQTOmuEKZBxScBWQ.* Instructions to access the Zoom virtual meeting will be provided in the link following registration.

Meeting Information: There will be a public comment period from 3:45 p.m.–4:15 p.m., EDT. The public is encouraged to register for the BSC, NCIPC April 11, 2022, meeting public comment period by accessing the link provided: *https://www.surveymonkey.com/r/l3hdzb6.* Individuals wishing to pre-register for public comment must do so by Wednesday, April 6, 2022, at 5:00 p.m., EDT.

FOR FURTHER INFORMATION CONTACT: Arlene Greenspan, DrPH, MPH, PT, Associate Director for Science, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341, Telephone: (770) 488–1279; Email address: *ncipcbsc@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Board will: (1) Conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of injury and violence, and other impairments; (2) assist States and their political subdivisions in preventing intentional and unintentional injuries and to promote health and well-being; and (3) conduct and assist in research and control activities related to injury. The Board of Scientific Counselors makes recommendations regarding policies, strategies, objectives, and priorities; and reviews progress toward injury prevention goals and provides evidence in injury prevention-related research and programs. In addition, the Board provides advice on the appropriate balance of intramural and extramural research, the structure, progress, and performance of intramural programs.

The Board is designed to provide guidance on extramural scientific program matters, including the: (1) Review of extramural research concepts for funding opportunity announcements; (2) conduct of Secondary Peer Review of extramural research grants, cooperative agreements, and contracts applications received in response to the funding opportunity announcements as it relates to the Center's programmatic balance and mission; (3) submission of secondary review recommendations to the Center Director of applications to be considered for funding support; (4) review of research portfolios, and (5) review of program proposals.

Matters To Be Considered: The agenda will include an update on the Traumatic Brain Injury (TBI) Research Priorities; Older Adult Falls Research Priorities; the Diversity, Equity, Belonging, Inclusion and Accessibility (DEBIA) Strategic Plan; and Health Equity. Agenda items are subject to change as priorities dictate.

Public Participation

Written Public Comment: Written comments must be received on or before 5:00 p.m., EDT, April 18, 2022, by email at *ncipcbsc@cdc.gov.* All written comments will be included as part of the meeting minutes.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Individuals wishing to pre-register for public comment must do so by Wednesday, April 6, 2022, at 5:00 p.m., EDT. Those pre-registering for public comment must also register for the meeting using the link below.

Oral Public Comment Procedure: Individuals registered to provide public comment will be called upon first to speak based on the order of registration, followed by others from the public. All public comments will be limited to two (2) minutes per speaker.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–05429 Filed 3–14–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP22–007, COVID–19 and Women: An Assessment of Challenges and Lessons Learned to Enhance Public Health Emergency Preparedness for Women and Families.

Date: May 11, 2022

Time: 11:00 a.m.–6:00 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–B, Atlanta, Georgia 30341, Telephone: (770) 488–6511, Email: *JRaman@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–05431 Filed 3–14–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Clinical Laboratory Improvement Advisory Committee (CLIAC). This meeting is open to the public, limited only by the webcast lines available. Check the CLIAC website on the day of the meeting for the web conference link *https://www.cdc.gov/cliac.* Time will be available for public comment.

DATES: The meeting will be held on April 13, 2022, from 11:00 a.m. to 6:00 p.m., EDT, and April 14, 2022, from 11:00 a.m. to 6:00 p.m., EDT.

ADDRESSES: This is a virtual meeting. Meeting times are tentative and subject to change. The confirmed meeting times, agenda items, and meeting materials including instructions for accessing the live meeting broadcast will be available on the CLIAC website at *https://www.cdc.gov/cliac.*

FOR FURTHER INFORMATION CONTACT: Nancy Anderson, MMSc, MT(ASCP), Senior Advisor for Clinical Laboratories, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, Georgia 30329–4018, Telephone: (404) 498–2741; *NAnderson@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; the Director, CDC; the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare and Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine practice and specific questions related to possible revision of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) standards. Examples include providing guidance on studies designed to improve safety, effectiveness, efficiency, timeliness, equity, and

patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods, the electronic transmission of laboratory information, and mechanisms to improve the integration of public health and clinical laboratory practices.

Matters To Be Considered: The agenda will include agency updates from CDC, CMS, and FDA. In addition to the general updates, an update will be provided on the ongoing CLIAC workgroups. Presentations and CLIAC discussion will focus on the future of laboratory medicine, especially testing in non-traditional sites. There will be an extended public comment session focusing on anticipated changes in testing practices, personnel issues, and emerging technologies used in non-traditional testing sites. Agenda items are subject to change as priorities dictate.

It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments pertinent to agenda items. Public comment periods for each agenda item are scheduled immediately prior to the Committee discussion period for that item. In general, each individual or group requesting to present an oral comment will be limited to a total time of five minutes (unless otherwise indicated). Speakers should email *CLIAC@cdc.gov* or notify the contact person at least five business days prior to the meeting date. For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least five business days prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. All written comments will be included in the meeting Summary Report posted on the CLIAC website.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–05430 Filed 3–14–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10573 and CMS–10106]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 16, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10573 Reform of Requirements for Long-Term Care Facilities

CMS–10106 Medicare Authorization to Disclose Personal Health Information

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Reform of Requirements for Long-Term Care Facilities; *Use:* According to our data, as of April 2, 2021, there were 15,372 LTC

facilities in the United States. These facilities are currently caring for 1,290,290 residents. Since the number of LTC facilities and residents varies yearly, for the purposes of this analysis, we utilized estimates of 15,600 for LTC facilities and 1.3 million residents. LTC facilities include skilled nursing facilities (SNFs) as defined in section 1819(a) of the Social Security Act in the Medicare program and nursing facilities (NFs) as defined in 1919(a) of the Act in the Medicaid program. SNFs and NFs provide skilled nursing care and related services for residents who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. In addition, NFs provide health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases. SNFs and NFs must care for their residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident and must provide to residents services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care, which describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met and is updated periodically.

Under the authority of sections 1819 and 1919 of the Act, the Secretary proposed to reform the requirements that SNFs and NFs must meet to participate in the Medicare & Medicaid programs. These requirements would be set forth in 42 CFR 483 subpart B as Requirements for LTC Care Facilities. The requirements apply to an LTC facility as an entity as well as the services furnished to each individual under the care of the LTC facility, unless a requirement is specifically limited to Medicare or to Medicaid beneficiaries. To implement these requirements, State survey agencies generally conduct surveys of LTC facilities to determine whether or not they are complying with the requirements.

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements (ICRs) for these regulations in accordance with chapter 35 of title 44, United States Code. However, sections 4204(b) and 4214(d) of Omnibus Budget Reconciliation Act of 1987, Public Law 100–203 (OBRA '87) provide for a waiver of Paperwork Reduction Act (PRA) requirements for some regulations. At the time that the 2016 LTC final rule (81 FR 68688) published, we believed that this waiver still applied to those updates we made to existing requirements in part 483 subpart B that were set forth by OBRA 87. However, we acknowledged that the 2016 final rule also extensively revised many of the existing requirements in part 483 subpart B and recognized that the revisions likely created new burdens for facilities. In addition, we noted that the 2016 final rule implemented several new requirements set forth by the Affordable Care Act, which were not included in the PRA waiver. Therefore, we provided burden estimates for the new ICRs finalized in the 2016 LTC final rule set forth by the Affordable Care Act, as well as those revisions to existing requirements in part 483 subpart B that were so extensive they could be considered new ICRs in concept. For the current or 2022 information collection request (ICR), we have provided updates to the burden in the 2019 ICR, as well as provided burden estimates for all of the new ICs finalized since 2016 that were in effect as of May 2021. The ICRs and the rules they were finalized in are indicated in table below.

ICRs Associated With Each Rule

Rule name and publication date	FR citation	ICRs
Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities; Final rule (CMS–3260–F) Published October 4, 2016.	81 FR 68688 ..	All ICRs, except as noted below.
Medicare and Medicaid Programs, Clinical Laboratory Improvement Amendments (CLIA), and Patient Protection and Affordable Care Act; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency; IFC (CMS–3401–IFC) Published September 2, 2020.	85 FR 54820 ..	Section 483.80(h)—COVID–19 Testing.
Medicare and Medicaid Programs; COVID–19 Vaccine Requirements for Long Term Care (LTC) Facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs–IID) Residents, Clients, and Staff); IFC (CMS–3414–IFC) (May 2021 Vaccination IFC) Published May 13, 2021.	86 FR 26306 ..	Sections 483.80(d)(3)—COVID–19 immunizations and (g)(1)(viii)–(x).
Medicare and Medicaid Programs: CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Model Expansion; Home Health and Other Quality Reporting Program Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; and COVID–19 Reporting Requirements for Long-Term Care Facilities (86 FR 62240) (CMS–1747–F and CMS–5531–F). Published November 9, 2021.	86 FR 62240 ..	Section 483.80(g).

The primary users of this information will be State agency surveyors, CMS, and the LTC facilities for the purposes of ensuring compliance with Medicare and Medicaid requirements as well as ensuring the quality of care provided to LTC facility residents. The ICs specified in the regulations may be used as a basis for determining whether a LTC is meeting the requirements to participate in the Medicare program. In addition, the information collected for purposes of ensuring compliance may be used to inform the data provided on CMS' Nursing Home Compare website and as such used by the public in considering nursing home selections for services. *Form Number:* CMS–10573 (OMB control number: 0938–1363); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 15,600; *Total Annual Responses:* 18,658,854; *Total Annual Hours:* 29,935,899. (For policy questions regarding this collection contact Diane Corning at 410–786–8486.)

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Medicare Authorization to Disclose Personal Health Information; *Use:* The ''Medicare Authorization to Disclose Personal Health Information'' will be used by Medicare beneficiaries to authorize Medicare to disclose their protected health information to a third

party. Medicare beneficiaries can submit the Medicare Authorization to Disclose Personal Health Information electronically at *Medicare.gov.* Beneficiaries may also submit the Medicare Authorization to Disclose Personal Health Information by mailing a complete and valid authorization form to Medicare. Beneficiaries can submit the Medicare Authorization to Disclose Personal Health Information verbally over the phone by calling Medicare. *Form Number:* CMS–10106 (OMB control number: 0938–0930); *Frequency:* Occasionally; *Affected Public:* Individuals or households; *Number of Respondents:* 1,000,000; *Total Annual Responses:* 1,000,000; *Total Annual Hours:* 250,000. (For policy questions regarding this collection contact Sam Jenkins at 410–786–3261.)

Dated: March 9, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–05360 Filed 3–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0367]

Compliance Policy Guide Sec. 540.525 Scombrotoxin (Histamine)-Forming Fish and Fishery Products—Decomposition and Histamine; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is reopening the comment period for the draft Compliance Policy Guide entitled ''Compliance Policy Guide Sec. 540.525 Scombrotoxin (Histamine)-forming Fish and Fishery Products—Decomposition and Histamine'' that published in the **Federal Register** of December 27, 2021. We are taking this action in response to a request from stakeholders to extend the comment period to allow additional time for interested parties to develop and submit data, other information, and comments before FDA begins work on the final guidance.

DATES: FDA is reopening the comment period for the draft Compliance Policy Guide announced in the **Federal Register** on December 27, 2021 (86 FR 73295). Submit either electronic or written comments on the draft guidance by April 14, 2022, to ensure that we consider your comments before we begin work on the final guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2021–D–0367 for ''Compliance Policy Guide Sec. 540.525 Scombrotoxin (Histamine)-forming Fish and Fishery Products—Decomposition and Histamine.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Steven Bloodgood, Division of Seafood Safety (HFS–325), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–5316, email: *Steven.Bloodgood@fda.hhs.gov;* or Jessica Larkin, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 27, 2021 (86 FR 73295), we published a notice announcing the availability of a draft Compliance Policy Guide (CPG) entitled ''Sec. 540.525 Scombrotoxin (Histamine)-forming Fish and Fishery Products—Decomposition and

Histamine (CPG 7108.24).'' This draft CPG would update and replace existing guidance for FDA staff on adulteration associated with decomposition and histamine identified during surveillance sampling and testing of fish and fishery products susceptible to histamine formation. We gave interested parties until February 25, 2022, to submit comments before we began work on the final guidance.

FDA has received a request for a 30-day extension for this comment period to allow additional time for interested parties to develop and submit data, other information, and comments for this draft Compliance Policy Guide before we begin work on the final version of the guidance. We have considered this request and are reopening the comment period for 30 days. FDA believes that this additional 30 days will allow adequate time for any interested parties to submit data, other information, and comments before we begin work on the final guidance.

Dated: March 10, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–05476 Filed 3–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0968]

Nayade Varona: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debarring Nayade Varona from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Varona was convicted of a felony under Federal law for conduct related to the development or approval, including the process for development or approval, of any drug product under the FD&C Act. Ms. Varona was given notice of the proposed permanent debarment and was given an opportunity to request a hearing to show why she should not be debarred. As of December 22, 2021 (30 days after receipt of the notice), Ms. Varona had not responded. Ms. Varona's failure to respond and request a hearing within the prescribed timeframe constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is applicable March 15, 2022.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(A) of the FD&C Act (21 U.S.C. 335a(a)(2)(A)) requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act. On August 11, 2021, Ms. Varona was convicted as defined in section 306(l)(1) of the FD&C Act in the U.S. District Court for the Southern District of Florida, Miami Division, when the court accepted her plea of guilty and entered judgment against her for one count of Conspiracy to Defraud the United States in violation of 18 U.S.C. 371.

The factual basis for this conviction is as follows: As contained in the Information, entered into the docket on March 16, 2021, and the Factual Proffer in Support of Ms. Varona's guilty plea, entered into the docket on June 8, 2021, both from her case, Ms. Varona was employed as an assistant study coordinator at Tellus Clinical Research (Tellus). Tellus was a medical clinic that conducted clinical trials on behalf of pharmaceutical company sponsors. A drug manufacturer (Sponsor) initiated a clinical trial concerning a new investigational drug intended to treat patients suffering from irritable bowel syndrome (Study or IBS Trial). The Sponsor retained a Contract Research Organization (CRO) to manage various aspects of the IBS Trial. CRO entered into a contract with Tellus and Martin Valdes, a medical doctor serving as a clinical investigator for clinical trials conducted at Tellus and as the clinical investigator for the IBS Trial. The study protocol for the IBS Trial required subjects to make periodic scheduled visits to the clinical trial site for which they were paid $100 per visit. During some of these visits, subjects were required to provide blood samples for pharmacokinetic analysis, receive physical exams by clinical trial staff, and undergo electrocardiograms. Subjects were also required to use an ''e-diary'' system to report their daily experience with the Study drugs. They would do this by making daily phone calls to a number maintained by a third party and answering automated questions nonverbally by touch-tone buttons.

In her role as an assistant study coordinator, Ms. Varona was responsible for administering procedures to subjects in the Study and creating written records reflecting the participation in the Study. However, Ms. Varona and her co-conspirators engaged in an effort to impair, impede, and obstruct FDA's legitimate function of regulating clinical trials of drugs in order to obtain money. Ms. Varona and her co-conspirators did this by fabricating medical records to portray persons as legitimate Study subjects when they were not. She and her co-conspirators falsified these records to make it appear that the Study subjects had consented to participating in the Study, satisfied the Study's eligibility criteria, appeared for scheduled visits at the Study's site, taken Study drugs as required, and received checks as payment for site visits, among other things. For example, Ms. Varona represented that she had seen a purported Study subject, spoken to her about her dietary habits, lifestyle, and exercise regimen, collected a urine sample, taken vital signs, and dispensed the Study drug to her when Ms. Varona well knew that the individual was not a Study subject and that these representations were false. Ms. Varona also knew that one or more of her co-conspirators placed telephone calls to the e-diary system for the purposes of reporting fabricated data on behalf of purportedly legitimate Study subjects.

As a result of this conviction, FDA sent Ms. Varona by certified mail on November 8, 2021, a notice proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) of the FD&C Act, that Ms. Varona was convicted, as set forth in section 306(l)(1) of the FD&C Act, of a felony under Federal law for conduct relating to the development or approval, including the process of development or

approval, of any drug product under the FD&C Act. The proposal also offered Ms. Varona an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted an election not to use the opportunity for a hearing and a waiver of any contentions concerning this action. Ms. Varona received the proposal on November 22, 2021. She did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(A) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Ms. Varona has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act.

As a result of the foregoing finding, Ms. Varona is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(A) and 306(c)(2)(A)(ii) of the FD&C Act, (21 U.S.C. 355a(2)(A) and 335a(c)(2)(A)(ii))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Ms. Varona in any capacity during her debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Ms. Varona provides services in any capacity to a person with an approved or pending drug product application during her period of debarment, she will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Ms. Varona during her period of debarment, other than in connection with an audit under section 306 of the FD&C Act (section 306(c)(1)(B) of the FD&C Act). Note that, for purposes of sections 306 and 307 of the FD&C Act, a ''drug product'' is defined as a drug subject to regulation under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Any application by Ms. Varona for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2021–N–0968 and sent to the Division of Dockets Management (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: March 3, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–05401 Filed 3–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0375]

Agency Information Collection Activities; Proposed Collection; Comment Request; Agreement for Shipment of Devices for Sterilization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements relating to shipment of nonsterile devices that are to be sterilized elsewhere or are shipped to other establishments for further processing, labeling, or repacking.

DATES: Submit either electronic or written comments on the collection of information by May 16, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 16, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 16, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2013–N–0375 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Agreement for Shipment of Devices for Sterilization.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff

between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Agreement for Shipment of Devices for Sterilization—21 CFR 801.150

OMB Control Number 0910–0131—Extension

Under sections 501(c) and 502(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(c) and 352(a)), nonsterile devices that are labeled as sterile but are in interstate transit to a facility to be sterilized are adulterated and misbranded. FDA regulations at § 801.150(e) (21 CFR 801.150(e)) establish a control mechanism by which firms may manufacture and label medical devices as sterile at one establishment and ship the devices in interstate commerce for sterilization at another establishment, a practice that facilitates the processing of devices and is economically necessary for some firms.

Under § 801.150(e)(1), manufacturers and sterilizers may sign an agreement containing the following: (1) Contact information of the firms involved and the identification of the signature authority of the shipper and receiver, (2) instructions for maintaining accountability of the number of units in each shipment, (3) acknowledgment that the devices that are nonsterile are being shipped for further processing, and (4) specifications for sterilization processing. This agreement allows the manufacturer to ship misbranded products to be sterilized without initiating regulatory action and provides FDA with a means to protect consumers from use of nonsterile products. During routine plant inspections, FDA normally reviews agreements that must be kept for 2 years after final shipment or delivery of devices (see § 801.150(a)(2)). The respondents to this collection of information are device manufacturers and contract sterilizers. FDA's estimate of the reporting burden is based on data obtained from industry in recent years. It is estimated that each of the firms subject to this requirement prepares an average of 37.5 written agreements each year. This estimate varies greatly, from 1 to 218, because some firms provide sterilization services on a part-time basis for only 1 customer, while others are large facilities with many customers. The average time required to prepare each written agreement is estimated to be 4 hours. This estimate varies depending on whether the agreement is the initial agreement or an annual renewal, on the format each firm elects to use, and on the length of time required to reach agreement. The estimate applies only to those portions of the written agreement that pertain to the requirements imposed by this regulation. The written agreement generally also includes contractual agreements that are a usual and customary business practice. The recordkeeping requirements of § 801.150(a)(2) consist of making copies and maintaining the records required under the third-party disclosure section of this collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [2]
Record retention, 801.150(a)(2)	218	37.5	8,175	0.50 (30 minutes)	4088

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Rounded to the nearest hour.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR Part	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Agreement and labeling requirements, 801.150(e)	218	37.5	8,175	4	32,700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall increase of 27,778 hours and a corresponding increase of 6,175 responses/records. We attribute this adjustment to an increase in the number of submissions we received over the last few years.

Dated: March 2, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–05402 Filed 3–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health (NIH)

National Institute of Mental Health (NIMH); Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Interagency Autism Coordinating Committee.

The purpose of the IACC meeting is to discuss business, agency updates, and issues related to autism spectrum disorder (ASD) research and services activities. The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting should notify the Contact Person listed below at least seven (7) business days in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocast website (*http://videocast.nih.gov/*).

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Date: April 13–14, 2022.

Time: Wednesday, April 13, 2022, 1:00 p.m. to 5:00 p.m. ET.

Meeting Access: Wednesday, April 13, 2022, *https://videocast.nih.gov/watch=44688.*

Time: Thursday, April 14, 2022, 1:00 p.m. to 5:00 p.m. ET.

Meeting Access: Thursday, April 14, 2022, *https://videocast.nih.gov/watch=44690*

Agenda: To discuss business, updates, and issues related to ASD research and services activities.

Cost: The meeting is free and open to the public.

Registration: A registration web link will be posted on the IACC website (*www.iacc.hhs.gov*) prior to the meeting. Pre-registration is recommended.

Deadlines: Written/Virtual Public Comment Due *Date:* Friday, April 1, 2022, by 5:00 p.m. ET, Public Comment Guidelines, For public comment instructions, see below.

Contact Person: Ms. Rebecca Martin, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Bethesda, MD 20892–9669, Phone: 301–435–0886, email: *IACCPublicInquiries@mail.nih.gov.*

Public Comments

The IACC welcomes public comments from members of the autism community and asks the community to review and adhere to its Public Comment Guidelines. In the *2016–2017 IACC Strategic Plan,* the IACC listed the ''Spirit of Collaboration'' as one of its core values, stating that, ''We will treat others with respect, listen with open minds to the diverse views of people on the autism spectrum and their families, thoughtfully consider community input, and foster discussions where participants can comfortably offer opposing opinions.'' In keeping with this core value, the IACC and the NIMH Office of Autism Research Coordination (OARC) ask that members of the public who provide public comments or participate in meetings of the IACC also seek to treat others with respect and consideration in their communications and actions, even when discussing issues of genuine concern or disagreement.

As the IACC will be updating its Strategic Plan, comments related to issues that the community would like to see highlighted in the new IACC Strategic Plan are welcome. Comments may be submitted in writing via email to *IACCPublicInquiries@mail.nih.gov* or using the web form at: *https://iacc.hhs.gov/meetings/public-comments/submit/index.jsp* by 5:00 p.m. ET on Friday, April 1, 2022. A limited number of slots are available for individuals to provide a 2–3-minute summary or excerpt of their written comment to the Committee live during the virtual meeting using the virtual platform. For those interested in that opportunity, please indicate ''Interested in providing virtual comment'' in your written submission, along with your name, address, email, phone number, and professional/organizational affiliation so that OARC staff can contact you if a slot is available for you to provide a summary or excerpt of your comment via the virtual platform during the meeting. For any given meeting, priority for live virtual comment slots will be given to those who have not previously provided live virtual comments in the current calendar year. This will help ensure that as many individuals as possible have an opportunity to share comments. Commenters going over their allotted 3-minute slot may be asked to conclude immediately in order to allow other comments and the rest of the meeting to proceed on schedule.

Public comments received by 5:00 p.m. ET on Friday, April 1, 2022, will be provided to the Committee prior to the meeting for their consideration. Any written comments received after 5:00 p.m. ET, April 1, 2022, may be provided to the Committee either before or after

the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable Federal policies. The Committee is not able to individually respond to comments. All public comments become part of the public record. Attachments of copyrighted publications are not permitted, but web links or citations for any copyrighted works cited may be provided. For public comment guidelines, see: *https://iacc.hhs.gov/meetings/public-comments/guidelines/.*

Technical Issues

If you experience any technical problems with the webcast please email *IACCPublicInquiries@mail.nih.gov.*

Meeting schedule subject to change.

Disability Accommodations

All IACC Full Committee Meetings provide Closed Captioning through the NIH videocast website. Individuals whose full participation in the meeting will require special accommodations (*e.g.,* sign language or interpreting services, etc.) must submit a request to the Contact Person listed on the notice at least seven (7) business days prior to the meeting. Such requests should include a detailed description of the accommodation needed and a way for the IACC to contact the requester if more information is needed to fill the request. Special requests should be made at least seven (7) business days prior to the meeting; last-minute requests may be made but may not be possible to accommodate.

More Information

Information about the IACC is available on the website: *http://www.iacc.hhs.gov.*

Dated: March 10, 2022.

Melanie Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05468 Filed 3–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below. Individuals who plan to participate and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 18–19, 2022.

Open: May 18, 2022, 1:00 p.m. to 5:30 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Activities; Administrative and Program Developments; and Overview of the NINDS Intramural Program.

Open session will be videocast from this link: https://videocast.nih.gov/.

Closed: May 19, 2022, 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Closed: May 19, 2022, 5:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' Reports.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Virtual Meeting).

Contact Person: Robert Finkelstein, Ph.D., Director of Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248, *finkelsr@ninds.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 9, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05465 Filed 3–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; FEB2022 Cycle 40 NExT SEP Committee Meeting.

Date: April 18, 2022.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, Maryland 20892 (WebEx Meeting).

Contact Persons: Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20817, (301) 496–4291, *mroczkoskib@mail.nih.gov.* Toby Hecht, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 3W110, Rockville, MD 20850, (240) 276–5683, *toby.hecht2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 10, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05464 Filed 3–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: March 28, 2022.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: Director's Report; RFA, RFP, and PAR Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Date: March 29, 2022.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: RFA, RFP, and PAR Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center, Drive, 7th Floor, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: BSA: *http://deainfo.nci.nih.gov/advisory/bsa/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 10, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05467 Filed 3–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; NIH COVID–19 Vaccination Status Form Extension

AGENCY: National Institutes of Health, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Jessica McCormick-Ell, Ph.D., SM (NRCM), CBSP, RBP, NIH/ORS/SR/DOHS, Bldg. 13/3W80, Bethesda, MD, 20892–5760 or call non-toll-free number (301) 496–0590 or email your request, including your address to: *jessica.mccormick-ell@nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on November 22, 2021 (86 FR 66319), and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of Research Services, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: NIH COVID–19 Vaccination Status Form, REVISION, 0925–0771, exp., 3/31/2022, Office of Research Services (ORS), National Institutes of Health (NIH).

Need and Use of Information Collection: This revision request includes two new forms as NIH is implementing a building entry protocol where all people, Federal Government employees, contractors, patients, and visitors, will answer questions about COVID exposure every day. The NIH COVID–19 Vaccination Status Form will continue to ensure the safety of the Federal workplace consistent with Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees, the COVID–19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from the Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration (OSHA). The proposed information collection will continue to be used to ensure compliance with vaccination requirements in the authorities above, generate the list of persons required to be tested on a routine basis, and will provide important information

regarding safety frameworks, guidance, and procedures.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 8,499.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of collection	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
NIH COVID–19 Vaccine Status Form	31,000	1	5/60	2,583
Screening Questionnaire	35,500	1	5/60	2,958
Building Access Form	35,500	1	5/60	2,958
Total		102,000		8,499

Dated: March 9, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–05475 Filed 3–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request NIH Electronic Application System for Certificates of Confidentiality

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Pamela Reed Kearney, Division of Human Subjects Research, OER, NIH, 6705 Rockledge Dr., Building Rockledge 1, Room 812–C, Bethesda, MD 20817, or call non-toll-free number (301) 402–2512 or email your request, including your address to: *NIH-CoC-Coordinator@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on December 17, 2021, page 71650 (FR 86 pages 71650–71651) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after February 28, 2023, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Electronic Application for NIH Certificates of Confidentiality (CoC E-application System), 0925–0689, REVISION, exp., date 02/28/2023, Office of Extramural Research (OER), National Institutes of Health (NIH).

Need and Use of Information Collection: The current CoC system sends system communications and the approved Certificate to the Principal Investigator and the Institutional Official. The optional data fields will allow the requester to identify another person that receives CoC system communications and the approved Certificate. This request system provides one electronic form to be used by all non-NIH funded research organizations that request a discretionary Certificates of Confidentiality (CoC) from NIH. As described in the authorizing legislation (Section 301(d) of the Public Health Service Act, 42 U.S.C. 241(d)), CoCs are issued by the agencies of the Department of Health and Human Services (HHS), including NIH, to authorize researchers to protect the privacy of human research subjects by prohibiting them from releasing names and identifying characteristics of research participants to anyone not connected with the research, except in limited circumstances specified in the statute. At NIH, the issuance of discretionary CoCs has been delegated to the OER in the NIH Office of the Director. NIH received 795 requests for CoCs from January 2020 through December 2020 and expects to receive approximately the same number of requests in subsequent years. The NIH has been using an online CoC system to review requests and issue CoCs since 2015. The current CoC request form includes six sections of information collected from research organizations. The information provided is used to determine eligibility for a CoC and to issue the CoC to the requesting organization. Eligible requesting organizations that provide legally binding affirmations that they will abide by the terms of the CoC are issued a Certificate of Confidentiality. This system has increased efficiency and reduced burden for both requesters and NIH staff who currently process these requests. OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1193.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Life Scientists	795	1	90/60	1193
	795	.....	.....	1193

Dated: March 9, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director,National Institutes of Health.

[FR Doc. 2022–05474 Filed 3–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroimaging Technologies.

Date: April 13, 2022.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7846, Bethesda, MD 20892, 301–237–1487, *lowss@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 10, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05469 Filed 3–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2022 Notice of Funding Opportunity (NOFO)

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award supplemental funding to the Certified Community Behavioral Health Clinic (CCBHC) Expansion (Short Title: CCBHC Expansion Grants) NOFO SM–20–012 grant recipients funded in FY 2020.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting administrative supplements (in scope of the parent award) up to $249,999 (total costs) for the 166 CCBHC Expansion grant recipients funded in FY 2020 under the Certified Community Behavioral Health Clinic (CCBHC) Expansion (Title: CCBHC Expansion Grants, NOFO SM–20–012, with a project end date of April 30, 2022) to cover unanticipated costs caused by the COVID–19 pandemic or related mitigation efforts that could not have been covered by rebudgeting existing funds. The supplemental funding is to assist CCBHC Expansion grant recipients that had unplanned administrative, staffing, labor, and other program costs due to the COVID–19 pandemic.

FOR FURTHER INFORMATION CONTACT: Mary Blake, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone (240) 276–1747; email: *mary.blake@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: It is expected that recipients of this supplemental funding will provide services and supports consistent with the approved activities in the FY 2020 CCBHC Expansion Grants NOFO SM–20–012 and the majority of funds will be used for services. No more than 15 percent of these funds may be used for infrastructure, supplies, or equipment. SAMHSA expects that this program will improve the behavioral health of individuals across the nation by providing comprehensive community-based mental and substance use disorder services; treatment of co-occurring disorders; advance the integration of behavioral health with physical health care; assimilate and utilize evidence-based practices on a more consistent basis; and promote improved access to high quality care.

Supplemental awards will be prioritized for FY 2020 CCBHC Expansion grant recipients with an unobligated balance of less than $1,000,000 under their current grant.

This is not a formal request for application. Assistance will only be provided to the 166 CCBHC Expansion grant recipients, funded in FY 2020 under NOFO SM–20–012, based on the receipt of a satisfactory application and associated budget that is approved by a review group.

Funding Opportunity Title: FY 2020 CCBHC Expansion Supplemental Funding.

Assistance Listing Number: 93.696.

Authority: Section 520A (42 U.S.C. 290bb–32) of the Public Health Service Act, as amended.

Justification: Eligibility for this supplemental funding is limited to the 166 CCBHC Expansion grant recipients who received funding in FY 2020 under the CCBHC Expansion Grants NOFO SM–20–012. These recipients have experienced unexpected and/or increased costs for program activities and services due to the COVID–19 pandemic. It is expected that this supplemental funding will allow CCBHC Expansion grant recipients to provide the required and approved program activities and services that were affected during the pandemic.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–05399 Filed 3–14–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2022–0010]

Commercial Customs Operations Advisory Committee (COAC); Meeting

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee management; notice of Federal Advisory Committee meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Thursday, March 31, 2022. The meeting will be open to the public via webinar only. There is no on-site, in-person option for the public to attend this quarterly meeting.

DATES: The COAC will meet on Thursday, March 31, 2022, from 1:00 p.m. to 5:00 p.m. EDT. Please note that the meeting may close early if the committee has completed its business. Comments must be submitted in writing no later than March 28, 2022.

ADDRESSES: The meeting will be open to the public via webinar. The webinar link and conference number will be provided to all registrants by 5:00 p.m. EDT on March 30, 2022. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344–1440 as soon as possible. Submit electronic comments and other data to *www.regulations.gov* or by email at *tradeevents@cbp.dhs.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Ms. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; or Ms. Valarie M. Neuhart, Designated Federal Officer at (202) 344–1440.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the authority of the Federal Advisory Committee Act, 5 U.S.C. Appendix. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Pre-registration: For members of the public who plan to participate in the webinar, please register online at *https://teregistration.cbp.gov/index.asp?w=246* by 5:00 p.m. EDT by March 30, 2022. For members of the public who are pre-registered to attend the meeting via webinar and later need to cancel, please do so by 5:00 p.m. EDT March 30, 2022, utilizing the following link: *https://teregistration.cbp.gov/cancel.asp?w=246.*

Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

Comments must be submitted in writing no later than March 28, 2022, and must be identified by Docket No. USCBP–2022–0010, and may be submitted by one (1) of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: tradeevents@cbp.dhs.gov.* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. *Docket:* For access to the docket, go to *http://www.regulations.gov* and search for Docket Number USCBP–2022–0010. To submit a comment, click the ''Comment Now!'' button located on the top-right hand side of the docket page.

All comments received will be posted without change to *https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings,* including any personal information provided.

There will be multiple public comment periods held during the meeting on March 31, 2022. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page: *http://www.cbp.gov/trade/stakeholder-engagement/coac.*

Agenda

The COAC will hear from the current subcommittees on the topics listed below:

1. The Rapid Response Subcommittee will share details regarding the formation of the Domestic Manufacturing and Production Working Group and provide an update on the progress and plans of the Broker Modernization Working Group.

2. The Intelligent Enforcement Subcommittee will provide updates on the progress and plans on the following: The Bond Working Group will provide the overall status; the Antidumping/Countervailing Duty Working Group will provide updates regarding the progress and plans for the group; the Intellectual Property Rights Process Modernization Working Group will provide an update on the status of the group and discuss potential next steps; and the Forced Labor Working Group will provide status updates and the plans for the 16th Term of COAC.

3. The Next Generation Facilitation Subcommittee will provide an update on the progress of the 21st Century Customs Framework and E-Commerce Task Forces; the One U.S. Government Working Group will provide an update on upcoming work; the Re-Imagined Entry Processes Working Group has undergone a name change and will be known as the ACE 2.0 Working Group. The working group plans to conduct an in-depth gap analysis of processes to be improved included in the ACE 2.0 modernization.

4. The Secure Trade Lanes Subcommittee will provide an update on the status of the Customs Trade Partnership Against Terrorism (CTPAT), export modernization, in-bond modernization, and cargo operations.

Meeting materials will be available by March 22, 2022, at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Dated: March 9, 2022.

Valarie M. Neuhart,

Deputy Executive Director, Office of Trade Relations.

[FR Doc. 2022–05388 Filed 3–14–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2217]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and

where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before June 13, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https:/msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2217, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Johnston County, Oklahoma and Incorporated Areas Project: 20–06–0098S Preliminary Date: August 27, 2021	
City of Tishomingo	City Hall, 1130 East Main Street, Tishomingo, OK 73460.
Town of Mannsville	Town Hall, 103 South 18th Street, Mannsville, OK 73447.
Town of Milburn	City Hall, 101 Main Street, Milburn, OK 73450.
Town of Mill Creek	Town Hall, 105 East Main Street, Mill Creek, OK 74856.
Town of Ravia	Town Hall Complex, 109 East Grand Avenue, Ravia, OK 73455.
Town of Wapanucka	City Hall, 211 South Choctaw Avenue, Wapanucka, OK 73461.
Unincorporated Areas of Johnston County	Johnston County Commissioner's Office, 705 West Main Street, Tishomingo, OK 73460.
Murray County, Oklahoma and Incorporated Areas Project: 20–06–0099S Preliminary Date: August 27, 2021	
City of Davis	City Hall, 227 East Main Street, Davis, OK 73030.
City of Sulphur	City Hall, 600 West Broadway Avenue, Sulphur, OK 73086.
Town of Dougherty	Murray County Courthouse, 1001 West Wyandotte Avenue, Sulphur, OK 73086.
Unincorporated Areas of Murray County	Murray County Courthouse, 1001 West Wyandotte Avenue, Sulphur, OK 73086.

Community	Community map repository address
Ellis County, Texas and Incorporated Areas Project: 20–06–0076S Preliminary Date: April 13, 2021	
City of Cedar Hill	Public Works Department, 285 Uptown Boulevard, Cedar Hill, TX 75104.
City of Ennis	City Hall, 115 West Brown Street, Ennis, TX 75119.
City of Grand Prairie	Municipal Complex, Stormwater Department, 300 West Main Street, Grand Prairie, TX 75050.
City of Mansfield	City Hall, 1200 East Broad Street, Mansfield, TX 76063.
City of Midlothian	City Hall, 104 West Avenue East, Midlothian, TX 76065.
City of Oak Leaf	City Hall, 301 Locust Drive, Oak Leaf, TX 75154.
City of Ovilla	City Hall, 105 Cockrell Hill Road, Ovilla, TX 75154.
City of Pecan Hill	Pecan Hill City Hall, 1094 South Lowrance Road, Red Oak, TX 75154.
City of Red Oak	City Hall, 200 Lakeview Parkway, Red Oak, TX 75154.
City of Venus	City Hall, 700 West US Highway 67, Venus, TX 76084.
City of Waxahachie	City Hall, 401 South Rogers Street, Waxahachie, TX 75165.
Unincorporated Areas of Ellis County	Ellis County Courthouse, 101 West Main Street, Waxahachie, TX 75165.

[FR Doc. 2022–05362 Filed 3–14–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2222]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before June 13, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2222, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities

with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
McIntosh County, North Dakota and Incorporated Areas Project: 21–08–0006S Preliminary Date: August 19, 2021	
City of Ashley	McIntosh County Courthouse, 112 1st Street Northeast, Ashley, ND 58413.
City of Venturia	McIntosh County Courthouse, 112 1st Street Northeast, Ashley, ND 58413.
City of Wishek	McIntosh County Courthouse, 112 1st Street Northeast, Ashley, ND 58413.
Unincorporated Areas of McIntosh County	McIntosh County Courthouse, 112 1st Street Northeast, Ashley, ND 58413.

[FR Doc. 2022–05363 Filed 3–14–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2223]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before June 13, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2223, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection

at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Saginaw County, Michigan (All Jurisdictions) **Project: 14–05–9590S Preliminary Date: May 21, 2021**	
Charter Township of Bridgeport	Governmental Center, 6740 Dixie Highway, Bridgeport, MI 48722.
Charter Township of Buena Vista	Buena Vista Administration Building, 1160 South Outer Drive, Saginaw, MI 48601.
Charter Township of Saginaw	Township Hall, 4980 Shattuck Road, Saginaw, MI 48603.
City of Frankenmuth	City and Township Government Center, 240 West Genesee Street, Frankenmuth, MI 48734.
City of Saginaw	City Hall, 1315 South Washington Avenue, Second Floor, Saginaw, MI 48601.
City of Zilwaukee	City of Zilwaukee Administration Building, 319 Tittabawassee Road, Saginaw, MI 48604.
Township of Albee	Albee Township Community Center, 10645 East Road, Burt, MI 48417.
Township of Birch Run	Birch Run Township Center, 8425 Main Street, Birch Run, MI 48415.
Township of Blumfield	Blumfield Township Office, 1175 Vassar Road, Reese, MI 48757.
Township of Brant	Brant Township Hall, 11012 South Hemlock Road, Brant, MI 48655.
Township of Carrollton	Carrollton Township Office, 1645 Mapleridge Road, Saginaw, MI 48604.
Township of Chesaning	Township Hall, 1025 West Brady Street, Chesaning, MI 48616.
Township of Frankenmuth	City and Township Government Center, 240 West Genesee Street, Frankenmuth, MI 48734.
Township of Fremont	Fremont Township Hall, 5980 South Hemlock Road, Hemlock, MI 48626.
Township of James	James Township Hall, 6060 Swan Creek Road, Saginaw, MI 48609.
Township of Kochville	Kochville Township Offices, 5851 Mackinaw Road, Saginaw, MI 48604.
Township of Maple Grove	Maple Grove Township Hall, 17010 Lincoln Road, New Lothrop, MI 48460.
Township of Marion	Marion Township Hall, 10925 South Merrill Road, Brant, MI 48614.
Township of Spaulding	Spaulding Township Offices, 5025 East Road, Saginaw, MI 48601.
Township of St. Charles	St. Charles Township Office, 1003 North Saginaw Street, St. Charles, MI 48655.
Township of Swan Creek	Swan Creek Township Hall, 11415 Lakefield Road, St. Charles, MI 48655.
Township of Taymouth	Taymouth Township Offices, 4343 East Birch Run Road, Birch Run, MI 48415.
Township of Thomas	Thomas Township Municipal Office, 249 North Miller Road, Saginaw, MI 48609.
Township of Tittabawassee	Tittabawassee Township Offices, 145 South Second Street, Freeland, MI 48623.
Township of Zilwaukee	Zilwaukee Township Clerk's Office, 7600 Melbourne Road, Saginaw, MI 48604.
Village of Chesaning	Administrative Offices, 218 North Front Street, Chesaning, MI 48616.
Village of St. Charles	Village Hall, 110 West Spruce Street, St. Charles, MI 48655.
Van Buren County, Michigan (All Jurisdictions) **Project: 13–05–4211S Preliminary Date: September 13, 2019**	
City of South Haven	City Hall, 539 Phoenix Street, South Haven, MI 49090.
Township of Covert	Township Hall, 73943 East Lake Street, Covert, MI 49043.
Township of South Haven	South Haven Charter Township Hall, 09761 Blue Star Memorial Highway, South Haven, MI 49090.
Lucas County, Ohio and Incorporated Areas **Project: 13–05–1800S Revised Preliminary Date: December 3, 2021**	
City of Oregon	City Hall, 5330 Seaman Road, Oregon, OH 43616.
City of Toledo	Department of Inspection, One Government Center, Suite 1600, Toledo, OH 43604.
Unincorporated Areas of Lucas County	Lucas County Engineer's Office, 1049 South McCord Road, Holland, OH 43528.
Village of Harbor View	Village Hall, 327 Lakeview Drive, Harbor View, OH 43434.

Community	Community map repository address
Greenbrier County, West Virginia and Incorporated Areas Project: 19–03–0028S Preliminary Date: September 30, 2021	
City of Ronceverte	City Hall, 182 Main Street West, Ronceverte, WV 24970.
City of White Sulphur Springs	City Hall, 589 Main Street West, White Sulphur Springs, WV 24986.
Corporation of Falling Springs	Renick Town Hall, 135 Church Lane, Renick, WV 24966.
Town of Rainelle	Town Hall, 1233 Kanawha Avenue, Rainelle, WV 25962.
Town of Rupert	Town Hall, 528 Nicholas Street, Rupert, WV 25984.
Unincorporated Areas of Greenbrier County	Greenbrier County Courthouse, 912 Court Street North, Lewisburg, WV 24901.

[FR Doc. 2022–05361 Filed 3–14–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–07]

60-Day Notice of Proposed Information Collection: HECM Counseling Client Survey, OMB Control No.: 2502–0585

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection OMB 2502–0585. OHC is seeking to reinstate OMB Collection 2502–0585 so that an OMB 83–D form can be submitted to discontinue this collection. HUD form 92911 is obsolete and hasn't been used in over 7 years. Currently collection OMB 2502–0585 is inactive and out of compliance. This collection expired on August 31, 2019. In 2020 OHC tried to submit OMB form 83D to discontinue this collection however were advised that a PRA Collection must be in active state before a request to discontinue the collection can be submitted. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 16, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HECM Counseling Survey.

OMB Approval Number: 2502–0585.

OMB Expiration Date: August 31, 2019.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD–92911.

Description of the need for the information and proposed use: This collection expired on August 31, 2019. The Office of Housing Counseling does not use this form and wants to discontinue this collection however PRA Collection 2502–0585 must be reinstated before form OMB 83–D can be submitted to request that this collection be approved for discontinuation by OMB.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.

Frequency of Response: 1.

Average Hours per Response: .25.

Total Estimated Burden: 75 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Janet M. Golrick,

Acting, Chief of Staff for the Office of Housing, Federal Housing Administration.

[FR Doc. 2022–05445 Filed 3–14–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number: FR–7062–N–02]

Privacy Act of 1974; Matching Program

AGENCY: Office of Public and Indian Housing, Real Estate Assessment Center.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of

1988, as amended, the Department of Housing and Urban Development (HUD) is providing notice of its intent to re-establish a computer matching agreement (CMA) with the Social Security Administration (SSA) for a recurring matching program with HUD's Office of Public and Indian Housing (PIH) and Office of Housing, involving comparisons of Social Security numbers (SSN) and benefit information provided by participants in any authorized HUD rental housing assistance program. HUD will obtain SSA data and make the results available to: (1) Program administrators such as public housing agencies (PHAs) and private owners and management agents (O/As) (collectively referred to as POAs) to enable them to verify the accuracy of income reported by the tenants (participants) of HUD rental assistance programs, and (2) contract administrators (CAs) overseeing and monitoring O/A operations as well as independent public auditors (IPAs) that audit both PHAs and O/As. The most recent renewal of the current matching agreement expired on November 7, 2021.

DATES: The CMA will become applicable 30 days after the publication of this notice, unless comments have been received from interested members of the public requiring modification and republication of the notice. The matching program will continue for 18 months after the applicable date and may be extended for an additional 12 months, if the respective agency Data Integrity Boards (DIBs) determine that the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact the Recipient Agency, Nancy Corsiglia, Senior Agency Official for Privacy, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6204, Washington, DC 20410, telephone number (202) 402–4025. [This is not a toll-free number.] A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Relay Service).

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** on March 26, 2019, at 84 FR 11321. Administrators of HUD rental assistance programs rely upon the accuracy of tenant-reported income to determine participant eligibility for and level of rental assistance. The computer matching program may provide indicators of potential tenant unreported or under-reported income, which will require additional verification to identify inappropriate or inaccurate rental assistance and may provide indicators for potential administrative or legal actions. The matching program will be carried out to detect inappropriate or inaccurate rental assistance. Specifically, the computer matching program will match HUD's tenant data to SSA's death data, Social Security (SS) and Supplemental Security Income (SSI) benefits data.

Participating Agencies: Department of Housing and Urban Development and the Social Security Administration.

Authority for Conducting the Matching Program: 42 U.S.C. 3543 authorizes HUD to require rental assistance applicants and participants to disclose their SSNs. HUD requires, as a condition of eligibility, that individuals requesting, or continuing to receive, rental assistance disclose their SSNs (24 CFR 5.216). Section 1106 of the Social Security Act (Act) (42 U.S.C. 1306) and the regulations promulgated thereunder provide legal authority for SSA's disclosures in this agreement (20 CFR part 401). Section 205(r)(3) of the Act (42 U.S.C. 405(r)(3)) provides legal authority for SSA to disclose death data to Federal agencies to ensure proper payment of Federally funded benefits. Pursuant to section 7213 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law (Pub. L.) No. 108–458, SSA includes death indicators in verification routines that SSA determines to be appropriate.

Purpose(s): HUD's primary objective of the computer matching program is to verify the income of participants in certain rental assistance programs to determine the appropriate level of rental assistance, and to detect, deter, and correct fraud, waste, and abuse in rental housing assistance programs. In meeting these objectives, HUD also is carrying out a responsibility under 42 U.S.C. 1437f(k) to ensure that income data provided to POAs by household members is complete and accurate. HUD's various rental housing assistance programs require that participants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report and recertify the amounts and sources of their income at least annually. However, under the Quality Housing and Work Responsibility Act of 1998, PHAs operating Public Housing programs may offer tenants the option to pay a flat rent or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the changes to the Admissions and Occupancy final rule (March 29, 2000 (65 FR 16692)) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent. Additional uses/benefits of this computer matching program include: (1) Increasing the availability of rental assistance to individuals who meet the requirements of the rental assistance programs; (2) after removal of personal identifiers, conducting analyses of SSA death data and benefit information, and income reporting of program participants; and (3) measuring improper payments due to under-reporting of income and/or overpayment of subsidy on behalf of deceased program participants.

Categories of Individuals

Covered Programs

This notice of computer matching program applies to individuals receiving assistance from the following rental assistance programs:

a. Disaster Housing Assistance Program (DHAP) under the United States Housing Act of 1937
b. Public Housing under 24 CFR part 960
c. Section 8 Housing Choice Voucher (HCV) under 24 CFR part 982
d. Project-Based Vouchers Section 24 CFR parts 880, 881, 883, 884, 886, and 891
e. New Construction Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f)
f. Substantial Rehabilitation Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f)
g. Section 202/8 of the Housing Act of 1959 (12 U.S.C. 1701q)
h. Rural Housing Services Section 515/8 under section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485)

i. Loan Management Set-Aside Section 236 of the National Housing Act (12 U.S.C. 1715z–1)
j. Property Disposition Set-Aside of the Housing Act of 1959 (12 U.S.C. 1701)
k. Section 101 Rent Supplement of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)
l. Section 202/162 Project Assistance Contract of the Housing Act of 1959 (24 CFR 891.655)
m. Section 202 Project Rental Assistance Contract (PRAC) of the Housing Act of 1959 (12 U.S.C. 1701q)
n. Section 811 PRAC of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013)
o. Section 236 of the National Housing Act (12 U.S.C. 1715z–1)
p. Section 236 Rental Assistance Program (RAP) of the National Housing Act (12 U.S.C. 1715z–1)
q. Section 221(d)(3) Below Market Interest Rate and 236 of the National Housing Act of 1959 (12 U.S.C. 171519(d)(3) and 1715z–1)
r. Section 8 Moderate Rehabilitation (24 CFR part 882)
s. Project-Based Voucher (24 CFR part 983)

Note: The Low-Income Housing Tax Credit and Rural Housing Services Section 515 (non-section 8) are not included under the rental housing assistance programs covered under this CMA.

Categories of Records: The following are the categories of record in this matching agreement that HUD will provide SSA for each individual for whom HUD requests information:

- First name
- Last name
- SSN
- Date of Birth (DOB)

SSA will provide HUD with the following information for each individual for whom HUD requests information:

- The amount of monthly benefits for each recipient of Title II, Title XVI, and Title VIII benefits
- SSN match/no match response
- In the case of a ''no match'', the reason for the no match response in the form of an error code
- A death indicator, if applicable

System(s) of Records: SSA will conduct the matching of tenant SSNs and additional identifiers (surnames and DOBs) to tenant data that HUD supplies from its systems of records known as:

1. Tenant Rental Assistance Certification System (TRACS) HSNG.MF.HITS.02, a component of HUD's Tenant Housing Assistance and Contract Verification Data System, published on August 22, 2016 (81 FR 56684);

2. Inventory Management System, Public Housing Information System (IMS/PIC), HUD/PIH.01, published on March 25, 2019 (84 FR 11117); and

3. Enterprise Income Verification (EIV) System, HUD/PIH–5, published on September 1, 2009 (74 FR 45235).

Program administrators utilize the form HUD–50058 module within IMS/PIC system and the form HUD–50059 module within TRACS to provide HUD with the tenant data. SSA will match the tenant data in TRACS and IMS/PIC to its systems of records known as

1. SSA's Master Files of Social Security Number (SSN) Holders and SSN Applications (Enumeration System), 60–0058; last fully published December 29, 2010 (75 FR 82121) and amended on July 5, 2013 (78 FR 40542), February 13, 2014 (79 FR 8780), July 3, 2018 (83 FR 31250 and 83 FR 31251), and November 1, 2018 (83 FR 54969);

2. Supplemental Security Income Record and Special Veterans Benefits, 60–0103, last fully published on January 11, 2006 (71 FR 1830) and amended December 10, 2007 (72 FR 69723), July 3, 2018 (83 FR 31250 and 83 FR 31251) and November 1, 2018 (83 FR 64969); and

3. Master Beneficiary Record (MBR), 60–0090, last fully published on January 11, 2006 (71 FR 1826) and amended on December 10, 2007 (72 FR 69723), July 5, 2013 (78 FR 40542), July 3, 2018 (83 FR 31250 and 83 FR 31251), and November 1, 2018 (83 FR 54969).

Dated: January 11, 2022.

Nancy Corsiglia,

Senior Agency Official for Privacy.

[FR Doc. 2022–05438 Filed 3–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6268–N–03]

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2021

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on July 1, 2021, and ending on September 30, 2021, including those made pursuant to the CARES Act.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10282, Washington, DC 20410–0500, telephone 202–708–5300 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the third quarter of calendar year 2021.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to

waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from July 1, 2021, through September 30, 2021. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Additionally, this notice includes waivers made pursuant to the Coronavirus Aid, Relief and Economic Security Act (CARES Act), not previously published in the **Federal Register**. These waivers are listed separately from other individual waivers within each program office grouping, as CARES Act waivers broadly covered all affected parties rather than individual, case-by-case situations.

Should HUD receive additional information about waivers granted during the period covered by this report (the third quarter of calendar year 2021) before the next report is published (the fourth quarter of calendar year 2021), HUD will include any additional waivers granted for the third quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Damon C. Smith,

General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development July 1, 2021, Through September 30, 2021

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory Waivers Granted by the Office of Community Planning and Development.
II. Regulatory Waivers Granted by the Office of Housing.
III. CARES Act Waivers Contained in CPD Notice 21–08 (July 19, 2021)

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 91.105(c)(2), and (k); 24 CFR 91.115(c)(2), and (i); and 24 CFR 91.401.

Project/Activity: Any HUD Community Planning and Development (CPD) grantee located in the counties included in the declared-disaster area (see FEMA–DR–4611) seeking to expedite action in response to Hurricane Ida, upon notification to the Community Planning and Development Director in its respective HUD Field Office.

Nature of Requirement: The regulations at 24 CFR 91.105(c)(2) and (k); 24 CFR 91.115(c)(2), and (i); and 24 CFR 91.401 require a 30-day public comment period prior to the implementation of a substantial amendment.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021.

Reason Waived: Hurricane Ida caused substantial damage to communities in Louisiana. As a result of substantial property loss and destruction, many individuals and families residing in the declared-disaster areas were displaced from their homes, including beneficiaries of various CPD programs, and families eligible to receive CPD program assistance. Some individuals and families continued to live in homes with habitability deficits, particularly related to potable water and electricity. A presidential disaster declaration was issued on August 29, 2021, (FEMA–DR–4611) for Hurricane Ida. In reducing the comment period to seven days, this waiver balances the need to quickly assist families dealing with the after-effects of Hurricane Ida while continuing to provide reasonable notice and opportunity for citizens to comment on the proposed uses of CDBG, HOME, HTF, HOPWA, and ESG funds.

Contact: James E. Höemann, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 91.105(c)(2), and (k); 24 CFR 91.115(c)(2), and (i); and 24 CFR 91.401.

Project/Activity: Any HUD Community Planning and Development (CPD) grantee located in the counties included in the declared-disaster area (see FEMA–DR–4614 and FEMA–DR–4615) seeking to expedite action in response to the remnants of Hurricane Ida, upon notification to the Community Planning and Development Director in its respective HUD Field Office.

Nature of Requirement: The regulations at 24 CFR 91.105(c)(2) and (k); 24 CFR 91.115(c)(2), and (i); and 24 CFR 91.401 require a 30-day public comment period prior to the implementation of a substantial amendment.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2021.

Reason Waived: The remnants of Hurricane Ida caused substantial damage to communities in New York and New Jersey. As a result of substantial property loss and destruction, many individuals and families residing in the declared-disaster areas were displaced from their homes, including beneficiaries of various CPD programs, and families eligible to receive CPD program assistance. Some individuals and families continued to live in homes with habitability deficits, particularly related to potable water and electricity. A presidential disaster declaration was issued on September 5, 2021, (FEMA–DR–4614 and FEMA–DR–4615) for the remnants of Hurricane Ida. In reducing the comment period to seven days, this waiver balances the need to quickly assist families dealing with the after-effects of Hurricane Ida while continuing to provide reasonable notice and opportunity for citizens to comment on the proposed uses of CDBG, HOME, HTF, HOPWA, and ESG funds.

Contact: James E. Höemann, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 91.105(c)(2), and (k) and 24 CFR 91.115(c)(2), and (i).

Project/Activity: Any HUD Community Planning and Development (CPD) grantee located in the counties included in the declared-disaster area (see FEMA–DR–4611) seeking to expedite action in response to Hurricane Ida, upon notification to the Community Planning and Development Director in its respective HUD Field Office.

Nature of Requirement: The regulations at 24 CFR 91.105(c)(2) and (k) and 24 CFR 91.115(c)(2) and (i) require grantees to provide reasonable notice and opportunity to comment, in accordance with a grantee's citizen participation plan, for substantial amendments to the consolidated plan. The citizen participation plan must state how reasonable notice and opportunity to comment will be given.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021.

Reason Waived: HUD recognizes that the destruction wrought by Hurricane Ida makes it difficult for impacted jurisdictions in Louisiana to provide notice to their citizens in accordance with their citizen participation plans. HUD's waiver will allow these grantees to determine what constitutes reasonable notice and opportunity to comment on substantial amendments through the end of their 2021 program year.

Contact: James E. Höemann, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 91.105(c)(2), and (k) and 24 CFR 91.115(c)(2), and (i).

Project/Activity: Any HUD Community Planning and Development (CPD) grantee located in the counties included in the declared-disaster area (see FEMA–DR–4614 and FEMA–DR–4615) seeking to expedite action in response to the remnants of Hurricane Ida, upon notification to the Community Planning and Development Director in its respective HUD Field Office.

Nature of Requirement: The regulations at 24 CFR 91.105(c)(2) and (k) and 24 CFR 91.115(c)(2) and (i) require grantees to provide reasonable notice and opportunity to comment, in accordance with a grantee's citizen participation plan, for substantial amendments to the consolidated plan. The citizen participation plan must state how reasonable notice and opportunity to comment will be given.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2021.

Reason Waived: HUD recognizes that the destruction wrought by the remnants of Hurricane Ida make it difficult for impacted jurisdictions in New York and New Jersey to provide notice to their citizens in accordance with their citizen participation plans. HUD's waiver will allow these grantees to determine what constitutes reasonable notice and opportunity to comment on substantial amendments through the end of their 2021 program year.

Contact: James E. Höemann, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 92.203(a)(1) and (2).

Project/Activity: Families displaced by the disaster (as documented by FEMA registration) whose income documentation was destroyed or made inaccessible by Hurricane Ida.

Nature of Requirement: These sections of the HOME regulation require initial income determinations for HOME beneficiaries by examining source documents covering the most recent two months. Many families whose housing was destroyed or damaged by Hurricane Ida will not have any documentation of income and will not be able to qualify for HOME assistance if the requirement remains effective.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021, for LA, September 9, 2021, for NY/NJ.

Reason Waived: This waiver permits the participating jurisdiction to use self-certification of income, as provided in § 92.203(a)(1)(ii), in lieu of source documentation to determine eligibility for HOME assistance of persons displaced by Hurricane Ida.

Applicability: This waiver applies only to families displaced by the disaster (as documented by FEMA registration) whose income documentation was destroyed or made inaccessible by Hurricane Ida and remains in effect for six months from the date of this memorandum. The participating jurisdiction or, as appropriate, HOME project owner, is required to maintain: (1) A record of FEMA registration to demonstrate that a family was displaced by Hurricane Ida; and (2) a statement signed by appropriate family members certifying to the family's size and annual income and that the family's income documentation was destroyed or is inaccessible.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.205(e)(2) and 24 CFR 92.64(a) (Insular Areas).

Project/Activity: Four-Year Project Completion Deadline.

Nature of Requirement: The provision requires that projects assisted with HOME funds be completed within 4 years of the date that HOME funds were committed. If the project is not complete, in accordance with the definition of ''project completion'' at 24 CFR 92.2, by the deadline, the project is involuntarily terminated in HUD's Integrated Data Information System (IDIS), and the PJ must repay all funds invested in the project. The regulations permit a PJ to request an extension of the deadline for up to one year. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 27, 2021.

Reason Waived: This waiver is necessary to provide additional time to permit completion of HOME-assisted projects that may be delayed because of the impact of COVID–19 on project timelines. These delays may occur because of worker illnesses or efforts to reduce the spread of COVID–19, such as smaller construction crews or delays in local permitting or inspections due to government office closures.

Applicability: This waiver applies to projects with 4-year project completion deadlines that occurred or will occur on after April 10, 2020, including projects with deadlines that were extended for one-year pursuant to an approved request under 24 CFR 92.205(e)(2) if such extension was in effect on or after April 10, 2020. The completion deadlines for covered projects will be extended to March 31, 2022.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.218 and 92.222(b).

Project/Activity: Any participating jurisdiction located in the areas included in the declared-disaster area (see FEMA–DR–4611–LA or FEMA–DR–4614–NJ and DR–4615–NY) which were damaged by Hurricane Ida.

Nature of Requirement: This provision requires all HOME participating jurisdictions to contribute throughout the fiscal year to housing that qualifies as affordable housing under the HOME program. The contributions must total no less than 25 percent of the HOME funds drawn from the participating jurisdiction's HOME Investment Trust Fund Treasury account. Reducing the match requirement for the participating jurisdiction by 100 percent for FY 2022 and FY 2023 will eliminate the need for the participating jurisdiction to identify match for HOME projects related to the damage caused by Hurricane Ida. The requirement that the participating jurisdiction must submit a copy of the Presidential major disaster-declaration is waived.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021, for LA, September 9, 2021, for NY/NJ.

Reason Waived: Given the urgent housing needs created by Hurricane Ida and the substantial financial impact the participating jurisdiction will face in addressing those needs, the approval of a match reduction will relieve the participating jurisdiction from the need to identify and provide matching contributions to HOME projects.

Applicability: This match reduction applies to funds expended by a participating jurisdiction located in the declared-disaster area from October 1, 2020, through September 30, 2023. The suspension also applies to State-funded HOME projects located in declared-disaster areas.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.218 and 92.222(b).

Project/Activity: Matching Contribution.

Nature of Requirement: The regulations require all HOME PJs to contribute

throughout the fiscal year to housing that qualifies as affordable housing under the HOME program. The contributions must total no less than 25 percent of the HOME funds drawn from the PJ's HOME Investment Trust Fund Treasury account.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 27, 2021.

Reason Waived: The COVID–19 pandemic has drastically reduced economic activity, reducing state and local tax revenues, and placing financial strain on PJs as they deliver urgently needed public health, emergency housing, education, and community and social services. Reducing the matching requirement for PJs in areas covered by a major disaster declaration by 100 percent for FY 2020, 2021 and FY 2022 will ease the economic burden on PJs and eliminate the need for them to identify other sources of match for HOME activities. Given the urgent housing and economic needs created by COVID–19, and the substantial financial impact the PJ will face in addressing those needs, waiver of these regulations will relieve the PJ from the need to identify and provide matching contributions to HOME projects.

Applicability: This match reduction waiver is in effect from October 19, 2019, until September 30, 2022, and applies to funds expended by a PJ for FY 2020, FY 2021, and FY 2022.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.251.

Project/Activity: Any housing units located in the areas included in the declared-disaster area (see FEMA–DR–4611–LA or FEMA–DR–4614–NJ and DR–4615–NY) which were damaged by Hurricane Ida and to which HOME funds are committed within two years of the date of the memorandum.

Nature of Requirement: This provision requires that housing assisted with HOME funds meet property standards based on the activity undertaken, *i.e.,* homebuyer assistance, and state and local standards and codes or model codes for rehabilitation and new construction. Property standard requirements are waived for repair of properties damaged by Hurricane Ida. Units must meet State and local health and safety codes. The lead housing safety regulations established in 24 CFR part 35 are not waived.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021, for LA, September 9, 2021, for NY/NJ.

Reason Waived: This waiver is required to enable the participating jurisdiction to meet the critical housing needs of families whose housing was damaged and families who were displaced by Hurricane Ida.

Applicability: This waiver applies only to housing units located in the declared-disaster areas which were damaged by the disaster and to which HOME funds are committed within two years of the date of this memorandum.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.252(d)(1) Utility Allowance Requirements.

Project/Activity: The State of California and Alameda County requested a waiver of 24 CFR 92.252(d)(1) to allow use of the utility allowance established by the local public housing agency (PHA) for two HOME-assisted projects—Mission Court Nine and Manzanita Family Apartments.

Nature of Requirement: The regulation at 24 CFR 92.252(d)(1) requires participating jurisdictions to establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. However, participating jurisdictions are not permitted to use the utility allowance established by the local public housing authority for HOME-assisted rental projects for which HOME funds were committed on or after August 23, 2013.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: July 23, 2021.

Reason Waived: The HOME requirements for establishing a utility allowances conflict with Project Based Voucher program requirements. It is not possible to use two different utility allowances to set the rent for a single unit and it is administratively burdensome to require a project owner establish and implement different utility allowances for HOME-assisted units and non-HOME assisted units in a project. This waiver will make quality affordable housing available to Project-Based Voucher (PBV) program participants by permitting the use of HOME funds in PBV-assisted projects.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.504(d)(1)(ii) and 24 CFR 92.64(a) (Insular Areas).

Project/Activity: Ongoing Periodic Inspections of HOME-assisted Rental Housing.

Nature of Requirement: These provisions require that during the period of affordability PJs perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards at 24 CFR 92.251 and to verify the information submitted by the owners in accordance with the income and rent requirements of section 92.252. Onsite inspections must occur at least once every three years during the period of affordability. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 27, 2021.

Reason Waived: Waiving the requirement to perform ongoing on-site inspections will help protect PJ staff and limit the spread of COVID–19. To protect PJ staff and reduce the spread of COVID–19, this waiver extends the timeframe for PJs to perform on-going periodic inspections and on-site reviews to determine a HOME rental project's compliance with property standards and rent and income requirements.

Applicability: The waiver is applicable to ongoing periodic inspections. Within 180 days of the end of this waiver period, PJs must physically inspect units that would have been subject to ongoing inspections since the waiver period began on April 10, 2020. The waiver is also applicable to on-site reviews to determine a HOME rental project's compliance with rent and income requirements if the project owner is unable to make documentation available electronically. The waiver is in effect through December 31, 2021.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.504(d)(1)(iii); 24 CFR 92.209(i) requirement for annual re-inspections and 24 CFR 92.64(a) (Insular Areas).

Project/Activity: Housing Quality Standards—Annual Inspections of TBRA Units.

Nature of Requirement: These provisions require PJs to annually inspect each unit occupied by a recipient of HOME TBRA. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 27, 2021.

Reason Waived: Waiving the requirement that annual re-inspections be performed according to schedule will protect the health of both inspectors and TBRA tenants by observing physical distancing recommendations to limit the spread of COVID–19.

Applicability: The waiver is applicable to annual HQS re-inspections required to occur from April 10, 2020, through December 31, 2021, and for units that were not initially inspected because of the PJ's use of a previous waiver under HUD's April 2020 Memo and/or the December 2020 Memo which provided waivers in response to the COVID–19 pandemic. PJs must make reasonable efforts to address any tenant reported health and safety issues during the waiver period. HUD encourages PJs to conduct ongoing inspections during the waiver period to the greatest extent feasible and consistent with employee and tenant safety. After December 31, 2021, all housing occupied by households receiving HOME TBRA must meet the housing quality standards (HQS) at 24 CFR 982.401. Within 180 days of the end of this waiver period, PJs must physically inspect units that would have been subject to inspections since the waiver period began on April 10, 2020. This waiver does not apply to the lead hazard reduction requirements at 24 CFR 35.1215. Consequently, units built before 1978 must undergo visual evaluation and paint repair in accordance with 24 CFR part 35, subpart M. PJs using this waiver authority must establish

procedures to minimize the risk that tenants are in housing that does not meet HQS.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.551(b)(1) and 24 CFR 92.64(a).

Project/Activity: Timeframe for a HOME participating jurisdiction's response to findings of noncompliance.

Nature of Requirement: The regulations require that if HUD determines that a participating jurisdiction has not met a provision of the HOME regulations, the participating jurisdiction must be notified and given an opportunity to respond within a time period prescribed by HUD, not to exceed 30 days.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 27, 2021.

Reason Waived: The waiver is necessary to permit HUD to provide participating jurisdictions with an extended period to respond to findings of noncompliance in recognition of the unanticipated circumstances created by the COVID–19 pandemic. Requiring participating jurisdictions to respond to all findings of noncompliance within 30 days may interfere with a participating jurisdiction's ability to address the unprecedented housing needs caused by the COVID–19 pandemic.

Applicability: The waiver applies to all findings of HOME regulatory noncompliance issued from April 10, 2020, through March 31, 2022. In the notice of findings, HUD will specify a time period for the participating jurisdiction's response. HUD may also extend time periods imposed before April 10, 2020. The waiver is available to all HOME participating jurisdictions.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 93.151(c).

Project/Activity: Families displaced by the disaster (as documented by FEMA registration) whose income documentation was destroyed or made inaccessible by Hurricane Ida.

Nature of Requirement: This section of the HTF regulation requires initial income determinations for HTF beneficiaries by examining source documents covering the most recent two months. Many families whose homes were destroyed or damaged by Hurricane Ida will not have any documentation of income and will not be able to qualify for HTF assistance if the requirement remains effective.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021, for LA, September 9, 2021, for NY/NJ.

Reason Waived: This waiver permits the grantee to use self-certification of income, as provided in section 93.151(d)(2), in lieu of source documentation to determine initial eligibility of persons displaced by Hurricane Ida for HTF assistance.

Applicability: This waiver applies only to families displaced by the disaster (as documented by FEMA registration) whose income documentation was destroyed or made inaccessible by Hurricane Ida and remains in effect for six months from the date of this memorandum. The grantee or, as appropriate, HTF project owner, is required to maintain: (1) A record of FEMA registration to demonstrate that a family was displaced by Hurricane Ida; and (2) a statement signed by appropriate family members certifying to the family's size and annual income and that the family's income documentation was destroyed or is inaccessible.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 570.201(e)(1) or (2) and Section 105(a)(8) of the Housing and Community Development Act of 1974, as amended (the Act).

Project/Activity: Any CDBG Entitlement grantee or State CDBG Program unit of general local government assisting persons and families who have registered with FEMA in connection with Hurricane Ida upon notification by the grantee to the Community Planning and Development Director in its respective HUD Field Office.

Nature of Requirement: The regulations at 24 CFR 570.201(e) limit the amount of CDBG funds used for public services to no more than 15 percent of the grantee's most recent CDBG grant plus 15 percent of program income received. Section 105(a)(8) sets forth the limitation of no more than 15 percent of each grant to be used for public services.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021.

Reason Waived: Several CDBG grantees, located within the declared-disaster areas, were affected by Hurricane Ida. The waiver granted will allow these grantees to expedite recovery efforts for low and moderate income residents affected by this event; pay for additional support services for affected individuals and families, including, but not limited to, food, health, employment, and case management services to help persons and families impacted by the property loss and destruction caused by the hurricane and flooding; and enable grantees to pay for the basic daily needs of individuals and families affected by Hurricane Ida on an interim basis.

Contact: James E. Höemann, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 570.201(e)(1) or (2) and Section 105(a)(8) of the Housing and Community Development Act of 1974, as amended (the Act).

Project/Activity: Any CDBG Entitlement grantee or State CDBG Program unit of general local government assisting persons and families who have registered with FEMA in connection with the remnants of Hurricane Ida upon notification by the grantee to the Community Planning and Development Director in its respective HUD Field Office.

Nature of Requirement: The regulations at 24 CFR 570.201(e) limit the amount of CDBG funds used for public services to no more than 15 percent of the grantee's most recent CDBG grant plus 15 percent of program income received. Section 105(a)(8) sets forth the limitation of no more than 15 percent of each grant to be used for public services.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2021.

Reason Waived: Several CDBG grantees, located within the declared-disaster areas, were affected by the remnants of Hurricane Ida. The waiver granted will allow these grantees to expedite recovery efforts for low and moderate income residents affected by this event; pay for additional support services for affected individuals and families, including, but not limited to, food, health, employment, and case management services to help persons and families impacted by the property loss and destruction caused by the storm and flooding; and enable grantees to pay for the basic daily needs of individuals and families affected by the remnants of Hurricane Ida on an interim basis.

Contact: James E. Höemann, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 570.207(b)(3) and Section 105(a) of the Housing and Community Development Act of 1974, as amended (the Act).

Project/Activity: Any CDBG Entitlement or State CDBG Program grantee located in the counties included in the declared-disaster area (see FEMA–DR–4611) seeking to expedite action in response to Hurricane Ida, upon notification to the Community Planning and Development Director in its respective HUD Field Office.

Nature of Requirement: The regulations at 24 CFR 570.207(b)(3) prohibit the use of CDBG funds for the construction of new, permanent residential structures. New housing construction is not generally an eligible activity under Section 105 of HCDA. It may be undertaken indirectly through CDBG assistance provided to Community Based Development Organizations or other nonprofit entities specified in Section 105(a)(15) of the HCDA.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021.

Reason Waived: HUD recognizes that Hurricane Ida caused damage and destruction to a large number of housing units within the declared-disaster areas. Allowing new housing construction will

enable CDBG grantees to replace affordable housing units that were lost as a result of the hurricane and flooding. To expedite the rebuilding process, HUD suspends Section 105(a) of HCDA and waives 24 CFR 570.207(b)(3) through the end of a grantee's 2022 program year to permit grantees to directly use CDBG funds for new housing construction activities to address damage from the hurricane. In addition to the flexibility provided by the suspension of the statute, grantees are encouraged to take advantage of the reconstruction provisions at Section 105(a)(4) of HCDA.

Contact: James E. Höemann, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 570.207(b)(4) (Entitlements).

Project/Activity: All Community Development Block Grant (CDBG) grantees located within and outside declared disaster areas assisting persons and families who have registered with FEMA in connection with Hurricane Ida.

Nature of Requirement: The CDBG regulations at 24 CFR 570.207(b)(4) prohibit income payments, but permit emergency grant payments for three months. ''Income payments'' means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities. Emergency grant payments made over a period of up to three consecutive months to the providers of such items and services on behalf of an individual or family are eligible public services.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021.

Reason Waived: HUD waives the provisions of 24 CFR 570.207(b)(4) to permit emergency grant payments for items such as food, clothing, housing (rent or mortgage), or utilities for up to six consecutive months. While this waiver allows emergency grant payments to be made for up to six consecutive months, the payments must still be made to service providers as opposed to the affected individuals or families. Many individuals and families have been forced to abandon their homes due to the flooding and other damage associated with Hurricane Ida. The waiver will allow CDBG grantees, including grantees providing assistance to evacuees outside the declared-disaster areas, to pay for the basic daily needs of individuals and families affected by the hurricane on an interim basis. This authority is in effect through the end of the grantee's 2022 program year. This waiver aligns with waivers currently in effect for CDBG coronavirus (CDBG–CV) grants. The six-month periods allowed by waiver for CDBG and CDBG–CV shall not be used consecutively for the same beneficiary.

Contact: James E. Höemann, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 570.207(b)(3) and Section 105(a) of the Housing and Community Development Act of 1974, as amended (the Act).

Project/Activity: Any CDBG Entitlement or State CDBG Program grantee located in the counties included in the declared-disaster area (see FEMA–DR–4614 and FEMA–DR–4615) seeking to expedite action in response to the remnants of Hurricane Ida, upon notification to the Community Planning and Development Director in its respective HUD Field Office.

Nature of Requirement: The regulations at 24 CFR 570.207(b)(3) prohibit the use of CDBG funds for the construction of new, permanent residential structures. New housing construction is not generally an eligible activity under Section 105 of HCDA. It may be undertaken indirectly through CDBG assistance provided to Community Based Development Organizations or other nonprofit entities specified in Section 105(a)(15) of the HCDA.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2021.

Reason Waived: HUD recognizes that the remnants of Hurricane Ida caused damage and destruction to a large number of housing units within the declared-disaster areas. Allowing new housing construction will enable CDBG grantees to replace affordable housing units that were lost as a result of the hurricane remnants and flooding. To expedite the rebuilding process, HUD suspends Section 105(a) of HCDA and waives 24 CFR 570.207(b)(3) through the end of a grantee's 2022 program year to permit grantees to directly use CDBG funds for new housing construction activities to address damage from the remnants of the hurricane. In addition to the flexibility provided by the suspension of the statute, grantees are encouraged to take advantage of the reconstruction provisions at Section 105(a)(4) of HCDA.

Contact: James E. Höemann, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 570.207(b)(4) (Entitlements).

Project/Activity: All Community Development Block Grant (CDBG) grantees located within and outside declared disaster areas assisting persons and families who have registered with FEMA in connection with the remnants of Hurricane Ida.

Nature of Requirement: The CDBG regulations at 24 CFR 570.207(b)(4) prohibit income payments, but permit emergency grant payments for three months. ''Income payments'' means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities. Emergency grant payments made over a period of up to three consecutive months to the providers of such items and services on behalf of an individual or family are eligible public services.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2021.

Reason Waived: HUD waives the provisions of 24 CFR 570.207(b)(4) to permit emergency grant payments for items such as food, clothing, housing (rent or mortgage), or utilities for up to six consecutive months. While this waiver allows emergency grant payments to be made for up to six consecutive months, the payments must still be made to service providers as opposed to the affected individuals or families. Many individuals and families have been forced to abandon their homes due to the flooding and other damage associated with the remnants of Hurricane Ida. The waiver will allow CDBG grantees, including grantees providing assistance to evacuees outside the declared-disaster areas, to pay for the basic daily needs of individuals and families affected by the remnants of the hurricane on an interim basis. This authority is in effect through the end of the grantee's 2022 program year. This waiver aligns with waivers currently in effect for CDBG coronavirus (CDBG–CV) grants. The six-month periods allowed by waiver for CDBG and CDBG–CV shall not be used consecutively for the same beneficiary.

Contact: James E. Höemann, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 574.310(b)(2).

Nature of Requirement: Section 574.310(b)(2) of the HOPWA regulations provides minimum housing quality standards that apply to all housing for which HOPWA funds are used for acquisition, rehabilitation, conversion, lease, or repair; new construction of single room occupancy dwellings and community residences; project or tenant-based rental assistance; or operating costs under 24 CFR 574.300(b)(3), (4), (5), or (8).

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021.

Reason Waived: This waiver is required to enable grantees and project sponsors in areas covered by major disaster declaration DR–4611–LA to expeditiously meet the critical housing needs of the many eligible families in the declared disaster areas.

Applicability: The property standard requirements in 24 CFR 574.310(b)(2) are waived for units in areas covered under major disaster declaration DR–4611–LA that are or will be occupied by HOPWA eligible households, provided that the units are free of life-threatening conditions as defined in Notice PIH 2017–20 (HA). Grantees must ensure that these units meet HOPWA HQS within 60 days of September 3, 2021.

Contact: Amy Palilonis, Office of HIV/AIDS Housing, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7248, Washington,

DC 20410, telephone (202) 402–5916. *amy.l.palilonis@hud.gov.*

• *Regulation:* 24 CFR 574.310(b)(2).

Project/Activity: Property Standards for HOPWA.

Nature of Requirement: Section 574.310(b)(2) of the HOPWA regulations provides minimum housing quality standards that apply to all housing for which HOPWA funds are used for acquisition, rehabilitation, conversion, lease, or repair; new construction of single room occupancy dwellings and community residences; project or tenant-based rental assistance; or operating costs under 24 CFR 574.300(b)(3), (4), (5), or (8).

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2021.

Reason Waived: This waiver is required to enable grantees and project sponsors in areas covered by major disaster declarations DR–4614–NJ and DR–4615–NY to expeditiously meet the critical housing needs of the many eligible families in the declared disaster areas.

Applicability: The property standard requirements in 24 CFR 574.310(b)(2) are waived for units in areas covered under major disaster declarations DR–4614–NJ and DR–4615–NY that are or will be occupied by HOPWA eligible households, provided that the units are free of life-threatening conditions as defined in Notice PIH 2017–20 (HA). Grantees must ensure that these units meet HOPWA HQS within 60 days of September 9, 2021.

Contact: Amy Palilonis, Office of HIV/AIDS Housing, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7248, Washington, DC 20410, telephone (202) 402–5916. *amy.l.palilonis@hud.gov.*

• *Regulation:* 24 CFR 574.320(a)(2).

Project/Activity: Rent Standard for HOPWA Rental Assistance.

Nature of Requirement: Grantees must establish rent standards for their rental assistance programs based on FMR (Fair Market Rent) or the HUD-approved community-wide exception rent for unit size.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021.

Reason Waived: This waiver is required to enable HOPWA grantees to expedite efforts to meet the critical housing needs of low-income people living with HIV and their families in the areas covered under major disaster declaration DR–4611–LA. Waiving the rent standard requirement, while still requiring that the unit be rent reasonable in accordance with § 574.320(a)(3), will make more units available to HOPWA eligible individuals and families in need of permanent housing in the declared-disaster areas.

Applicability: The rent standard requirement is waived for any rent amount that takes effect during the two-year period beginning on September 3, 2021, for any individual or family who is renting or executes a lease for a unit in the areas covered under major disaster declaration DR–4611–LA. Grantees and project sponsors must still ensure the reasonableness of rent charged for units in the declared-disaster areas in accordance with § 574.320(a)(3).

Contact: Amy Palilonis, Office of HIV/AIDS Housing, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7248, Washington, DC 20410, telephone (202) 402–5916. *amy.l.palilonis@hud.gov.*

• *Regulation:* 24 CFR 574.320(a)(2).

Project/Activity: Rent Standard for HOPWA Rental Assistance.

Nature of Requirement: Grantees must establish rent standards for their rental assistance programs based on FMR (Fair Market Rent) or the HUD-approved community-wide exception rent for unit size.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2021.

Reason Waived: This waiver is required to enable HOPWA grantees to expedite efforts to meet the critical housing needs of low-income people living with HIV and their families in the areas covered under major disaster declarations DR–4614–NJ and DR–4615–NY. Waiving the rent standard requirement, while still requiring that the unit be rent reasonable in accordance with § 574.320(a)(3), will make more units available to HOPWA eligible individuals and families in need of permanent housing in the declared-disaster areas.

Applicability: The rent standard requirement is waived for any rent amount that takes effect during the two-year period beginning on September 9, 2021, for any individual or family who is renting or executes a lease for a unit in the areas covered under major disaster declarations DR–4614–NJ and DR–4615–NY. Grantees and project sponsors must still ensure the reasonableness of rent charged for units in the declared-disaster areas in accordance with § 574.320(a)(3).

Contact: Amy Palilonis, Office of HIV/AIDS Housing, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7248, Washington, DC 20410, telephone (202) 402–5916. *amy.l.palilonis@hud.gov.*

• *Regulation:* 24 CFR 574.530.

Project/Activity: HOPWA Source Documentation for Income and HIV Status Determinations.

Nature of Requirement: Each grantee must maintain records to document compliance with HOPWA requirements, which includes determining the eligibility of a family to receive HOPWA assistance.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021.

Reason Waived: This waiver will permit HOPWA grantees and project sponsors, located within and outside of the areas covered under major disaster declaration DR–4611–LA, to rely upon a family member's self-certification of income and credible information on their HIV status (such as knowledge of their HIV-related medical care) in lieu of source documentation to determine eligibility for HOPWA assistance for individuals and families displaced by the disaster. Many individuals and families displaced by the disaster whose homes have been destroyed or damaged will not have immediate access to documentation of income or medical records and, without this waiver, will be unable to document their eligibility for HOPWA assistance.

Applicability: This waiver is available to HOPWA grantees, located within and outside of the areas covered under major disaster declaration DR–4611–LA, to assist displaced persons and families who have registered with FEMA in connection with Hurricane Ida. Grantees must require written certification of HIV status and income of such individuals and families seeking assistance and obtain source documentation of HIV status and income eligibility within six months of September 3, 2021.

Contact: Amy Palilonis, Office of HIV/AIDS Housing, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7248, Washington, DC 20410, telephone (202) 402–5916. *amy.l.palilonis@hud.gov.*

• *Regulation:* 24 CFR 574.530.

Project/Activity: HOPWA Source Documentation for Income and HIV Status Determinations.

Nature of Requirement: Each grantee must maintain records to document compliance with HOPWA requirements, which includes determining the eligibility of a family to receive HOPWA assistance.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2021.

Reason Waived: This waiver will permit HOPWA grantees and project sponsors, located within and outside of the areas covered under major disaster declarations DR–4614–NJ and DR–4615–NY, to rely upon a family member's self-certification of income and credible information on their HIV status (such as knowledge of their HIV-related medical care) in lieu of source documentation to determine eligibility for HOPWA assistance for individuals and families displaced by the disaster. Many individuals and families displaced by the disaster whose homes have been destroyed or damaged will not have immediate access to documentation of income or medical records and, without this waiver, will be unable to document their eligibility for HOPWA assistance.

Applicability: This waiver is available to HOPWA grantees, located within and outside of the areas covered under major disaster declarations DR–4614–NJ and DR–4615–NY, to assist displaced persons and families who have registered with FEMA in connection with Hurricane Ida. Grantees must require written certification of HIV status and income of such individuals and families seeking assistance and obtain source documentation of HIV status and income eligibility within six months of September 9, 2021.

Contact: Amy Palilonis, Office of HIV/AIDS Housing, Office of Community

Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7248, Washington, DC 20410, telephone (202) 402–5916. *amy.l.palilonis@hud.gov.*

• *Regulation:* 24 CFR 576.106(a), 576.105(a)(5), and 576.105(b)(2).

Project/Activity: The 24-month limits on rental assistance and housing relocation and stabilization services are waived for individuals and families who meet both of the following criteria:

1. The individual or family lives in a declared-disaster area or was displaced from a declared-disaster area as a result of Hurricane Ida; and

2. The individual or family is currently receiving rental assistance or housing relocation stabilization services or begins receiving rental assistance or housing relocation stabilization services within two years after the date of this memorandum.

For these individuals and families, ESG funds may be used to provide up to thirty-six consecutive months of rental assistance, utility payments, and housing stability case management, in addition to the 30 days of housing stability case management that may be provided before the move into permanent housing under 24 CFR 576.105(b)(2). HUD will also consider further waiver requests to allow assistance to be provided for longer than three years, if the recipient demonstrates good cause.

Nature of Requirement: The ESG regulation at 24 CFR 576.106(a) prohibits a program participant from receiving more than 24 months of ESG rental assistance during any three-year period. Section 576.105(a)(5) prohibits a program participant from receiving more than 24 months of utility payments under ESG during any three-year period. Section 576.105(b)(2) limits the provision of housing stability case management to 30 days while the program participant is seeking permanent housing.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021, for LA—September 9, 2021, for NY/NJ.

Reason Waived: Waiving the 24-month caps on rental assistance, utility payments, and housing stability case management assistance will assist individuals and families, both those already receiving assistance and those who will receive assistance subsequent to the date of this memorandum, to maintain stable permanent housing in place or in another area and help them return to their hometowns, as desired, when additional permanent housing is available.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

• *Regulation:* 24 CFR 576.106(d)(1).

Project/Activity: The FMR restriction is waived for any rent amount that takes effect during the two-year period beginning on the date that the waiver appeared in the **Federal Register** for any individual or family who is renting or executes a lease for a unit in a declared-disaster area. However, the affected recipients and their subrecipients must still ensure that the unit in which ESG assistance is provided to these individuals and families meet the rent reasonableness standard. HUD will consider requests to waive the FMR restriction for rent amounts that take effect after the two-year period, if a recipient demonstrates good cause.

Nature of Requirement: Under 24 CFR 576.106(d)(1), rental assistance cannot be provided unless the total rent is equal to or less than the FMR established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021, for LA—September 9, 2021, for NY/NJ.

Reason Waived: This waiver is required to enable ESG recipients to meet the critical housing needs of individuals and families whose housing was damaged or who were displaced due to the severe winter weather. Waiving the FMR restriction will make more units available to individuals and families in need of permanent housing.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

• *Regulation:* 24 CFR 576.403(c).

Project/Activity: The ESG housing standards at 24 CFR 576.403(c) are waived for units in the declared disaster area that are or will be occupied by individuals or families eligible for ESG Rapid Re-housing or Homelessness Prevention assistance, provided that:

1. Each unit must still meet applicable state and local standards;

2. Each unit must be free of life-threatening conditions as defined in Notice PIH 2017–20 (HA); and

3. Recipients assure all units in which program participants are assisted meet the ESG housing standards within 60 days of the date of this memorandum.

Nature of Requirement: If ESG funds are used to help a program participant remain in or move into housing, the housing must meet the minimum habitability standards provided in 24 CFR 576.403(c).

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021, for LA—September 9, 2021, for NY/NJ.

Reason Waived: This waiver is needed to enable ESG recipients to expeditiously meet the critical housing needs of many eligible individuals and families in the declared disaster area.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

• *Regulation:* 24 CFR 576.403(b).

Project/Activity: The shelter standard standards at 24 CFR 576.403(b) are waived for shelters in the declared disaster area that are or will be occupied by individuals and families eligible for ESG emergency shelter assistance, provided that:

1. Each shelter must meet applicable state and local standards;

2. Each shelter must be free of life-threatening conditions defined in Notice PIH 2017–20 (HA); and

3. Recipients must ensure that these shelters meet ESG shelter standards within 60 days of the date of this memorandum.

Nature of Requirement: If ESG funds are used for shelter operations costs, the shelter must meet the minimum safety, sanitation and privacy standards under 24 CFR 576.403(b). If ESG funds are used to convert a building into a shelter, rehabilitation a shelter, or otherwise renovate a shelter, the shelter must meet the minimum safety, sanitation, and privacy standards in 24 CFR 576.403(b) as well as applicable state or local government safety and sanitation standards.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021 for LA—September 9, 2021 for NY/NJ.

Reason Waived: This waiver is needed to enable ESG recipients to expeditiously meet the critical emergency shelter needs of many eligible individuals and families in the declared disaster area.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

• *Regulation:* 24 CFR 576.203(b).

Project/Activity: The expenditure deadline is waived for rapid re-housing and homelessness prevention costs, along with reasonable related HMIS and administrative costs. Unless otherwise waived for an individual recipient, any draw made after 24 months from the date HUD signs the grant agreement must be for rapid re-housing or homelessness prevention assistance or for costs related to HMIS data entry related to these activities and administrative costs related to carrying out these activities.

Nature of Requirement: A recipient must expend grant funds within 24 months after the date HUD signs the grant agreement with the recipient. Expenditure means an actual cash disbursement for a direct charge for a good or service or an indirect cost accrual of a direct charge for a good or service or an indirect cost.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021, for LA—September 9, 2021, for NY/NJ.

Reason Waived: Extending the expenditure deadline for rapid re-housing and homelessness prevention assistance, along with reasonable related HMIS and administrative costs will allow recipients to provide more than 24 months of rapid re-housing and homelessness prevention

assistance from a single ESG grant as permitted by the waivers of 24-month limits on rental assistance and housing relocation and stabilization services and the FMR restriction granted on September 3, 2021, for LA and September 9, 2021, for NY/NJ.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

• *Regulation:* 24 CFR 578.37(a)(1)(ii), 24 CFR 578.37(a)(1)(ii)(C), and 24 CFR 578.51(a)(1)(i).

Project/Activity: For two years from the date of the waiver, the 24-month limit on rental assistance is waived for individuals and families who meet the following criteria:

1. The individual or family lives in a declared-disaster area or was displaced from a declared-disaster area as a result of Hurricane Ida; and

2. The individual or family is currently receiving rental assistance or begins receiving rental assistance within two years after the date of this memorandum.

Nature of Requirement: The CoC Program regulation at 24 CFR 578.37(a)(1)(ii) and 24 CFR 578.51(a)(1)(i) defines medium-term rental assistance as 3 to 24 months and 24 CFR 578.37(a)(1)(ii) and 24 CFR 578.37(a)(1)(ii)(C) limits rapid re-housing projects to medium-term rental assistance, or no more than 24 months.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021, for LA—September 9, 2021, for NY/NJ.

Reason Waived: Waiving the 24-month cap on rapid re-housing rental assistance will assist individuals and families affected by Hurricane Ida and the flooding, including those already receiving rental assistance as well as those who will receive rental assistance within 2 years of the date of this memorandum, to maintain stable permanent housing in another area and help them return to their hometowns, as desired, when additional permanent housing becomes available. It will also provide additional time to stabilize individuals and families in permanent housing where vacancy rates are extraordinarily low due to the hurricane and flooding. Experience with prior disasters has shown us some program participants need additional months of rental assistance to identify and stabilize in housing of their choice, which can mean moving elsewhere until they are able to return to their hometowns.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

• *Regulation:* 24 CFR 578.3, definition of permanent housing, 24 CFR 578.51(l)(1).

Project/Activity: The one-year lease requirement is waived for two years beginning on the date of the waiver, so long as the initial lease term of all leases is for one month or more, and the leases are renewable for terms that are a minimum of one month long and the leases are terminable only for cause.

Nature of Requirement: The CoC Program regulations at 24 CFR 578.3, definition of permanent housing, and 24 CFR 578.51(l)(1) require program participants residing in permanent housing to be the tenant on a lease for a term of one year that is renewable and terminable for cause.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021, for LA—September 9, 2021, for NY/NJ.

Reason Waived: Waiving the one-year lease requirement will allow program participants receiving PSH or RRH assistance under the CoC Program to enter into leases that have an initial term of less than one year, so long as the leases have an initial term of one month or more. While some program participants desire to identify new housing, many program participants displaced during the disaster desire to return to their original permanent housing units when repairs are complete because of proximity to schools and access to public transportation and services. Additionally, it will permit new program participants to identify permanent housing units in a tight rental market where many landlords prefer lease terms of less than one year and might not be willing to alter their policies regarding the length of lease terms when considering permanent housing applicants. Therefore, HUD had determined that waiving the one-year lease requirement will improve the housing options available to program participants in permanent housing projects.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

• *Regulation:* 24 CFR 578.53(e)(2).

Project/Activity: The one-time limit on moving costs is waived for two years beginning on the date of the waiver.

Nature of Requirement: The CoC Program regulation at 24 CFR 578.53(e)(2) limits recipients of supportive service funds to using those funds to pay for moving costs to provide reasonable moving assistance, including truck rental and hiring a moving company, to only one-time per program participant.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 3, 2021, for LA—September 9, 2021, for NY/NJ.

Reason Waived: Waiving this provision will permit recipients to pay for reasonable moving costs for program participants more than once and will assist program participants affected by Hurricane Ida as well as those who become homeless in the areas impacted by Hurricane Ida to stabilize in housing locations of their choice. Many current program participants received assistance moving into their assisted units prior to being displaced by Hurricane Ida and experience with prior disasters has shown us some program participants will need additional assistance moving to a new unit while others will need assistance moving back to their original units after repairs are completed. Further, until the housing market stabilizes, experience has shown many program participants will need to move more than once during their participation in a program to find a unit that best meets their needs.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

• *Regulation:* 24 CFR 578.49(b)(2).

Project/Activity: The FMR restriction is waived for any lease executed by a recipient or subrecipient to provide transitional or permanent supportive housing during the 2-year period beginning on the date of this memorandum. The affected recipient or subrecipient must still ensure that rent paid for individual units that are leased with CoC Program leasing dollars meet the rent reasonableness standard in 24 CFR 578.49(b)(2).

Nature of Requirement: The CoC Program regulation at 24 CFR 578.49(b)(2) prohibits a recipient from using grant funds for leasing to pay above FMR when leasing individual units, even if the rent is reasonable when compared to other similar, unassisted units.

Granted By: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2021, for NY/NJ.

Reason Waived: Waiving the limit on using grant using leasing funds to pay above FMR for individual units above FMR, but not greater than reasonable rent will provide recipients and subrecipients with more flexibility in identifying housing options for program participants in disaster-declared areas. The rental market in areas impacted by disasters are often more expensive after the disaster due to decreased housing stock and increased rents. These more expensive rents are not reflected in the HUD-determined FMRs.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 2 CFR 200, Subpart F, Appendix IV, Paragraph C.2.f.

Project/Activity: Comprehensive Housing Counseling Grantees.

Nature of Requirement: Provisional and final indirect cost rates must be negotiated where neither predetermined nor fixed rates

are appropriate. At the close of an organization's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

Granted by: Lopa P. Kolluri, Principal Deputy Assistant Secretary for Housing, Federal Housing Commission.

Date Granted: September 29, 2021.

Reason Waived: A change in contract service providers led to significant backlog in processing negotiated indirect cost rate agreement (NICRA) proposals. For Housing Counseling Program grantees that are dependent on approval of a NICRA associated with housing counseling activities, the current backlog continues to delay final closeout activities for grants for previous Fiscal Years. Requiring grantees to finalize indirect cost rates for previous Fiscal Years where grant funds that have already been expended and where OHC has performed closeout activities using the provisional rate exacerbates the existing backlog in obtaining final rates for current and future grantees.

Contact: Brian Siebenlist, Director, Office of Housing Counseling, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 9224, Washington, DC 20410, telephone (202) 402–5415.

- *Regulation:* 24 CFR 200.54(b).

Project/Activity: Projects insured under National Housing Act Section 213 and Section 221(d)(4).

Nature of Requirement: 24 CFR 200.54(b), requires that an agreement acceptable to the Commissioner shall require that funds provided by the mortgagor under requirements of this section must be disbursed in full for project work, material, and incidental charges and expenses before disbursement of any mortgage proceeds.

Granted by: Lopa P. Kolluri, Principal Deputy Assistant Secretary for the Office of Housing—Federal Housing Administration.

Date Granted: July 5, 2021.

Reason Waived: The partial waiver will allow mortgage proceeds resulting from the initial issuance of a mortgage-backed security guaranteed by the Government National Mortgage Association to be disbursed immediately upon receipt but limited to no more than one half percent (0.5%) of the initially endorsed loan amount for projects insured under National Housing Act Section 213 and Section 221(d)(4) only when the required Borrower equity exceeds the amount of the initial construction draw at closing.

Contact: Zachary Skochko, Senior Production Specialist, Multifamily Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6140, Washington, DC 20410, telephone (202) 402–7112, *Zachary.S.Skochko@hud.gov.*

- *Regulation:* 24 CFR 242.49(a).

Project/Activity: Regents of the University of New Mexico d/b/a University of New Mexico Hospital, Albuquerque, NM.

Nature of Requirements: 24 CFR 242.49(a) states that, where HUD requires the mortgagor to make a deposit of cash or securities, such deposit shall be with the mortgagee or with a depository acceptable to the mortgage and HUD. Any such deposit shall be held in a separate account for and on behalf of the mortgagor and shall be the responsibility of that mortgagee or depository.

Granted By: Lopa P. Kolluri, Principal Assistant Secretary for Housing Federal Housing Commissioner.

Date Granted: August 26, 2021.

Reason Waived: The Regents of the University of New Mexico is contributing a large equity contribution in conjunction with a § 241 supplemental HUD insured mortgage to complete the construction of a new Adult Acute Care Replacement Hospital. The regulatory waiver of 24 CFR 242.49(a) is necessary to allow the mortgagor to hold funds needed to complete the project.

The Regents of the University of New Mexico is a component unit of New Mexico State Government and approvals for the transfer of equity funds to a lender sponsored account would be time intensive and could negatively impact the construction schedule. Efforts to meet the construction timeline are highly important due to the COVID–19 pandemic which has caused uncertainty in the supply chain for construction commodities. A delay in the construction schedule could materially impair the project cost and the ability for the mortgagor to complete this highly needed project for the benefit of healthcare delivery in its community. The mortgagor's excellent historical track record with HUD and performance in the 242 portfolio further supports this waiver request.

Contact: Paul Giaudrone, Underwriting Director, Office of Hospital Facilities, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 409 3rd Street SW, Washington, DC 20024, telephone (202) 578–2027.

- *Regulation:* 24 CFR 3282.14(b), Alternative construction of manufactured homes, 1/16/84.

Project/Activity: Regulatory Waiver for Industry-Wide Alternative Construction Letter for Window Standard.

Nature of Requirement: 24 CFR 3282.14(b), Request for Alternative Construction, requires manufactured housing manufacturers to submit a request for Alternative Construction consideration for the use of construction designs or techniques that do not conform with HUD Standards, to receive permission from HUD to utilize such designs or techniques in the manufacturing process for manufactured homes.

Granted by: Lopa P. Kolluri, Principal Deputy Assistant Secretary for Housing—Federal Housing Administration.

Date Granted: August 5, 2021.

Reason Waived: Due to ongoing materials shortages affecting the manufactured home industry, it was necessary to extend the Regulatory Waiver initially approved in April 2020 and renewed in December 2020, to allow an alternative window standard to be used for the construction of HUD Code-compliant manufactured homes. This regulatory waiver was granted to allow the Office of Manufactured Housing Programs to provide an industry-wide Alternative Construction approval letter that could be used by any manufacturer experiencing supply chain issues for windows. The regulatory waiver is good through June 30, 2022.

Contact: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Office of Housing, 451 Seventh Street SW, Room 9168, Washington, DC 20410–0800, telephone (202) 402–5365, *Teresa.L.Payne@hud.gov.*

- *Regulation:* 24 CFR 3282.14(b), Alternative construction of manufactured homes, 1/16/84.

Project/Activity: Regulatory Waiver for Industry-Wide Alternative Construction Letter for Electrical Circuit Breakers for Water Heater Installations.

Nature of Requirement: 24 CFR 3282.14(b), Request for Alternative Construction, requires manufactured housing manufacturers to submit a request for Alternative Construction consideration for the use of construction designs or techniques that do not conform with HUD Standards, to receive permission from HUD to utilize such designs or techniques in the manufacturing process for manufactured homes.

Granted by: Lopa P. Kolluri, Principal Deputy Assistant Secretary for Housing—Federal Housing Administration.

Date Granted: August 5, 2021.

Reason Waived: Many manufactured home manufacturers are currently facing shortages in the supply of 25-ampere (amp), double-pole circuit breaks that are necessary for Rheem brand 4,500-watt, 240-volt water heater installations to conform to HUD's circuit break sizing standards. Alternative circuit breaker options are available that provide performance equivalent or superior to that required by the Standards yet cannot be utilized without an Alternative Construction approval. To resolve this matter for the whole industry in an expedient manner while protecting the health and safety of consumers and maintaining durability of the homes, this regulatory waiver was granted to allow the Office of Manufactured Housing Programs to provide an industry-wide Alternative Construction approval letter that could be used by any manufacturer experiencing supply chain issues for 25-amp circuit breakers to use an alternative electrical circuit breaker size to be used for the construction of HUD Code-compliant manufactured homes through December 31, 2021.

Contact: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 9168, Washington, DC 20410–0800, telephone (202) 402–5365, *Teresa.L.Payne@hud.gov.*

III. HUD's Summary of CARES Act Notices Providing Waivers 6/30/21 to 9/30/21

Office of Community Planning and Development (CPD)

Authority: Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

• *Notice CPD 21–08: Waivers and Alternative Requirements for the Emergency Solutions Grants (ESG) Program Under the CARES Act* available at: *https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-08cpdn.pdf.*

Date Issued: July 19, 2021.

Description: Notice CPD–21–08 (the ESG–CV Notice) includes and explains multiple statutory and regulatory waivers HUD provided for ESG grants funded by the CARES Act (ESG–CV grants), as well as alternative requirements and applicable statutory and regulatory requirements for those grants. The waivers and alternative requirements in the ESG–CV Notice were made using special authority under the CARES Act, as further explained in section III of the ESG–CV Notice. The same waivers and alternative requirements were also made applicable to FY2020 and prior fiscal year ESG funds an ESG recipient uses to prevent, prepare for, and respond to the coronavirus pandemic until September 30, 2022, subject to the additional conditions explained in section IV of the ESG–CV Notice. This ESG–CV Notice was issued by James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development, and supersedes the initial ESG–CV Notice (Notice CPD–20–08) that was issued on September 1, 2020. Questions about the waivers provided in Notice CPD–21–08 should be directed to Norm Suchar, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7266, Washington, DC 20410 or *ESG-CV@hud.gov.*

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 223R5065C6, RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of contract actions.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; *mkelly@usbr.gov;* telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939, and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
XM Extraordinary maintenance
EXM Emergency Extraordinary Maintenance
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
O&M Operation and Maintenance
OM&R Operation, Maintenance, and Replacement
P–SMBP Pick-Sloan Missouri Basin Program
RRA Reclamation Reform Act of 1982

SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District
WIIN Act Water Infrastructure Improvements for the Nation Act

Missouri Basin—Interior Region 5: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406–247–7752.

1. Irrigation, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Water service contracts for the sale, conveyance, storage, and exchange of surplus project water and non-project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year, or up to 1,000 acre-feet of water annually for a term of up to 40 years.

2. Water user entities responsible for payment of O&M costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Contracts for XM and replacement funded pursuant to Title IX, Subtitle G of Public Law 111–11.

3. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contracts for the sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

4. Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contracting in the Fryingpan-Arkansas Project.

5. Colorado-Big Thompson Project, Colorado: Consideration of excess capacity contracting in the Colorado-Big Thompson Project.

6. Milk River Project, Montana: Proposed amendments to contracts to reflect current landownership.

7. Title transfer agreements; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Potential title transfer agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

8. Garrison Diversion Conservancy District; Garrison Diversion Unit, P–SMBP; North Dakota: Intent to modify long-term water service contract to add additional irrigated acres.

9. Garrison Diversion Conservancy District; Garrison Diversion Unit, P–SMBP; North Dakota: Consideration for conversion of irrigation water service contract No. 129E620001 to a repayment contract.

10. Garrison Diversion Conservancy District; Garrison Diversion Unit, P–SMBP; North Dakota: Consideration of a contract for 145 cubic-feet-per-second of water for rural and M&I purposes.

11. Buford-Trenton ID; Buford-Trenton Project, P–SMBP; North Dakota: Consideration to amend long-term irrigation power repayment contract and project-use power contract to include additional acres.

12. Arkansas Valley Conduit, Fryingpan-Arkansas Project, Colorado: Consideration of a repayment contract for the Arkansas Valley Conduit and signing a contract to use infrastructure owned by the Pueblo Board of Water Works.

13. Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration for conversion of long-term water service contract No. 5–07–70–W0086.

14. Pueblo Board of Water Works, Fryingpan-Arkansas Project, Colorado: Consideration for renewal of contract No. 00XX6C0049.

15. Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration of a repayment contract for the North Outlet Works—South Outlet Works Interconnect at Pueblo Reservoir.

16. Pitkin County and City of Aurora, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contract at Ruedi Reservoir.

17. Triview Metropolitan District; Pueblo Reservoir, Fryingpan-Arkansas Project; Colorado: Consideration of a 40-year contract for excess capacity.

18. Fresno Dam, Milk River Project, Montana: Consideration of contract(s) for repayment of SOD costs.

19. Canyon Ferry Water Users Association; Canyon Ferry Unit, P–SMBP; Montana: Consideration of a new long-term contract for an irrigation water supply.

20. Dana Ranch; Canyon Ferry Unit, P–SMBP; Montana: Consideration of a new long-term contract for an irrigation water supply.

21. Oxbow Ranch; Canyon Ferry Unit, P–SMBP; Montana: Consideration of a new long-term contract for an irrigation water supply.

22. Laura Vukasin and Jeff Ivers; Canyon Ferry Unit, P–SMBP; Montana: Consideration of a new long-term contract for an irrigation water supply.

23. Tom Jacobson; Canyon Ferry Unit, P–SMBP; Montana: Consideration of a new long-term contract for an irrigation water supply.

24. Lugert-Altus ID, W.C. Austin Project, Oklahoma: Consideration for amendment to contract No. Ilr–1375.

25. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Consideration of a potential contract(s) for use of excess capacity by individual landowner(s) for irrigation purposes.

26. Kansas Bostwick ID No. 2; Bostwick Division, P–SMBP; Kansas: Consideration of a contract for repayment of SOD costs.

27. Bostwick ID in Nebraska; Bostwick Division, P–SMBP; Nebraska: Consideration of a contract for repayment of SOD costs.

28. Glen Elder ID; Glen Elder Unit, P–SMBP; Kansas: Consideration of a repayment contract for XM funded pursuant to Title X, Subtitle G of Public Law 111–11.

29. Glen Elder ID; Glen Elder Unit, P–SMBP; Kansas: Consideration of an amendment to change the amount of annual water supply in contract No. 199E630032.

30. H&RW ID; Frenchman-Cambridge Division, P–SMBP; Nebraska: Consideration for renewal of water service contract No. 5–07–70–W0738.

31. City of Casper; Kendrick Project, Wyoming: Consideration for renewal of long-term water service contract No. 2–07–70–W0534.

32. Bluff ID; Boysen Unit, P–SMBP; Wyoming: Consideration of a new long-term water service contract for irrigation purposes.

33. Shoshone Municipal Pipeline, Shoshone Project, Wyoming: Consideration for renewal of water service contract No. 1–07–60–W0703.

34. Grey Reef Ranch, Kendrick Project, Wyoming: Consideration for renewal of excess capacity contract No. 14XX660043.

Discontinued contract action:

1. (12) State of Kansas Department of Wildlife and Parks; Glen Elder Unit, P–SMBP; Kansas: Intent to enter into a contract for the remaining conservation storage in Waconda Lake for recreation and fish and wildlife purposes.

Completed contract action:

1. (29) Huntley ID, Huntley Project, Montana: Consideration of a repayment contract for XM and replacement funded pursuant to Title IX, Subtitle G of Public Law 111–11. Contract executed on September 21, 2021.

Upper Colorado Basin—Interior Region 7: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and

New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Contracts with various water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to Title IX, Subtitle G of Public Law 111–11 to be executed as project progresses.

3. Middle Rio Grande Project, New Mexico: Reclamation will continue annual leasing of water from various San Juan-Chama Project contractors in 2022 to stabilize flows in a critical reach of the Rio Grande to meet the needs of irrigators and preserve habitat for the silvery minnow. Reclamation leased approximately 8,245 acre-feet of water from San Juan-Chama Project contractors in 2021.

4. South Cache Water Users Association, Hyrum Project, Utah: Problems with the spillway at Hyrum Dam require the construction of a new spillway under the SOD Act, as amended. A repayment contract is necessary to recover 15 percent of the construction costs in accordance with the SOD Act.

5. Pojoaque Valley ID, San Juan-Chama Project, New Mexico: An amendment to the repayment contract to reflect the changed allocations of the Aamodt Litigation Settlement Act (Title VI of the Claims Resolution Act of 2010, Pub. L. 111–291, December 8, 2010, and Article 7 of the Settlement Agreement dated April 19, 2012) is currently under review by the Pojoaque Valley ID board. The draft contract is currently under review with the Pojoaque Valley ID board.

6. Dolores Water Conservancy District, Dolores Project, Colorado: The District has requested a water service contract for 1,402 acre-feet of newly identified project water for irrigation. The proposed water service contract will provide 417 acre-feet of project water for irrigation of the Ute Enterprise and 985 acre-feet for use by the District's full-service irrigators.

7. State of Wyoming, Seedskadee Project; Wyoming. The Wyoming Water Development Commission is interested in purchasing an additional 219,000 acre-feet of M&I water from Fontenelle Reservoir. Reclamation and the State of Wyoming are pursuing entering into a Contributed Funds Act agreement which allows the State to advance funds to Reclamation associated with activities involved in contracting for remaining available M&I water as specified in Section 4310 of Public Law 115–270.

8. Ute Indian Tribe of the Uinta and Ouray Reservation, CUP, Utah: The Ute Indian Tribe of the Uinta and Ouray Reservation has requested the use of excess capacity in the Strawberry Aqueduct and Collection System, as authorized in the CUP Completion Act legislation.

9. Ute Indian Tribe of the Uinta and Ouray Reservation; Flaming Gorge Unit, CRSP; Utah: As part of discussions on settlement of a potential compact, the Ute Indian Tribe of the Uinta and Ouray Reservation has indicated interest in storage of its potential water right in Flaming Gorge Reservoir.

10. State of Utah; Flaming Gorge Unit, CRSP; Utah: The State of Utah has requested contracts that will allow the full development and use of the CUP Ultimate Phase water right of 158,000 acre-feet of depletion, which was previously assigned to the State of Utah. A contract for 72,641 acre-feet was executed March 20, 2019. A contract for the remaining 86,249 acre-feet has been negotiated and is awaiting completion of NEPA activities.

11. Weber Basin Water Conservancy District, Weber Basin Project, Utah: The District has requested permission to install a low-flow hydro-electric generation plant at Causey Reservoir to take advantage of winter releases. This will likely be accomplished through a supplemental O&M contract.

12. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado: Ute Mountain Ute Tribe has requested a water delivery contract for 16,525 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

13. Navajo-Gallup Water Supply Project, New Mexico: Reclamation continues negotiations on an OM&R transfer contract with the Navajo Tribal Utility Authority pursuant to Public Law 111–11, Section 10602(f) which transfers responsibilities to carry out the OM&R of transferred works of the Project; ensures the continuation of the intended benefits of the Project; distribution of water; and sets forth the allocation and payment of annual OM&R costs of the Project.

14. Animas-La Plata Project, Colorado-New Mexico: (a) Navajo Nation title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land outside the corporate boundaries of the City of Farmington, New Mexico; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11); (b) City of Farmington, New Mexico, title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land inside the corporate boundaries of the City of Farmington, New Mexico, contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11); and (c) Operations agreement among the United States, Navajo Nation, and City of Farmington for the Navajo Nation Municipal Pipeline pursuant to Public Law 111–11, Section 10605(b)(1) that sets forth any terms and conditions that secures an operations protocol for the M&I water supply.

15. City of Page, Arizona; Glen Canyon Unit, CRSP; Arizona: Request for a long-term contract for 975 acre-feet of water for municipal purposes.

16. Middle Rio Grande Water Conservancy District; El Vado Dam; Middle Rio Grande Project; New Mexico: SOD work is anticipated to begin in 2022 involving repairs to the steel faceplate and spillways. A repayment contract with the District for their required 15 percent share of costs will be entered into for this work.

17. Title transfer agreements; Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

18. Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: Reclamation is in negotiations to lease Abiquiu Reservoir Storage Space from the Authority. This agreement will be for a period of 2 years and may be extended for one additional 2-year term. This agreement may go through October 31, 2025, with the extension. The Authority and the USACE are currently reviewing the final draft contract.

19. Taos Pueblo, San Juan-Chama Project, New Mexico: Reclamation is in negotiations with the Taos Pueblo to lease up-to 2,200 acre-feet of the Pueblo's Project water to stabilize flows in a critical reach of the Rio Grande to meet the needs of the endangered silvery minnow. This contract is in accordance with approved basis of negotiation dated April 20, 2021. Reclamation will seek a 15-year contract term beginning in 2022 through 2036. The Taos Pueblo are currently reviewing the final contract.

20. Mancos Water Conservancy District, Mancos Project, Colorado: Amendment (No. 2) to repayment contract No. 10–WC–40–394 to incorporate the provisions provided in Public Law 116–260, to review and approve costs associated with the completion of the rehabilitation project and credit the District for all amounts paid by the District for engineering work and improvements directly associated with the rehabilitation project, whether before, on, or after the date of enactment of Public Law 116–260.

21. Uncompahgre Water Users Association and Gunnison County Electric Association (together, Taylor River Hydro, LLC), Uncompahgre Project, Colorado: Lease of power privilege contract for development of hydropower at Taylor Park Dam. This contract will provide the terms and conditions for leasing the Federal premises for third-party hydropower development.

22. North Fork Water Conservancy District and Ragged Mountain Water Users Association, Paonia Project, Colorado: The District has requested a replacement 5-yr contract for the existing water service contract (No. 16–WC–40–646) for 2,000 acre-feet of water which expired on December 31, 2021.

23. Weber River Water Users Association, Weber River, Utah: The Association is pursuing a conversion contract under the Miscellaneous Purposes Act of 1920 to convert all or part of its water from irrigation to miscellaneous purposes.

24. Uintah Water Conservancy District; Jensen Unit, CUP; Utah: The District has requested to initiate the process to construct the Burns Bench Pumping Plant, as part of the CUP—Jensen Unit. This action will require various contracts and agreements which include a Contributed Funds Act agreement for the District to provide funding to Reclamation and an implementation agreement for construction and O&M of the Burns Bench Pumping Plant.

25. Moon Lake Water Users Association, Moon Lake Project, Utah: The Association is interested in installing a small hydro-electric generation plant on the outlet works Moon Lake Dam. This will likely be accomplished through a supplemental O&M agreement.

26. Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: The Albuquerque Bernalillo County Water Utility Authority and Reclamation have entered negotiations for a contract to lease 10,000 acre-feet of storage space in Abiquiu Reservoir to store San Juan-Chama Project water. This will be a 15-year contract beginning 2022 through 2036.

27. Eden Valley IDD, Eden Project, Wyoming: The Eden Valley IDD proposes to raise the level of Big Sandy Dam to fully perfect its water rights. An agreement will be necessary to obtain the authorization to modify Federal facilities.

28. Pueblo of Ohkay Owingeh, San Juan-Chama Project, New Mexico: Lease for 2,000 acre-feet of the Pueblo's San Juan-Chama Project water to stabilize flows in a critical reach of the Rio Grande to meet the needs of the endangered silvery minnow. This contract will be for a term of 15 years.

29. Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: Contract for Reclamation to lease 5,000 acre-feet of the Authority's San Juan-Chama Project water to stabilize flows in the critical reaches of the Rio Grande to meet the needs of the endangered silvery minnow. This contract will be for a term of 3 years.

30. Grand Valley Water Users Association and Orchard Mesa ID, Grand Valley Project, Colorado: Lease of Power Privilege contract for development of hydropower on the Power Canal (Vinelands Power Plant) near the existing Grand Valley Power Plant which has been decommissioned. This contract provides the terms and conditions for leasing the Federal premises for 3rd party hydropower development.

Completed contract actions:

1. (17) Provo River Project, Utah: The Metropolitan Water District of Salt Lake and Sandy has requested a long-term contract with the United States and the Provo River Water Users Association to store up to 4,000 acre-feet of non-project water in Deer Creek Reservoir, on a space-available basis. Contract executed December 1, 2021.

2. (27) Taylor Hydro, LLC, Uncompahgre Project, Colorado: Preliminary lease and funding agreement for development of the lease of power privilege for hydropower development on the Taylor Park Dam. The purpose of this agreement is to receive funding from Taylor Hydro for Reclamation's assistance in the development of the lease of power privilege and identify timelines for the process. Contract executed on June 6, 2021.

3. (31) Jicarilla Apache Nation, Navajo Project, New Mexico: Water service agreement between the Jicarilla Apache Nation and the San Juan Basin Water Haulers Association for delivery of 400 acre-feet of M&I water from the Jicarilla Apache Nation's settlement water from Navajo Reservoir. This agreement will have a term of 5 years. Contract executed December 8, 2021.

4. (32) Jicarilla Apache Nation, Navajo Project, New Mexico: Water service agreement between the Jicarilla Apache Nation and the Elks Lodge 1747 for delivery of 20 acre-feet of M&I water from the Jicarilla Apache Nation's settlement water from Navajo Reservoir. This agreement will have a term of 5 years. Contract executed on October 30, 2021.

28. Pueblo of Ohkay Owingeh, San Juan-Chama Project, New Mexico: Lease for 2,000 acre-feet of the Pueblo's San Juan-Chama Project water to stabilize flows in a critical reach of the Rio Grande to meet the needs of the endangered silvery minnow. This contract will be for a term of 15 years. Contract executed October 23, 2021.

29. Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: Contract for Reclamation to lease 5,000 acre-feet of the Authority's San Juan-Chama Project water to stabilize flows in the critical reaches of the Rio Grande to meet the needs of the endangered silvery minnow. This contract will be for a term of 3 years. Contract executed October 30, 2021.

30. Grand Valley Water Users Association and Orchard Mesa ID, Grand Valley Project, Colorado: Lease of Power Privilege contract for development of hydropower on the Power Canal (Vinelands Power Plant) near the existing Grand Valley Power Plant which has been decommissioned. This contract provides the terms and conditions for leasing the Federal premises for third-party hydropower development. Contract executed October 23, 2021.

Lower Colorado Basin—Interior Region 8: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

1. Milton and Jean Phillips, BCP, Arizona: Develop a Colorado River water delivery contract for 60 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

2. Ogram Boys Enterprises, Inc., BCP, Arizona: Revise Exhibit A of the contract to change the contract service area and points of diversion/delivery.

3. Gold Dome Mining Corporation and Wellton-Mohawk IDD, Gila Project, Arizona: Terminate contract No. 0–07–30–W0250 pursuant to Articles 11(d) and 11(e).

4. Estates of Anna R. Roy and Edward P. Roy, Gila Project, Arizona: Terminate

contract No. 6–07–30–W0124 pursuant to Article 9(c).

5. ChaCha, LLC, Arizona, BCP: Assignment of the water delivery contract for transfer of ownership of the land within Cha LLC's contract service area.

6. Desert Lawn Memorial Park Associates, Inc., and SAIA Family LP, BCP, Arizona: Review and approve a proposed partial assignment of contract No. 14–06–300–2587 as recommended by the Arizona Department of Water Resources and transfer of Arizona fourth priority Colorado River water in the amount of 315 acre-feet per year from 360 acre-feet per year on 70 acres of land acquired from Desert Lawn Memorial Park Associates, Inc.

7. Armon Curtis, BCP, Arizona: Amendment and partial assignment of the water delivery contract for transfer of ownership of the Armon Curtis Deeded land and exclude lands owned by the United States.

8. Gary and Barbara Pasquinelli and Pasquinelli, Gary J Trust/90, BCP, Arizona: Amendment and assignment of the water delivery contract for transfer of ownership to Pasquinelli, Gary J Trust/90.

9. Present Perfected Right 30 (Stephenson), BCP, California: Offer contracts for delivery of Colorado River water to holders of miscellaneous present perfected rights as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

10. Wilbur G. and Carrol D. Schroeder, BCP, California: Terminate contract No. 6–07–30–W0137 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

11. Sunmor Properties, Inc., BCP, California: Terminate contract No. 6–07–30–W0139 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

12. Ronnie and Linda Herndon, BCP, California: Terminate contract No. 6–07–30–W0138 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

13. Jack D. Brown, BCP, California: Terminate contract No. 7–07–30–W0149 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

14. Palms River Resort, Inc., BCP, California: Offer a contract to the current landowner for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

15. Ak-Chin Indian Community and Del Webb Corporation, CAP, Arizona: Execute a First Amendment to (Restated) Option and Lease among the Ak-Chin Indian Community, the Del Webb Corporation, and United States of America.

16. San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona: Execute a CAP water lease for the San Carlos Apache Tribe to lease 10,267 acre-feet of its CAP water to the Town of Gilbert during calendar year 2022 (Amendment No. 11).

17. San Carlos Apache Tribe and Pascua Yaqui Tribe, CAP, Arizona: Execute a CAP water lease for the San Carlos Apache Tribe to lease 1,730 acre-feet of its CAP water to the Pascua Yaqui Tribe during calendar year 2022.

18. San Carlos Apache Tribe and Freeport Minerals Corporation, CAP, Arizona: Execute a CAP water lease for the San Carlos Apache Tribe to lease 12,990 acre-feet of its CAP water to Freeport Minerals Corporation during calendar year 2022.

19. Cibola Valley Irrigation and Drainage District (CVIDD) and The Cibola Sportsman's Club, Inc., Alfred F. and Emma Jean Bishop Family Trust, and Bruce and Lora Cathcart and James and Aria Cathcart (Beneficiaries) BCP, Arizona: Enter into a proposed partial assignment and transfer of Arizona fourth-priority Colorado River water in the amount of 762 acre-feet per year from CVIDD to be divided amongst the Beneficiaries. Amend CVIDD's Colorado River water delivery contract No. 2–07–30–W0028 to decrease its Colorado River water entitlement from 8,204.52 to 7,442.52 acre-feet per year. Enter into Colorado River water delivery contracts for Arizona fourth-priority Colorado River water entitlements under contract No. 21–XX–30–W0717 with The Cibola Sportsman's Club, Inc. for 216 acre-feet per year, contract No. 21–XX–30–W0718 with Alfred F. and Erma Jean Bishop Family Trust for 420 acre-feet per year, and contract No. 21–XX–30–W0719 with Bruce and Lora Cathcart and James and Maria Cathcart for 126 acre-feet per year.

20. City of Needles, BCP, California: Approve a new point of diversion under contract No. 05–XX–30–W0445, as amended, dated March 16, 2007, and contract No. 2–07–30–W0280, as amended, dated July 3, 2002, and revise the necessary exhibits of the above-referenced contracts to add an additional point of diversion.

21. GSC Farm, LLC, and the Town of Queen Creek, Arizona; BCP; Arizona: Enter into a proposed assignment and transfer of Arizona fourth-priority Colorado River water in the amount of 2,033.01 acre-feet per year from GSC to Queen Creek, amend GSC's Colorado River water delivery contract No. 13–XX–30–W0571 to decrease their Colorado River water entitlement from 2,913.3 to 69.93 acre-feet per year, enter into Colorado River water delivery contract No. 20–XX–30–W0689 with Queen Creek for 2,033.01 acre-feet per year of Arizona fourth-priority Colorado River water entitlement, and enter into a wheeling agreement between the United States and Queen Creek for the wheeling of non-project water to be transported through the CAP for the use or benefit of the Queen Creek.

22. Mohave Water Conservation District and the City of Bullhead City, Arizona; BCP; Arizona: Enter into a proposed contract No. 9–07–30–W0012, assignment of Arizona fourth-priority Colorado River water entitlement in the amount of 1,800 acre-feet per year from the District to Bullhead City and amend Bullhead City's Colorado River water delivery contract No. 2–07–30–W0273 to increase their Colorado River water entitlement from 15,210 to 17,010 acre-feet per year and increase the Bullhead City contract service area to include the District's land that previously received Colorado River water pursuant to contract No. 9–07–30–W0012.

23. Marble Canyon Company, Inc. (Marble Canyon) and TV Marble Canyon AZ, LLC (TV Marble Canyon), BCP, Arizona: Enter into a proposed assignment of contract No. 5–07–30–W0322 for 70 acre-feet per year of Arizona fourth-priority Colorado River water and an unspecified amount of Arizona fifth- and/or sixth-priority Colorado River water during periods when the Secretary of the Interior determines that surplus water or unused apportionment entitlement is available, from Marble Canyon Company, Inc. to TV Marble Canyon AZ, LLC and enter into Colorado River water delivery contract No. 20–XX–30–W0689 with TV Marble Canyon AZ, LLC for 70 acre-feet per year of Arizona fourth-priority Colorado River water and an unspecified amount of fifth- and/or sixth-priority Colorado River water during periods when the Secretary of the Interior determines that surplus water or unused apportionment entitlement is available.

Completed contract action:

(19) Central Arizona Water Conservation District and Seventeen Entities, CAP, Arizona: Execute Non-Indian Agricultural (NIA) subcontracts

consistent with a January 16, 2014, recommendation from the Arizona Department of Water Resources. Contracts executed on September 20, 2021, and September 29, 2021.

Columbia-Pacific Northwest—Interior Region 9: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim irrigation and M&I water service, water storage, water right settlement, exchange, miscellaneous use, or water replacement contracts to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon; and Whitestone Reclamation District, Chief Joseph Dam Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. Nine water user entities of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of the reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

6. Three irrigation water user entities, Rogue River Basin Project, Oregon: Long-term contracts for exchange of water service with three entities for the provision of up to 292 acre-feet of stored water from Applegate Reservoir (a USACE project) for irrigation use in exchange for the transfer of out-of-stream water rights from the Little Applegate River to instream flow rights with the State of Oregon for instream flow use.

7. Conagra Foods Lamb Weston, Inc., Columbia Basin Project, Washington: Miscellaneous purposes water service contract providing for the delivery of up to 1,500 acre-feet of water from the Scooteney Wasteway for effluent management.

8. Benton ID, Yakima Project, Washington: Replacement contract to, among other things, withdraw Benton ID from the Sunnyside Division Board of Control; provide for direct payment of Benton ID's share of total operation, maintenance, repair, and replacement costs incurred by the United States in operation of storage division; and establish Benton ID responsibility for operation, maintenance, repair, and replacement for irrigation distribution system.

9. Burley and Minidoka IDs, Minidoka Project, Idaho: Supplemental and amendatory contracts to transfer the O&M of the Main South Side Canal Headworks to Burley ID and transfer the O&M of the Main North Side Canal Headworks to Minidoka ID.

10. Clean Water Services and Tualatin Valley ID, Tualatin Project, Oregon: Long-term water service contract that provides for the District to allow Clean Water Services to beneficially use up to 6,000 acre-feet annually of stored water for water quality improvement.

11. Stanfield ID, Umatilla Basin Project, Oregon: A short-term water service contract to provide for the use of conjunctive use water, if needed, for the purposes of pre-saturation or for such use in October to extend their irrigation season.

12. Falls ID, Michaud Flats Project, Idaho: Amendment to contract No. 14–06–100–851 to authorize the District to participate in State water rental pool.

13. Roza ID, Yakima Project, Washington: Contract for use of water in dead space of Kachess Reservoir and construction of a pumping plant.

14. Quincy-Columbia Basin ID, Columbia Basin Project, Washington: Long-term contract to renew master water service contract No. 14–06–100–9166, as supplemented, to authorize the District to deliver project water to up to 10,000 First Phase Continuation Acres located within the District, and to deliver additional project water to land irrigated under the District's repayment contract during the peak period of irrigation water use annually.

15. Windy River LLC, Umatilla Project, Oregon: Contract pursuant to the Warren Act for use project facilities.

16. Water user entities responsible for repayment of reimbursable project construction costs in Idaho, Washington, Oregon, Montana, and Wyoming: Contracts for conversion or prepayment executed pursuant to the WIIN Act.

17. Title transfer agreements; Idaho, Washington, Oregon, Montana, and Wyoming: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

18. Irrigation water districts; Idaho, Washington, Oregon, Montana, and Wyoming: Temporary Warren Act contracts for terms of up to 5 years providing for use of excess capacity in Reclamation facilities for annual quantities exceeding 10,000 acre-feet.

19. Idaho, Washington, Oregon, Montana, and Wyoming: Aquifer Recharge Flexibility Act (Pub. L. 116–260) contracts that allow the use of excess capacity in Reclamation facilities for aquifer recharge of non-Reclamation project water.

20. Idaho Board of Water Resources, Boise Project, Idaho: Reclamation intends to negotiate an agreement with the Idaho Board of Water Resources to cost share construction of the raise of Anderson Ranch Dam, under the WIIN Act.

California-Great Basin—Interior Region 10: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users; California, Nevada, and Oregon: Short-term (up to 5 years)—Water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually; Warren Act contracts for use of excess capacity in project facilities for quantities that could exceed 10,000 acre-feet annually; and contracts for similar service for up to 1,000 acre-feet annually.

2. State of California, Department of Water Resources, CVP, California: Temporary or short-term conveyance agreements for various purposes.

3. Contractors from the Delta Division, Cross Valley Canal, and West San Joaquin Division; CVP; California: Renewal of 10 interim and long-term water service contracts; water quantities for these contracts total in excess of 148,000 acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public Law 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts.

4. Redwood Valley County WD, SRPA, California: Restructuring the repayment schedule pursuant to Public Law 100–516.

5. Sutter Extension WD, Delano-Earlimart ID, Pixley ID, the State of California Department of Water

Resources, and the State of California Department of Fish and Wildlife; CVP; California: Pursuant to Public Law 102–575, agreements with non-Federal entities for the purpose of providing funding for Central Valley Project Improvement Act refuge water conveyance and/or facilities improvement construction to deliver water for certain Federal wildlife refuges, State wildlife areas, and private wetlands.

6. CVP Service Area, California: Temporary water acquisition agreements for purchase of 5,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by Public Law 102–575 for terms of up to 5 years.

7. Horsefly, Klamath, Langell Valley, and Tulelake IDs; Klamath Project; Oregon: Repayment contracts for SOD work on Clear Lake Dam. These districts will share in repayment of costs, and each district will have a separate contract.

8. Irrigation water districts, individual irrigators, M&I, and miscellaneous water users; CVP; California: Execution of long-term Warren Act contracts (up to 40 years) with various entities for conveyance of non-project water in the CVP.

9. Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California: Long-term water service contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly a long-term contract for storage of non-project water in New Melones Reservoir.

10. Pershing County Water Conservation District, Pershing County, and Lander County; Humboldt Project; Nevada: Title transfer of lands and features of the Humboldt Project.

11. San Luis WD, CVP, California: Proposed partial assignment of 4,604 acre-feet of the District's CVP supply to Santa Nella County WD for M&I use.

12. Placer County Water Agency, CVP, California: Proposed exchange agreement under section 14 of the 1939 Act to exchange up to 71,000 acre-feet annually of the Agency's American River Middle Fork Project water for use by Reclamation, for a like amount of CVP water from the Sacramento River for use by the Agency.

13. Irrigation contractors, Klamath Project, Oregon: Amendment of repayment contracts or negotiation of new contracts to allow for recovery of additional capital costs.

14. Orland Unit Water User's Association, Orland Project, California: Repayment contract for the SOD costs assigned to the irrigation of Stony Gorge Dam.

15. City of Santa Barbara, Cachuma Project, California: Execution of a temporary contract and a long-term Warren Act contract with the City for conveyance of non-project water in Cachuma Project facilities.

16. Non-federal Operating Entities and Contractors with O&M responsibilities for transferred works; California, Nevada, and Oregon: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

17. Cachuma Operation and Maintenance Board, Cachuma Project, California: Amendment to SOD contract No. 01–WC–20–2030 to provide for increased SOD costs associated with Bradbury Dam.

18. State of California, Department of Water Resources; Cross Valley Contractors; CVP; California: Three-party conveyance agreement for conveyance of Cross Valley Contractors' CVP water supplies available pursuant to long-term water service contracts.

19. Westlands WD, CVP, California: Negotiation and execution of a long-term repayment contract to provide reimbursement of costs related to the construction of drainage facilities. This action is being undertaken to satisfy the Federal Government's obligation to provide drainage service to lands within the San Luis Unit of the CVP including the Westlands WD service area.

20. San Luis WD, Meyers Farms Family Trust, and Reclamation; CVP; California: Revision of an existing contract among San Luis WD, Meyers Farms Family Trust, and Reclamation providing for an increase in the exchange of water from 6,316 to 10,526 acre-feet annually and an increase in the storage capacity of the bank to 60,000 acre-feet.

21. Contra Costa WD, CVP, California: Amendment to an existing O&M agreement to transfer O&M of the Contra Costa Rock Slough Fish Screen to the Contra Costa WD. Initial construction funding provided through ARRA.

22. Irrigation water districts, individual irrigators and M&I water users, CVP, California: Temporary water service contracts for terms not to exceed 1 year for up to 100,000 acre-feet of surplus supplies of CVP water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged flood flows of short duration.

23. City of Redding, CVP, California: Proposed partial assignment of 30 acre-feet of the City of Redding's CVP water supply to the City of Shasta Lake for M&I use.

24. Sacramento River Division, CVP, California: Administrative assignments of various Sacramento River Settlement Contracts.

25. California Department of Fish and Game, CVP, California: To extend the term of and amend the existing water service contract for the Department's San Joaquin Fish Hatchery to allow an increase from 35 to 60 cubic feet per second of continuous flow to pass through the Hatchery prior to it returning to the San Joaquin River.

26. PacifiCorp, Klamath Project, Oregon and California: Transfer of O&M of Link River Dam and associated facilities. Contract will allow for the continued O&M by PacifiCorp.

27. Tulelake ID, Klamath Project, Oregon and California: Transfer of O&M of Station 48 and gate on Drain No. 1, Lost River Diversion Channel.

28. U.S. Fish and Wildlife Service and Tulelake ID; Klamath Project; Oregon and California: Water service contract for deliveries to Lower Klamath National Wildlife Refuge, including transfer of O&M responsibilities for the P Canal system.

29. Tulelake ID, Klamath Project, Oregon and California: Amendment of repayment contract to eliminate reimbursement for P Canal O&M costs.

30. Placer County Water Agency and East Bay Municipal Utility District, CVP, California: Long-term Warren Act contracts for up to 47,000 acre-feet of water annually with the Agency for storage and conveyance in Folsom Reservoir, and a contract with the District for conveyance of non-project water through Folsom South Canal.

31. Gray Lodge Wildlife Area, CVP, California: Reimbursement agreement between the California Department of Fish and Wildlife and Reclamation for groundwater pumping costs. Groundwater will provide a portion of Gray Lodge Wildlife Area's Central Valley Improvement Act Level 4 water supplies. This action is taken pursuant to Public Law 102–575, Title 34, Section 3406(d)(1, 2 and 5), to meet full Level 4 water needs of the Gray Lodge Wildlife Area.

32. State of Nevada, Newlands Project, Nevada: Title transfer of lands and features of Carson Lake and Pasture.

33. Washoe County Water Conservation District, Truckee Storage Project, Nevada: Repayment contract for costs associated with SOD work on Boca Dam.

34. Santa Barbara County Water Agency, Cachuma Project, California: Negotiation and execution of a long-term water service contract.

35. Cachuma Operations and Maintenance Board, Cachuma Project,

California: Negotiation and execution of an O&M contract.

36. State of California, Department of Water Resources; CVP; California: Negotiation of a multi-year wheeling agreement with the State of California, Department of Water Resources providing for the conveyance and delivery of CVP water through the State of California's water project facilities to Byron-Bethany ID (Musco Family Olive Company), Del Puerto WD, and the San Joaquin Valley National Cemetery.

37. Water user entities responsible for repayment of reimbursable project construction costs in California, Nevada, and Oregon: Contracts for conversion or prepayment executed pursuant to the WIIN Act.

38. Contra Costa Water District, CVP, California: Title transfer of lands and features of the Contra Costa Canal System of the CVP.

39. Truckee-Carson ID, Newlands Project, Nevada: Negotiation and execution of an OM&R transfer agreement.

40. Tehama-Colusa Canal Authority, CVP, California: Renewal of OM&R contract.

41. Title transfer agreements; California, Nevada, and Oregon: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

42. Shasta County Water Agency, CVP, California: Proposed partial assignment of 50 acre-feet of the Shasta County Water Agency's CVP water supply to the City of Shasta Lake for M&I use.

43. Friant Water Authority, CVP, California: Negotiation and execution of a repayment contract for Friant Kern Canal Middle Reach Capacity Correction Project.

Completed contract actions:

1. (9) Madera-Chowchilla Water and Power Authority, CVP, California: Agreement to transfer the OM&R and certain financial and administrative activities related to the Madera Canal and associated works. Contract executed on January 22, 2021.

2. (29) Santa Clara Valley WD (now called Valley Water), CVP, California: Second amendment to Santa Clara Valley WD's water service contract to add CVP-wide form of contract language providing for mutually agreed upon point or points of delivery. Contract executed on December 14, 2020.

3. (32) Fresno County Waterworks No. 18; Friant Division, CVP; California: Execution of an agreement to provide for the O&M of select Federal facilities by Fresno County Waterworks No. 18. Contract executed on September 11, 2018.

5. (50) Friant Water Authority, Friant Division, CVP, California: Renewal of OM&R contract. Contract executed on October 5, 2020.

Christopher Beardsley,

Director, Policy and Programs.

[FR Doc. 2022–05416 Filed 3–14–22; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1307]

Certain Barcode Scanners, Mobile Computers With Barcode Scanning Capabilities, Scan Engines, Components Thereof, and Products Containing the Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 7, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Zebra Technologies Corporation of Lincolnshire, Illinois and Symbol Technologies, LLC of Holtsville, New York. Supplements to the complaint were filed on February 25 and 28, 2022. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain barcode scanners, mobile computers with barcode scanning capabilities, scan engines, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent No. 7,478,753 (''the '753 patent''); U.S. Patent No. 7,905,414 (''the '414 patent''); U.S. Patent No. 9,800,749 (''the '749 patent''); and U.S. Patent No. 10,732,380 (''the '380 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Mullan, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 9, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–4, 10, 16–17, and 19 of the '753 patent; claims 1, 5–9, 11–12, 14–15, and 19–26 of the '414 patent; claims 1–16 of the '749 patent; and claims 1–2, 4–12, 14–16, and 19–20 of the '380 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''barcode scan engines and scanners (handheld and stationary scanners), mobile computers with barcode scanning capabilities (handheld, tablet, and wearable computers), and components thereof (circuit boards with barcode scanning capabilities)'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Zebra Technologies Corporation, 3 Overlook Point, Lincolnshire, Illinois 60069

Symbol Technologies, LLC, 1 Zebra Plaza, Holtsville, New York 11742

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Honeywell International Inc., 855 S. Mint Street, Charlotte, North Carolina 28202

Hand Held Products, Inc., 855 S. Mint Street, Charlotte, North Carolina 28202

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations is not participating as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 9, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–05380 Filed 3–14–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1210]

Certain Wrapping Material and Methods for Use in Agricultural Applications; Notice of Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions; Extension of Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''final ID'') issued by the presiding administrative law judge (''ALJ'') on December 10, 2021, finding no violation of section 337 of the Tariff Act of 1930, as amended. The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding. The Commission has also determined to extend the target date for the completion of the investigation to May 9, 2022.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On August 11, 2020, the Commission instituted this investigation based on a complaint filed on behalf of Tama Group of Israel and Tama USA Inc. of Dubuque, Iowa (together, ''Tama''). 85 FR 48561–62 (Aug. 11, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wrapping material and methods for use in agricultural applications by reason of infringement of one or more of claims 1, 2, 4–16, 18, 28, 32, 33, and 35–45 of U.S. Patent No. 6,787,209 (''the '209 patent''). *Id.* The Commission's notice of investigation named as respondents Zhejiang Yajia Cotton Picker Parts Co., Ltd. of Zhuji City, China (''Yajia Cotton''); Southern Marketing Affiliates, Inc. of Jonesboro, Arkansas (''SMA''); Hai'an Xin Fu Yuan of Agricultural, Science, and Technology Co., Ltd. of Nantong, China (''XFY''); and Gosun Business Development Co. Ltd. of Grande Prairie, Canada (''Gosun''). *Id.* at 48561. The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

The Commission previously terminated this investigation with respect to Gosun. Order No. 6, *unreviewed by* Notice (Oct. 5, 2020).

Based on Tama's motion, the Commission later amended the complaint and notice of investigation to add Zhejiang Yajia Packaging Materials Co., Ltd. (''Yajia Packaging'') as a respondent. Order No. 8, *unreviewed by* Notice (Oct. 27, 2020); 85 FR 68,916 (Oct. 30, 2020). Yajia Cotton and Yajia Packaging are collectively referred to herein as ''Yajia.'' Yajia, SMA, and XFY are collectively referred to herein as ''Respondents.''

On November 16, 2020, XFY was found in default pursuant to Commission Rule 210.16 (19 CFR 210.16). Order No. 11, *unreviewed by* Notice (Nov. 30, 2020).

On December 10, 2021, the ALJ issued the final ID, which found that Respondents did not violate section 337. The final ID found (1) that Tama no longer asserts claims 15, 16, 18, 28, and 45 of the '209 patent; (2) the importation or sale requirement of section 337 has been satisfied; (3) the Accused Products infringe claims 1, 2, 4–7, and 10–14 of the '209 patent; (4) Yajia and SMA do not infringe claims 32, 33, 35–38, and 41–44 of the '209 patent; (5) the technical prong of the domestic industry requirement for the '209 patent has been satisfied; (6) the '209 patent is not invalid; and (7) the economic prong of the domestic industry requirement has not been satisfied. The ALJ's Recommended Determination on remedy and bonding (''RD'') recommended that should the Commission find a violation, it should issue a limited exclusion order directed to certain wrapping material and methods for use in agricultural applications imported, sold for importation, and/or sold after

importation by respondents Yajia, SMA, and XFY. The RD further recommended that the issuance of cease and desist orders would be unnecessary. The RD additionally recommended that the Commission set a bond during the period of Presidential review using a price differential between the Accused Products and Tama's TamaWrap products. Thus, the CALJ recommended that the Commission set a bond in the amount of $119 (or 20%) for Tama's Premium product and $23 (or 4%) for Tama's Blue Value product. The Commission did not instruct the CALJ to make findings concerning the public interest.

On December 27, 2021, Yajia and SMA filed a joint petition for review, and Tama also filed a petition for review. On January 4, 2022, Yajia Cotton and SMA filed a joint response to Tama's petition for review, and Tama filed a response to Yajia and SMA's joint petition for review.

The Commission received no public interest comments from the public in response to the Commission's **Federal Register** notice seeking comment on the public interest. 86 FR 71664–65 (Dec. 17, 2021). Tama, Yajia, and SMA did not submit any public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

Having examined the record in this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. In particular, the Commission has determined to review the following:

(1) The final ID's findings that Yajia and SMA do not infringe claims 32, 33, 35–38, and 41–44 directly or indirectly; and

(2) the final ID's finding that the economic prong of the domestic industry requirement has not been satisfied.

The Commission has determined not to review the remainder of the final ID.

The Commission has also determined to extend the target date for the completion of the investigation to May 9, 2022.

The parties are requested to brief their positions with reference to the applicable law and the evidentiary record regarding the questions provided below:

(1) Under Commission and judicial precedent, section 337 and its legislative history, and any other relevant authority, is a license (express or otherwise) between Tama and John Deere & Co. (''Deere'') necessary for the Commission to consider Deere's investments in its On-Board Module Harvesters, including model numbers 7760, CP690, and CS690 (''the Deere Machines''), towards Tama's satisfaction of the economic prong of the domestic industry requirement? Or, is it sufficient that Deere and Tama collaborated to design a system that requires Tama's TamaWrap and Deere's Deere Machines? Is it necessary that Tama authorized Deere to use the patented devices and methods?

(2) What evidence is in the record that shows that Deere was authorized to use the '209 patent?

(3) Under Commission and judicial precedent, section 337 and its legislative history, and any other relevant authority, if the Commission considers Deere's investments in the categories listed in section 337(a)(3)(A)–(C) towards the satisfaction of the economic prong of the domestic industry requirement, to what extent and in which statutory category(ies) should the Commission consider the Deere expenditures? For example, should such expenditures be in TamaWrap itself and/or the method of using TamaWrap; should such expenditures be related to ensuring TamaWrap is compatible with the Deere Machines; should such expenditures have some other connection to TamaWrap and/or the '209 patent; or, should all expenditures related to the Deere Machines in each relevant statutory category contribute towards the satisfaction of the domestic industry requirement?

(4) What evidence is in the record that Deere specifically invested in TamaWrap and/or the method of using TamaWrap? For example, what activities did Deere undertake to ensure the Deere Machines would work well with TamaWrap?

(5) What part of the Deere Machines are specifically designed to interact with TamaWrap and what, if any, of Deere's investments asserted by Tama were specifically related to that portion of the Deere Machines and/or ensuring that Deere Machines are compatible with TamaWrap?

(6) Does the ''article[ ] protected by the patent'' (19 U.S.C. 1337(a)(3)) differ for the asserted apparatus claims and method claims? For example, are the Deere Machines ''articles protected by the patent'' with respect to the method claims while only the TamaWrap is an ''article[ ] protected by the patent'' with respect to the apparatus claim? If the articles protected by the patent differ as between the apparatus and the method claims, please provide a chart with supporting citations to the record indicating the expenditures for each statutory category for the respective apparatus and method claims.

(7) Can the Commission consider Deere's expenditures related to the Deere Machines under an ''article of commerce theory''? *See, e.g., Certain Video Game Sys. & Wireless Controllers & Components* Thereof, Inv. No. 337–TA–770, Comm'n Op. at 66–70 (Oct. 28, 2013) (Public Version) (''*Video Game Sys.*'').

(8) To what extent do Deere's activities related to the Deere Machines have a direct relationship to the exploitation of the patented technology, and to what extent can the expenditures be considered on that basis? *See, e.g., Video Game Sys.,* Comm'n Op. at 67–68.

(9) To what extent do the ''realities of the marketplace'' require Deere's expenditures in the Deere Machines for Tama to sell TamaWrap (or articles practicing the Asserted Patent)? *See, e.g., Video Game Sys.,* Comm'n Op. at 8.

(10) Were the expenditures related to the Deere Machines necessary to bringing TamaWrap to the consumer market, and if so, should the Commission consider those expenditures, and to what extent? *See, e.g., Video Game Sys.,* Comm'n Op. at 69–70; *Certain Digital Set-Top Boxes & Components Thereof,* Inv. No. 337–TA–712, Order No. 33 (Jan. 11, 2011), *aff'd in part,* Notice (July 21, 2011).

(11) Were the expenditures related to the Deere Machines central to the exploitation of TamaWrap, and if so, should the Commission consider those expenditures, and to what extent? *See, e.g., Certain Magnetic Tape Cartridges & Components Thereof,* Inv. No. 337–TA–1058, Comm'n Op. at 50 (Apr. 9, 2019) (Public Version); *Certain Sleep-Disordered Breathing Treatment Sys. & Components Thereof,* Inv. No. 337–TA–890, Final ID at 147–50 (Sept. 16, 2014) (Public Version), *unreviewed in relevant part by* Notice, (Oct. 16, 2014).

(12) With citations to record evidence and any relevant Commission and/or judicial precedent, including, *e.g., Certain In Vitro Fertilization Products, Components Thereof, and Products Containing the Same,* Inv. No. 337–TA–1196, Dissenting Views of Commissioners Schmidtlein and Karpel (Oct. 28, 2021), please discuss whether Tama's domestic activities as a whole indicate that it is more than a ''mere importer.'' Please note that this question is different from Question 13.

(13) With citations to record evidence and any relevant Commission and/or judicial precedent, please discuss whether Tama's qualifying domestic activities indicate that it is more than a ''mere importer.''

(14) Please indicate how Tama's claimed investments in the acquisition of Ambraco, components, administrative fees, and administrative expenses qualify as investments in ''labor or capital'' under section 337(a)(3)(B)? Please allocate those investments with respect to the articles protected by the patent and to those portions attributable to labor or capital.

(15) What arguments were presented to the ALJ that the amount of Deere's investment were significant or substantial?

(16) To the extent Tama is not a mere importer and certain domestic activities and investments with respect to the asserted patent excluded by the final ID (see *e.g.,* certain warehousing, inventory, logistics, finance, invoicing, account management, and/or promotion, marketing, and sales expenditures) should be credited as cognizable domestic industry investments, please discuss whether Tama's cognizable domestic industry investments (apart from any investments by Deere) are significant or substantial within the meaning of section 337(a)(3)(A)–(C), with citation to record evidence.

(17) To the extent investments by Deere are considered by the Commission along with the investments excluded by the final ID (*see, e.g.,* certain warehousing, inventory, logistics, finance, invoicing, account

management, and/or promotion, marketing, and sales expenditures) with respect to satisfaction of the economic prong of the domestic industry requirement under section 337(a)(3)(A)–(C), please discuss whether domestic industry investments are significant or substantial within the meaning of section 337(a)(3)(A)–(C), with citation to record evidence.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the questions identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such initial written submissions should include views on the RD that issued on December 10, 2021.

Initial written submissions, limited to 80 pages, must be filed no later than the close of business on March 23, 2022. Complainants are requested to identify the form of the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the HTSUS subheadings under which the accused articles are imported, and to supply identification information for all known importers of the accused products. Reply submissions, limited to 50 pages, must be filed no later than the close of business on March 30, 2022. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1210'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary at (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on March 9, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.

Issued: March 9, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–05384 Filed 3–14–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on March 2, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Open Group, L.L.C. (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amgen Inc., Thousand Oaks, CA; CIBIT Academy B.V, Velp, THE NETHERLANDS; Danbury Mission Technologies, LLC, Danbury, CT; Dianomic Systems, Inc., Menlo Park, CA; Engineered Products of Ohio, LLC., Cortland, OH; Geolog International, Amsterdam, THE NETHERLANDS; Herley Industries, Inc., Lancaster, PA; Hughes Network Systems, LLC, Gaithersburg, MD; IFP Energies Nouvelles, Rueil-Malmaison, FRANCE; Micronika LLC, Perm, RUSSIAN FEDERATION; Mitsubishi Chemical Corporation, Chiyoda-ku, JAPAN; NEC Corporation, Minato-ku, JAPAN; NPO, SNGS, Soyuzneftegazservice, Moscow, RUSSIAN FEDERATION; Oil Field Instrumentation (India) Pvt. Ltd., Mumbai, INDIA; Petrotechnical Data Systems International Holding BV, Rijswijk, THE NETHERLANDS; REDCOM Laboratories Inc., Victor, NY; Sarder, Inc. d.b.a. NetCom Learning, New York, NY; Shared Spectrum Company, Vienna, VA; Smiths Interconnect Americas Inc., Blandon, PA; Systel, Inc., Sugar Land, TX; The Engineerix Group, McAllen, TX; Transpara LLC, Scottsdale, AZ; Trenton Systems, Inc., Lawrenceville, GA; Universidad Técnica Particular de Loja, Loja, ECUADOR; and Wellsite Software Ltd, Hatfield, UNITED KINGDOM, have been added as parties to this venture.

Also, 848 Solutions Limited, Stafford, UNITED KINGDOM; Advantech Corporation, Irvine, CA; Avistar Consulting Limited, Calgary, CANADA; B2B Learning sprl/bvba, Brussels, BELGIUM; Department of Defense—System Engineering, Fort Meade, MD; Dept of Pharmacology, School of Medicine, Keio University, Tokyo, JAPAN; DNV GL Business Assurance Norway AS, Høvik, NORWAY; Elasticsearch, Inc, Mountain View, CA; Energistics Consortium, Inc, Houston, TX; Great Software Laboratory Private Limited, Pune, INDIA; In2itive LLC, Alexandria, VA; Inspearit B.V., Bilthoven, THE NETHERLANDS; IT Management and Governance LLC, Falls Church, VA; Keross LLC, Dubai, UNITED ARAB EMIRATES; NVIDIA Corporation, Santa Clara, CA; Optic Earth Limited, Aberdeen, SCOTLAND; Relfex Photonics Corp, Bethlehem, PA; Riversand Technologies, Inc., Houston, TX; Silver Storm Solutions S.L., Valladolid, SPAIN; Target Energy Solutions, Ltd, Woking, UNITED KINGDOM; Vedanta Limited (Cairn Oil & Gas), Gurgaon, INDIA; and Vose Software NV, Sint-Amandsberg, BELGIUM, have withdrawn as parties to this venture.

Additionally, Cyber Assessments, Inc. has changed its name to VisibleRisk, Inc., New York, NY; and Viqtor Davis, Inc. to D3Clarity, Inc., Austin, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on November 20, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 13, 2022 (87 FR 2181).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05385 Filed 3–14–22; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MLCommons Association

Notice is hereby given that, on February 25, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), MLCommons Association (''MLCommons'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Matt Sinclair (individual member), Madison, WI; Serenade Labs Inc., San Francisco, CA; Asustek Computer Incorporation, Taipei City, TAIWAN; New H3C Technologies Co., Ltd., Hangzhou, PEOPLE'S REPUBLIC OF CHINA; Deep AI Technologies, Caesarea, ISRAEL; Formativ, Paris, FRANCE; Biren Technology, San Jose, CA; Coactive Systems, Inc., San Jose, CA; and Yinhe Han (individual member), Beijing, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MLCommons intends to file additional written notifications disclosing all changes in membership.

On September 15, 2020, MLCommons filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 2020 (85 FR 61032).

The last notification was filed with the Department on December 3, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 13, 2022 (87 FR 2183).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05457 Filed 3–14–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB 1140–NEW]

ATF Citizens Academy Application—ATF Form 3000.12

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

ACTION: Notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The corresponding 60-day notice published on February 7, 2022, lists Paul Massock as the point of contact (POC). However, the newly appointed POC is Michael Zeppieri.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Michael Zeppieri, Special Operations Division, either by mail at 99 New York Ave. NE, Mailstop 7.S–241,Washington, DC 20226, or by email at *Michael.Zeppieri@atf.gov,* or by telephone at 917–881–2448.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* New Information Collection.

2. *The Title of the Form/Collection:* ATF Citizens Academy Application.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 3000.12.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): None.

Abstract: The ATF Citizens Academy Application—ATF form 300.12 will be used to collect personally identifiable information to determine an individual's eligibility to participate in the Citizens Academy training program.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 750 respondents will prepare responses for this collection once annually, and it will take each respondent approximately 5 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 63 hours, which is equal to 750 (total respondents) * 1 (# of response per respondent) * .0833333 (5 minutes or the time taken to prepare each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–405A, Washington, DC 20530.

Dated: March 9, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–05377 Filed 3–14–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Complaint and Consent Decree Under the Clean Air Act

On March 9, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Texas in the lawsuit entitled *United States* v. *Chevron Phillips Chemical Company LP,* Civil Action No. 4:22–cv–00737.

The United States filed this lawsuit under the Clean Air Act. The complaint seeks injunctive relief and civil penalties based on violations of the Clean Air Act's New Source Review requirements, New Source Performance Standards, National Emissions Standards for Hazardous Air Pollutants, ''Title V'' program requirements and operating permits, and related Texas state implementation plan requirements. The alleged violations involve flares used at three petrochemical manufacturing facilities owned and operated by the defendant, in or near Cedar Bayou, Port Arthur and Sweeny, Texas. Under the proposed consent decree, the defendant has agreed to perform injunctive relief (including flare gas minimization, flaring efficiency measures, and fenceline monitoring) that is estimated to cost $118 million, and pay $3.4 million in civil penalties.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer *United States* v. *Chevron Phillips Chemical Company LP,* D.J. Ref. No. 90–5–2–1–11288. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $32.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $ 22.25.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–05408 Filed 3–14–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Retaining Employment and Talent After Injury/Illness Network (RETAIN) Demonstration Projects and Evaluation

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Disability Employment Policy (ODEP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/*

PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: In FY 2018, the Department of Labor and the Social Security Administration launched a collaboration to develop and test promising stay-at-work/return-to-work (SAW/RTW) early intervention strategies and evaluate outcomes for individuals who are experiencing work disability. The RETAIN Demonstration Projects provide opportunities to improve SAW/RTW outcomes for individuals with both occupational and non-occupational injuries and illnesses. The purpose of the RETAIN employee participant information collection is to understand and assess RETAIN program start-up, pilot projects, and full implementation. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 12, 2021 (86 FR 62846).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ODEP.

Title of Collection: Retaining Employment and Talent After Injury/Illness Network (RETAIN) Demonstration Projects and Evaluation.

OMB Control Number: 1230–0014.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 5,313.

Total Estimated Number of Responses: 5,313.

Total Estimated Annual Time Burden: 1,771 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: March 8, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–05415 Filed 3–14–22; 8:45 am]

BILLING CODE 4510–FK–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Recordkeeping and Reporting Occupational Injuries and Illnesses

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Health and Safety Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Act (OSH Act) and 29 CFR part 1904 prescribe that certain employers maintain records of job-related injuries and illnesses. The injury and illness records are intended to have multiple purposes. One purpose is to provide data needed by OSHA to carry out enforcement and intervention activities to provide workers a safe and healthy work environment. The data are also needed by the Bureau of Labor Statistics to report on the number and rate of occupational injuries and illnesses in the country. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 29, 2021 (86 FR 74107).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Recordkeeping and Reporting Occupational Injuries and Illnesses.

OMB Control Number: 1218–0176.

Affected Public: Business or other for-profits farms; not-for-profit institutions; State and local government.

Total Estimated Number of Respondents: 982,912.

Total Estimated Number of Responses: 5,113,141.

Total Estimated Annual Time Burden: 2,048,626 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2022–05414 Filed 3–14–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Patient Protection and Affordable Care Act Patient Protection Notice

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The No Surprises Act, which Congress enacted as part of the Consolidated Appropriations Act, 2021, amended section 2719A of the Public Health Service Act (the PHS Act) to specify in new subsection (e) that section 2719A shall not apply with respect to plan years beginning on or after January 1, 2022. The No Surprises Act expanded the patient protections related to emergency services to provide additional protections. In addition, the No Surprises Act added section 2799A–7 of the PHS Act, which contains the patient protections regarding choice of health care professional from section 2719A of the PHS Act. These provisions mirror those currently applicable under section 2719A of the PHS Act (minus the emergency services protections). In addition, the patient protections under the No Surprises Act apply generally to all group health plans and health insurance coverage, including grandfathered health plans. The 2021 interim final regulations ''Requirements Related to Surprise Billing; Part I'' add a sunset clause to the current patient protection provisions codified in the 2015 final regulations, and re-codify the provisions related to choice of health care professional at 29 CFR 2590.722. The Patient Protection Notice is used by health plan sponsors and issuers to notify certain individuals of their right to (1) choose a primary care provider or a pediatrician when a plan or issuer requires participants or subscribers to designate a primary care physician; or (2) obtain obstetrical or gynecological care without prior authorization. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 18, 2021 (86 FR 64528).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Patient Protection and Affordable Care Act Patient Protection Notice.

OMB Control Number: 1210–0142.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 11,241.

Total Estimated Number of Responses: 148,181.

Total Estimated Annual Time Burden: 2,810 hours.

Total Estimated Annual Other Costs Burden: $7,409.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: March 8, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–05412 Filed 3–14–22; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; COVID–19 Symptom Tracker for Students, Emotional Wellness Form for Students, and Student Vaccination Status and Test Consent Form Collection

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of

the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal, by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Workforce Innovation Opportunity Act (WIOA), Sections 116(b)(2)(A)(i), 159(c)(4), and 156(a) authorize this information collection. This information collection supplements Job Corps' existing health information collections to gather information that will allow Job Corps to safely mitigate the spread of COVID–19 and protect the safety and health of students during the ongoing pandemic. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 20, 2021 (86 FR 71928).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: COVID–19 Symptom Tracker for Students, Emotional Wellness Form for Students, and Student Vaccination Status and Test Consent Form Collection.

OMB Control Number: 1205–0548.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 60,000.

Total Estimated Number of Responses: 14,680,000.

Total Estimated Annual Time Burden: 4,844,400 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: March 10, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–05494 Filed 3–14–22; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Opt-In State Balance Bill Process

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The No Surprises Act was enacted as part of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260). The interim final rules allow plans to voluntarily opt in to state law that provides for a method for determining the cost-sharing amount or total amount payable under such a plan, where a state has chosen to expand access to such plans, to satisfy their obligations under section 9816(a)–(d) of the Code, section 716(a)–(d) of ERISA, and section 2799A–1(a)–(d) of the PHS Act. A plan that has chosen to opt into a state law must prominently display in its plan materials describing the coverage of out-of-network services a statement that the plan has opted into a specified state law, identify the state (or states), and include a general description of the items and services provided by nonparticipating facilities and providers that are covered by the specified state law. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 9, 2021 (86 FR 62206).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Opt-in State Balance Bill Process.

OMB Control Number: 1210–0168.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 207.

Total Estimated Number of Responses: 207.

Total Estimated Annual Time Burden: 311 hours.

Total Estimated Annual Other Costs Burden: $106.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: March 8, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–05413 Filed 3–14–22; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Notice of Funding Availability and Request for Proposals for Calendar Year 2023 Basic Field Grant Awards

AGENCY: Legal Services Corporation.

ACTION: Notice of funding availability.

SUMMARY: The Legal Services Corporation (LSC) is a federally established and funded organization that awards grants to civil legal aid organizations across the country and in the U.S. territories. LSC's mission is to expand access to justice by funding high-quality legal representation for low-income people in civil matters. In anticipation of a congressional appropriation to LSC for Fiscal Year 2023, LSC hereby announces the availability of funding for basic field grants with terms commencing in January 2023. LSC will publish a Request for Proposals (RFP) and seeks applications from interested parties who are qualified to provide effective, efficient, and high-quality civil legal services to eligible clients in the service area(s) of the states and territories identified below. The availability and the exact amount of congressionally appropriated funds, as well as the date, terms, and conditions of funds available for grants for calendar year 2023, have not yet been determined.

DATES: See **SUPPLEMENTARY INFORMATION** section for grant application dates.

ADDRESSES: By email to *lscgrants@lsc.gov* or by other correspondence to Legal Services Corporation—Basic Field Grant Awards, 3333 K Street NW, Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: Judy Lee, Program Manager for the Basic Field Grant Program, Office of Program Performance, by phone at 202–295–1518 or email at *lscgrants@lsc.gov,* or visit the LSC website at *https://www.lsc.gov/grants/basic-field-grant.*

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) hereby announces the availability of funding for basic field grants with terms beginning in January 2023. LSC seeks grant proposals from interested parties who are qualified to provide effective, efficient, and high-quality civil legal services to eligible clients in the service area(s) of the states and territories identified below. Interested potential applicants must first file a Pre-Application. After approval by LSC of the Pre-Application, an applicant can submit an application in response to the RFP, which contains the grant proposal guidelines, proposal content requirements, and selection criteria. The Pre-Application and RFP will open in GrantEase, LSC's grants management system, on or around April 11, 2022. Additional information will be available at *https://www.lsc.gov/grants/basic-field-grant.*

The listing of all key dates for the LSC 2022 basic field grants process, including the deadlines for filing grant proposals is available at *https://www.lsc.gov/grants/basic-field-grant/how-apply-basic-field-grant/basic-field-grant-key-dates.*

LSC seeks proposals from: (1) Non-profit organizations that have as a purpose the provision of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) state or local governments; and (5) sub-state regional planning and coordination agencies that are composed of sub-state areas and whose governing boards are controlled by locally elected officials.

The service areas for which LSC is requesting grant proposals for 2023 are listed below. LSC provides grants for three types of service areas: Basic Field-General, Basic Field-Native American, and Basic Field-Agricultural Worker. For example, the state of Idaho has three basic field service areas: ID–1 (General), NID–1 (Native American), and MID (Agricultural Worker). Service area descriptions are available at *https://www.lsc.gov/grants/basic-field-grant/lsc-service-areas.* LSC will post all updates and changes to this notice at *https://www.lsc.gov/grants/basic-field-grant.* Interested parties can visit *https://www.lsc.gov/grants/basic-field-grant* or reach out to *lsgrants@lsc.gov.*

State or territory	Service area(s)
Arkansas	AR–6; AR–7.
Arizona	AZ–3; AZ–5; MAZ; NAZ–6.
California	CA–1; CA–12; CA–27; CA–28; NCA–1.
Connecticut	CT–1.
Delaware	MDE.
District of Columbia	DC–1.
Florida	FL–17; FL–18; MFL.
Illinois	IL–3; IL–7.
Kentucky	KY–2; KY–9; KY–10.
Louisiana	LA–13.
Maryland	MD–1; MMD.
Massachusetts	MA–4; MA–10; MA–11.
Michigan	MI–9; MI–12; MI–15; MMI; NMI–1.
Minnesota	MN–4; MN–5; MN–6; MMN.
Missouri	MO–4; MO–5.
New Hampshire	NH–1.
New Mexico	NM–5; MNM; NNM–4.
New York	NY–9.
North Dakota	MND.
Ohio	OH–18; OH–20; OH–21; OH–23; MOH.
Oklahoma	OK–3; MOK; NOK–1.
Pennsylvania	PA–5; PA–24.
Puerto Rico	PR–2.
South Dakota	SD–2.
Tennessee	TN–4; TN–7; TN–9; TN–10.
Texas	TX–13; TX–15; MSX–2; NTX–1.
Virginia	VA–17; VA–19; VA–20.
West Virginia	WV–5.
Wisconsin	WI–5; MWI.

(Authority: 42 U.S.C. 2996g(e))

Dated: March 9, 2022.

Stefanie Davis,

Senior Associate General Counsel.

[FR Doc. 2022–05368 Filed 3–14–22; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 22–020]

Name of Information Collection: NASA Virtual Guest Watch Party Registration

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by April 14, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review-Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 202–358–2375 or email *claire.a.little@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is committed to effectively performing the Agency's communication function in accordance with the Space Act Section 203(a)(3) to ''provide for the widest practicable and appropriate dissemination of information concerning its activities and the results there of,'' and to enhance public understanding of, and participation in, the nation's space program in accordance with the NASA Strategic Plan.

The Space Act of 1958, directs the Agency to expand human knowledge of Earth and space phenomena. The Virtual Guest Program exists to leverage the excitement around launches and milestones to widely disseminate information about Earth and space phenomena through the sharing of information about research on launches, mission objectives, public engagement activities (coloring pages, social media filters) and the like.

The program provides registration opportunities for individuals and watch parties so that NASA may provide them specific information they are interested in receiving and to share a detailed slice of the NASA efforts in carrying out the other portions of the Space Act of 1958. By learning through information submitted of the plans of Watch Party organizers, NASA can best provide appropriate resources and share information about its activities and results.

II. Methods of Collection

Electronic/Online Web Form.

III. Data

Title: NASA Virtual Guest Watch Party Registration.

OMB Number: 2700–xxxx.

Type of Review: New.

Affected Public: Individuals.

Estimated Annual Number of Activities: 1.

Estimated Number of Respondents per Activity: 100,869.

Annual Responses: 100,869.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 5,043.

Estimated Total Annual Cost: $75,652.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2022–05358 Filed 3–14–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–22–0006; NARA–2022–035]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on regulations.gov for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by May 2, 2022.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-22-0006/document.* This is a direct link to the schedules posted in the docket for this notice on *regulations.gov.* You may submit comments by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

Due to COVID–19 building closures, we are currently temporarily not accepting comments by mail. However, if you are unable to comment via *regulations.gov,* you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to

comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

Due to COVID–19 building closures, we are currently temporarily not accepting comments by mail. However, if you are unable to comment via *regulations.gov,* you may contact *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov* or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on regulations.gov a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Health and Human Services, Administration for Children and Families, Services Tracking System (DAA–0292–2021–0004).

2. Department of State, Bureau of Conflict and Stabilization Operations, Consolidated Schedule (DAA–0059–2019–0009).

3. Commission on Combating Synthetic Opioid Trafficking, Agency-wide, Records of the Commission on Combating Synthetic Opioid Trafficking (DAA–0220–2022–0001).

4. Commodity Futures Trading Commission, Agency-wide, Hedge Exemption Requests (DAA–0180–2022–0001).

5. Federal Trade Commission, Bureau of Consumer Protection, Consumer Sentinel Network (DAA–0122–2021–0002).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2022–05391 Filed 3–14–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:30 a.m., Thursday, March 17, 2022

PLACE: Due to the COVID–19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.ncua.gov*) and access the provided webcast link.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. NCUA's 2022–2026 Strategic Plan.

2. NCUA's 2022 Annual Performance Plan.

3. Board Briefing, Corporate System Resolution Update.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2022–05495 Filed 3–14–22; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Environmental Research and Education (9487).

Date and Time: April 19, 2022; 11:00 a.m.–5:30 p.m. (EDT), April 20, 2022; 11:00 a.m.–4:00 p.m. (EDT).

Place: National Science Foundation, 2415 Eisenhower Avenue, Room E 2020, Alexandria, VA 22314 | Virtual.

Registration for the virtual meeting can be accessed at: *https://nsf.zoomgov.com/meeting/register/vJIsduytqTMsEg8W7iTzUbYliGfTpaW8cNM.*

Type of Meeting: Open.

Contact Person: Dr. Arnoldo Valle-Levinson, Staff Associate, Office of Integrative Activities/Office of the Director/National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; (email: *avellele@nsf.gov;* Telephone: (703) 292–7946).

Summary of Minutes: May be obtained from the AC ERE website: *https://www.nsf.gov/ere/ereweb/minutes.jsp.*

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda: Approval of minutes from past meeting. Updates on agency support for environmental research and activities. Discussion with NSF Director and Assistant Directors. Plan for future advisory committee activities. Updated agenda will be available on the AC ERE website: *https://www.nsf.gov/ere/ereweb/minutes.jsp.*

Dated: March 10, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–05456 Filed 3–14–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0112]

Fuel Qualification for Advanced Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–2246, ''Fuel Qualification for Advanced Reactors.'' The purpose of this NUREG report is to provide a fuel qualification assessment framework for use by applicants for proposed advanced reactors using fuel designs and operating environments that differ from traditional light water reactor fuel. Specifically, the framework provides objective criteria, derived from regulatory requirements, that when satisfied, would support regulatory findings for licensing.

DATES: NUREG–2246, Revision 0 is available on March 15, 2022.

ADDRESSES: Please refer to Docket ID NRC–2021–0112 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0112. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* NUREG–2246, ''Fuel Qualification for Advanced Reactors,'' is available in ADAMS under Accession No. ML22063A131.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Timothy Drzewiecki, telephone: 301–415–5184, email: *Timothy.Drzewiecki@nrc.gov* and Jordan Hoellman, telephone: 301–415–5481, email: *Jordan.Hoellman2@nrc.gov.* Both are staff of the Office of Nuclear Reactor Regulation at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

Proposed advanced reactor technologies use fuel designs and operating environments (*e.g.,* neutron energy spectra, fuel temperatures, neighboring materials) that differ from those described in previous NRC guidance and frameworks applicable to traditional light-water reactor fuel. As such, the purpose of this report is to identify criteria that will be useful for advanced reactor fuel designs through an assessment framework that would support regulatory findings associated with nuclear fuel qualification. The report begins by examining the regulatory basis and related guidance applicable to fuel qualification, noting that the role of nuclear fuel in the protection against the release of radioactivity for a nuclear facility depends heavily on the reactor design. The report considers the use of accelerated fuel qualification techniques and lead test specimen programs that may shorten the timeline for qualifying fuel for use in a nuclear reactor at the desired parameters (*e.g.,* burnup). The assessment framework particularly emphasizes the identification of key fuel manufacturing parameters, the specification of a fuel performance envelope to inform testing requirements, the use of evaluation models in the fuel qualification process, and the assessment of the experimental data used to develop and validate evaluation models and empirical safety criteria.

II. Additional Information

Draft NUREG–2246, Revision 0, was published in the **Federal Register** for public comment on June 30, 2021 (86 FR 34794) with a 60-day comment period. The NRC received three public comments from private citizens and industry organizations. The NRC staff's evaluation and resolution of the public comments are documented in Appendix B to NUREG–2246 in ADAMS under Accession No. ML22063A131.

III. Congressional Review Act

NUREG–2246, Revision 0, is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated: March 9, 2022.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Acting Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–05382 Filed 3–14–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

694th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on April 6–8, 2022. The Committee will be conducting meetings that will include some members being physically present at the U.S. Nuclear Regulatory Commission (NRC) while other members participating remotely. Interested members of the public are encouraged to participate remotely in any open sessions via MS Teams or via phone at 301–576–2978, passcode 314 240 222#. A more detailed agenda including the MS Teams link may be found at the ACRS public website at *https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html.* If you would like the MS Teams link forwarded to you, please contact the Designated Federal Officer as follows: *Quynh.Nguyen@nrc.gov* or *Lawrence.Burkhart@nrc.gov*

Wednesday, April 6, 2022

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Radiation Embrittlement of Reactor Vessel Materials (Open)—The Committee will have presentations and discussion with representatives from the NRC staff regarding the subject topic.

10:00 a.m.–11:00 a.m.: Committee Deliberation on Radiation Embrittlement of Reactor Vessel Materials (Open)—The Committee will deliberate regarding the subject topic.

12:30 p.m.–2:00 p.m.: BWRX–300 Topical Report on Containment Evaluation Methodology (Open/Closed)—The Committee will have presentations and discussion with representatives from GE-Hitachi and NRC staff regarding the subject topic. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

2:00 p.m.–3:00 p.m.: Committee Deliberation BWRX–300 Topical Report on Containment Evaluation Methodology (Open/Closed)—The Committee will deliberate regarding the subject topic. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

3:00 p.m.–6:00 p.m.: Point Beach Subsequent License Renewal Application (Open)—The Committee will have presentations and discussion with representatives from NextEra and NRC staff regarding the subject topic.

Thursday, April 7, 2022

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: SHINE Operating License Application Review—Interim Letter (Open/Closed)—The Committee will have presentations and discussion with representatives from SHINE and the NRC staff regarding the subject topic. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

10:00 a.m.–11:00 a.m.: Committee Deliberation on the SHINE Operating License Application Review—Interim Letter (Open/Closed)—The Committee will deliberate regarding the subject topic. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

1:00 p.m.–3:30 p.m.: BWRX–300 Topical Report on Advanced Civil Construction and Design Approach (Open/Closed)—The Committee will have presentations and discussion with representatives from GE-Hitachi and NRC staff regarding the subject topic. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

3:30 p.m.–4:30 p.m.: Committee Deliberation on the BWRX–300 Topical Report on Advanced Civil Construction and Design Approach (Open/Closed)—The Committee will deliberate regarding the subject topic. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

4:30 p.m.–6:00 p.m.: Preparation of Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Friday, April 8, 2022

8:30 a.m.–11:30 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations/Preparation of Reports (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports as determined by the Chairman. [*Note:* Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.] [*Note:* Pursuant to 5 U.S.C. 552b(c)(2)and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

1:00 p.m.–6:00 p.m.: Preparation of Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Officer (DFO) (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the Cognizant ACRS Staff at least one day before meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS), which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Dated: March 9, 2022.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2022–05365 Filed 3–14–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0202]

Information Collection: Safeguards on Nuclear Material, Implementation of US/IAEA Agreement

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Safeguards on Nuclear Material, Implementation of US/IAEA Agreement.''

DATES: Submit comments by May 16, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0202. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0202 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2021–0202.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML22018A196.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0202 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Part 75 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Safeguards on Nuclear Material, Implementation of US/IAEA Agreement.''

2. *OMB approval number:* 3150–0055.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* N/A.

5. *How often the collection is required or requested:* Selected licensees are required to provide reports of nuclear material inventory and flow for selected facilities under the US/IAEA Safeguards Agreement, permit inspections by International Atomic Energy Agency Agreement (IAEA) inspectors, complementary access of IAEA

inspectors under the Additional Protocol, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. Reporting is done when specified events occur. Recordkeeping for nuclear material accounting and control information is done in accordance with specific instructions.

6. *Who will be required or asked to respond:* Licensees required to report information required by the U.S. Additional Protocol. Licensed possessors of nuclear material outside facilities in the U.S. Caribbean Territories.

7. *The estimated number of annual responses:* 22 (12 reporting responses + 10 recordkeepers).

8. *The estimated number of annual respondents:* 10.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 3,234.

10. *Abstract:* 10 CFR part 75, requires selected licensees to provide reports of nuclear material inventory and flow for selected facilities under the US/IAEA Safeguards Agreement, permit inspections by IAEA inspectors, complementary access of IAEA inspectors under the Additional Protocol, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. In addition, this collection is being renewed to include approximately 6 entities subject to the U.S.–IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366). These licensees will provide reports of nuclear material inventory and flow for entities under the U.S.–IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366), permit inspections by IAEA inspectors, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. These licensees will also follow written material accounting and control procedures, although actual reporting of transfer and material balance records to the IAEA will be done through the U.S. State system (Nuclear Materials Management and Safeguards System, collected under OMB clearance numbers 3150–0003, 3150–0004, 3150–0057, and 3150–0058). The NRC needs this information to implement its responsibilities under the US/IAEA agreement.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: March 10, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–05410 Filed 3–14–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0201]

Information Collection: Export and Import of Nuclear Equipment and Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Export and Import of Nuclear Equipment and Material.''

DATES: Submit comments by May 16, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0201. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0201 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2021–0201.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement and NRC Forms 830, 830A, 831, 831A, are available in ADAMS under Accession Nos. ML21340A028, ML21340A017, ML21340A019, ML21340A020, and ML21340A103.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without

charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0201 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Part 110 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Export and Import of Nuclear Equipment and Material.''

2. *OMB approval number:* 3150–0036.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Forms 830, 830A, 831, and 831A.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* Any person in the U.S. who wishes to export or import (a) nuclear material and equipment subject to the requirements of a specific license; (b) amend a license; (c) renew a license; (d) obtain consent to export Category 1 quantities of materials listed in Appendix P to 10 CFR part 110; or (e) request an exemption from a licensing requirement under 10 CFR part 110.

7. *The estimated number of annual responses:* 3,092.

8. *The estimated number of annual respondents:* 90.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 1,514.

10. *Abstract:* Persons in the U.S. who export or import nuclear material or equipment under a general or specific authorization must comply with certain reporting and recordkeeping requirements under 10 CFR part 110.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: March 10, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–05411 Filed 3–14–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0181]

Information Collection: Packaging and Transportation of Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Packaging and Transportation of Radioactive Material.''

DATES: Submit comments by May 16, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0181. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0181 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2021–0181.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML21356A582 and ML21356A581.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please

send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0181 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Part 71 of title 10 of the *Code of Federal Regulations* (10 CFR) ''Packaging and Transportation of Radioactive Material.''

2. *OMB approval number:* 3150–0008.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NA.

5. *How often the collection is required or requested:* On occasion. Application for package certification may be made at any time. Required reports are collected and evaluated on a continuous basis as events occur.

6. *Who will be required or asked to respond:* All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

7. *The estimated number of annual responses:* 611.

8. *The estimated number of annual respondents:* 225.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 30,619 hours (25,913 hours reporting + 4,575 hours recordkeeping + 131 hours third-party disclosure).

10. *Abstract:* The NRC regulations in 10 CFR part 71 establish requirements for packaging, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities. The NRC collects information pertinent to 10 CFR part 71 for three reasons: to issue a package approval; to ensure that any incidents or package degradation or defect are appropriately captured, evaluated and if necessary, corrected to minimize future potential occurrences; and to ensure that all activities are completed using an NRC-approval quality assurance program.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: March 10, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–05409 Filed 3–14–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System Board of Actuaries Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Civil Service Retirement System Board of Actuaries plans to meet on Tuesday, May 10, 2022. The meeting will start at 10:00 a.m. EDT and will be held at the U.S. Office of Personnel Management (OPM), 1900 E Street NW, Washington, DC 20415. The purpose of the meeting is for the Board to review the actuarial methods and assumptions used in the valuations of the Civil Service Retirement and Disability Fund (CSRDF).

Agenda

1. Summary of recent legislative proposals
2. Review of actuarial assumptions
   a. Demographic Assumptions
   b. Economic Assumptions
3. CSRDF Annual Report

Persons desiring to attend this meeting of the Civil Service Retirement System Board of Actuaries, or to make a statement for consideration at the meeting, should contact OPM at least 5 business days in advance of the meeting date at the address shown below. Attendance may be limited in accordance with the building's operating status and the health and safety protocols in effect as of the date of the meeting. Any detailed information or analysis requested for the Board to consider should be submitted at least 15 business days in advance of the meeting date. The manner and time for any material presented to or considered by the Board may be limited.

FOR FURTHER INFORMATION CONTACT: Gregory Kissel, Senior Actuary for Pension Programs, U.S. Office of Personnel Management, 1900 E Street NW, Room 4316, Washington, DC 20415. Phone (202) 606–0722 or email at *actuary@opm.gov.*

For the Board of Actuaries.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2022–05443 Filed 3–14–22; 8:45 am]

BILLING CODE 6325–63–P

POSTAL SERVICE

Next Generation Delivery Vehicles Acquisitions

AGENCY: Postal Service.

ACTION: Notice of availability of record of decision.

SUMMARY: To replace existing delivery vehicles nationwide that have reached the end of their service life, the U.S. Postal Service (''Postal Service'') has determined that it will implement the Preferred Alternative. The Preferred Alternative is the purchase and deployment over a ten-year period of 50,000 to 165,000 purpose-built, right-hand drive NGDV vehicles consisting of a mix of internal combustion engine (''ICE'') and battery electric vehicle (''BEV'') powertrains, with at least ten percent BEVs.

DATES: The Record of Decision (''ROD'') became effective when it was signed by the Postal Service's Vice President of Supply Management on February 23, 2022.

ADDRESSES: Interested parties may view the ROD and FEIS at *https://uspsngdveis.com/.*

SUPPLEMENTARY INFORMATION: To replace existing delivery vehicles nationwide that have reached the end of their service life, the U.S. Postal Service (''Postal Service'') has determined that it will implement the Preferred Alternative, as described in the Next Generation Delivery Vehicle Acquisitions (''NGDV'') Final Environmental Impact Statement (''FEIS''), which was published by the U.S. Environmental Protection Agency in the **Federal Register** on January 7, 2022 (87 FR 964).

The Postal Service has decided on the Preferred Action because it fully meets the Postal Service's Purpose and Need by providing a purpose-built right-hand drive vehicle capable of meeting performance, safety, and ergonomic requirements for efficient carrier deliveries to businesses and curb-line residential mailboxes over the entire nationwide system. Moreover, the Postal Service has determined that the Preferred Alternative is the most achievable given the Postal Service's financial condition as the BEV NGDV has a significantly higher total cost of ownership than the ICE NGDV, which is why the Preferred Alternative being implemented does not commit to more than 10 percent BEV NGDV. Finally, the Postal Service notes that the Preferred Alternative as implemented contains the flexibility to significantly increase the percentage of BEV NGDVs should additional funding become available from any source.

The Record of Decision was prepared in accordance with the requirements of the National Environmental Policy Act, the Postal Service's implementing procedures at 39 CFR part 775, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508). The ROD incorporates the analyses and findings from the FEIS.

References

1. U.S. Postal Service, Notice of Intent to Prepare an Environmental Impact Statement for Purchase of Next Generation Delivery Vehicles, 86 FR 12715 (Mar. 4, 2021).
2. U.S. Postal Service, Notice of Availability of Draft Environmental Impact Statement for Purchase of Next Generation Delivery Vehicle, 86 FR 47662 (Aug. 26, 2021).
3. U.S. Environmental Protection Agency, Notice of Availability of EIS No. 20210129, Draft, USPS, DC, Next Generation Delivery Vehicle Acquisitions, 86 FR 49531 (Sept. 3, 2021).
4. U.S. Environmental Protection Agency, Notice of Availability of EIS No. 20220001, Final, USPS, DC, Next Generation Delivery Vehicle Acquisitions, 87 FR 964 (Jan. 7, 2022).
5. U.S. Postal Service, Notice of Availability of Final Environmental Impact Statement for Purchase of Next Generation Delivery Vehicles, 87 FR 994 (Jan. 7, 2022).

Sarah E. Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–05383 Filed 3–14–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94388; File No. SR–NYSE–2022–11]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Amend the NYSE Listed Company Manual To Provide a Limited Exemption From the Shareholder Approval Requirements for Closed-End Management Investment Companies With Equity Securities Listed Under Section 102.04 of the Listed Company Manual

March 9, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 23, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change. On March 8, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 312.03 of the NYSE Listed Company Manual (''Manual'') to provide a limited exemption from the shareholder approval requirements of that rule for listed closed-end funds. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amendment No. 1

The Exchange has previously submitted to the SEC a proposal to amend Section 312.03 of the Manual to provide a limited exemption from the shareholder approval requirements of that rule for listed closed-end funds.[4] This Amendment No. 1 replaces and supersedes the original filing in its entirety.[5] This Amendment No. 1 is being filed to:

- Make clarifications with respect to the description of the text of Section 312.03(b) of the Manual and Section 102.04 of the Manual;

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* SR–NYSE–2022–11 (February 23, 2022).

[5] Amendment No. 1 does not make any changes to the rule text as presented in Exhibit 5 of the original filing.

- correct some typographical errors;
- clarify in the Statutory Basis section that there is a reduced risk of disenfranchisement of existing shareholders as a result of a Rule 17a–8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid, rather than stating that there is no risk of disenfranchisement at all; and
- replace a sentence in the Statutory Basis section of the Form 19b–4 that states that the interests of shareholders of the acquiring fund will not be diluted where the shares issued by the surviving fund are issued at a price equal to the surviving fund's net asset value. The deleted sentence is replaced with the following:

To the Exchange's knowledge, the shares of the surviving Fund in a merger of affiliated Funds are generally issued at a price equal to the surviving Fund's net asset value, thereby ensuring that the transaction is not dilutive to the surviving Fund's shareholders. As described above, if the shares in such a merger are issued at any price other than net asset value, in order to rely on Rule 17a–8, the board of directors of the surviving Fund would have to make an affirmative determination that such price was not dilutive to the interests of its existing shareholders. Consequently, the Exchange believes that the proposed exemption would not result in issuances that are economically dilutive to the shareholders of the surviving Fund.

Section 312.03(b)(i) of the Manual requires listed issuers to obtain shareholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions, to a director, officer or substantial security holder of the company (each a ''Related Party'') if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance. Section 312.03(b) affords an exception for cash sales that meet a market price test.

Section 312.03(b)(ii) of the Manual provides that shareholder approval is also required prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, where such securities are issued as consideration in a transaction or series of related transactions in which a Related Party has a five percent or greater interest (or such persons collectively have a ten percent or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into common stock, could result in an issuance that exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

Section 312.03(b)(iii) of the Manual provides that any sale of stock to an employee, director or service provider is also subject to the equity compensation rules in Section 303A.08 of the Manual. For example, a sale of stock to any of such parties at a discount to the then market price would be treated as equity compensation under Section 303A.08 notwithstanding that shareholder approval may not be required under Sections 312.03(b) or 312.03(c).

Similarly, Section 312.03(c) of the Manual requires listed issuers to obtain shareholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions if:

(1) The common stock has, or will have upon issuance, voting power equal to or in excess of 20 percent of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock; or

(2) the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20 percent of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock.

The Exchange proposes to exempt closed end management companies that are registered under the Investment Company Act of 1940 (''1940 Act'')[6] (consisting of closed-end funds listed under Section 102.04.A. and business development companies listed under Section 102.04.B) (collectively, ''Funds''), from having to comply with the shareholder approval requirement in Sections 312.03(b) and (c) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a–8 under the 1940 Act (Mergers of affiliated companies) (''Rule 17a–8'')[7] and does not otherwise require shareholder approval under the 1940 Act or the rules thereunder or any other Exchange rule. As described below, the Exchange believes Rule 17a–8 provides protections that obviate the need for a shareholder approval requirement in these circumstances.

Sections 17(a)(1) and (2) of the 1940 Act prohibit, among other things, certain transactions between registered investment companies and affiliated persons. Rule 17a–8 provides an exemption from Sections 17(a)(1)–(2) of the 1940 Act for certain mergers of affiliated companies, provided, among other things, that the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company or of any other company or series participating in the transaction, must determine that (i) participation in the merger is in the best interests of its respective investment company, and (ii) the interests of the company's existing shareholders will not be diluted as a result of the transaction.[8] In addition, under Rule 17a–8, an affiliated merger must be approved by a majority of the outstanding voting securities of the merging company that is not the surviving company unless certain conditions are met.[9] Rule 17a–8 does not require the surviving company to obtain shareholder approval in connection with the merger of an affiliated company.

Because the board of each merging company must make an affirmative decision that the transaction is in the best interest of its respective company and that the transaction will not result in dilution for existing shareholders, the Exchange believes the provisions of Rule 17a–8 protect against dilution and also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. The Exchange therefore believes that it is appropriate to exempt issuers of Funds from having to comply with the shareholder approval requirement in Section 312.03(c) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a–8, which

[6] 15 U.S.C. 80a–1.

[7] 17 CFR 270.17a–8.

[8] *See* 15 U.S.C. 80a–17(a)(1)—(2). *See also* the definition of ''affiliated person'' in the 1940 Act, 15 U.S.C 80a–2(a)(3).

[9] 17 CFR 270.17a–8(a)(3).

can be both time consuming and expensive.

Notwithstanding the proposed exemption, if other provisions of Exchange rules and the 1940 Act and the rules thereunder require shareholder approval, those would still apply. The Exchange also notes that the adopting release for Rule 17a–8 specifically noted that nothing in Rule 17a–8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment is consistent with the protection of investors, as protections afforded by Rule 17a–8 mean that (i) there is no risk of dilution to existing shareholders as a result of an issuance of shares by a Fund in connection with the acquisition of the stock or assets of an affiliated company, and (ii) there is a reduced risk of disenfranchisement of existing shareholders as a result of a Rule 17a–8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid. Because the board of each merging company must make an affirmative determination that the transaction is in the best interest of its investment company and that the transaction will not result in dilution for existing shareholders, there is reduced concern the existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

The Exchange further believes its proposal is consistent with the protection of investors because its proposal is limited to registered investment companies that are organized under the 1940 Act. In the case of a merger of affiliated investment companies, the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company, must affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction. To the Exchange's knowledge, the shares of the surviving Fund in a merger of affiliated Funds are generally issued at a price equal to the surviving Fund's net asset value, thereby ensuring that the transaction is not dilutive to the surviving Fund's shareholders. The Exchange understands that this exchange ratio is publicly disclosed in the proxy statement soliciting proxies from the acquired Fund's shareholders, as well as in other disclosure documents. As described above, if the shares in such a merger are issued at any price other than net asset value, in order to rely on Rule 17a–8, the board of directors of the surviving Fund would nonetheless be required to make an affirmative determination that such price was not dilutive to the interests of its existing shareholders. Consequently, the Exchange believes that the proposed exemption would not result in issuances that are dilutive to the shareholders of the surviving Fund.

The Exchange notes that while shareholders of the non-surviving company must approve the merger under certain circumstances, Rule 17a–8 does not require the shareholders of the surviving company to approve the transaction. Accordingly, the Exchange believes it is appropriate to exempt Funds from the requirements of Sections 312.03(b) and (c) in this same limited circumstance.

Notwithstanding the proposed exemption described above, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a–8 specifically noted that nothing in Rule 17a–8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a Fund's organizational documents.

The Exchange believes it is not unfairly discriminatory to offer the exemption only to Funds completing a merger with an affiliated registered investment company, as opposed to all issuers, because the protections against dilution and self-dealing described herein are embedded in the 1940 Act and do not apply to those other issuers.[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendment would offer Funds a limited exemption for the Exchange's shareholder approval rule in a specific circumstance where the Exchange believes there is a low risk of dilution to existing shareholders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2022–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[10] *See* Investment Company Act Release No. 25666, 67 FR 48511 (July 24, 2002) at n. 18.

[11] 15 U.S.C. 78f(b)(5).

[12] The Exchange does not currently have any listed companies that are registered under the Investment Company Act other than closed-end funds and business development companies listed under Section 102.04.

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–11 and should be submitted on or before April 5, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05371 Filed 3–14–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94392; File No. SR–NYSE–2022–04]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rules 5P, 5.2(j)(8)(e), 8P, and 98

March 9, 2022.

On January 14, 2022, New York Stock Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the listing and trading of certain exchange traded products that include in their portfolios a NMS Stock listed on the Exchange, or that are based on or represent an interest in an underlying index or reference asset that includes a NMS Stock listed on the Exchange. The proposed rule change was published for comment in the **Federal Register** on January 31, 2022.[3]

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 17, 2022.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates May 1, 2022 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2022–04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05370 Filed 3–14–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94389; File No. SR–NASDAQ–2021–054]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Disapproving a Proposed Rule Change To Modify Nasdaq IM–5101–2 To Permit an Acquisition Company To Contribute a Portion of Its Deposit Account to Another Entity in a Spin-Off or Similar Corporate Transaction

March 9, 2022.

I. Introduction

On June 24, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Nasdaq IM–5101–2 to permit an acquisition company to contribute a portion of the amount held in its deposit account to a deposit account of a new acquisition company in a spin-off or similar corporate transaction. The proposed rule change was published for comment in the **Federal Register** on July 13, 2021.[3]

On August 25, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 30, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On January 3, 2022, the Commission extended the period for consideration of the proposed rule change to March 10, 2022.[8]

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94053 (January 25, 2022), 87 FR 4982.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92344 (July 7, 2021), 86 FR 36841 (''Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2021-054/srnasdaq2021054.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92751, 86 FR 48780 (August 31, 2021). The Commission designated October 11, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93219, 86 FR 55664 (October 6, 2021) (''OIP'').

[8] *See* Securities Exchange Act Release No. 93891, 87 FR 998 (January 7, 2022).

This order disapproves the proposed rule change because, as discussed below, the Exchange has not met its burden under the Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and, in particular, the requirements that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[9]

II. Description of the Proposed Rule Change

Generally, the Exchange will not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.[10] However, the Exchange currently will permit the listing of a company whose business plan is to complete an initial public offering (''IPO'') and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (''Acquisition Company'' or ''SPAC''), if the company meets all applicable initial listing requirements, as well as certain conditions described in Nasdaq IM–5101–2.[11] Among other things, Nasdaq IM–5101–2 requires that at least 90% of the gross proceeds from the IPO and any concurrent sale by the Acquisition Company of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an insured depository institution, or in a separate bank account established by a registered broker or dealer (collectively, a ''deposit account'').[12] In addition, Nasdaq IM–5101–2 requires that within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the Acquisition Company specifies in its registration statement, the Acquisition Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.[13] Nasdaq IM–5101–2 further requires each business combination to be approved by a majority of the Acquisition Company's independent directors.[14] If the Acquisition Company holds a shareholder vote on a business combination, the business combination must be approved by a majority of the shares of common stock voting at the meeting and public shareholders voting against the business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated.[15] If a shareholder vote on a business combination is not held, the Acquisition Company must provide all shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes), pursuant to Rule 13e–4 and Regulation 14E under the Act, which regulate issuer tender offers.[16]

The Exchange now proposes to modify Nasdaq IM–5101–2 to allow a SPAC listed under that rule to contribute a portion of its deposit account to a deposit account of a new entity in a spin-off or similar corporate transaction (''SpinCo SPAC''). According to the Exchange, when a SPAC conducts its IPO, it raises the amount of capital that it estimates will be necessary to finance a subsequent business combination with its ultimate target; however, the Exchange believes that because a SPAC cannot identify or select a specific target at the time of its IPO, often the amount raised is not optimal for the needs of a specific target.[17] The Exchange states that it is proposing to modify Nasdaq IM–5101–2 to permit what it believes is a more efficient structure whereby a SPAC can raise in its IPO the maximum amount of capital it anticipates it may need for a business combination transaction and then ''rightsize'' itself by contributing any amounts not needed to a SpinCo SPAC, which would be subject to the provisions of Nasdaq IM–5101–2, in the same manner as the original SPAC, and spun off to the original SPAC's shareholders.[18]

Specifically, proposed Nasdaq IM–5101–2(f) would provide that a SPAC will be permitted to contribute a portion of the amount held in the deposit account to a deposit account of another entity (the ''Contribution'') in a spin-off or similar corporate transaction, subject to the following conditions:

(i) The requirements set forth in Nasdaq IM–5101–2(d) and (e) that shareholders of a SPAC must have the right to convert or redeem their shares of common stock into a pro rata share of the aggregate amount in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) at the times specified in such paragraphs may be based on the amounts in the deposit account of the SPAC at such times after having been reduced by the Contribution provided that, in connection with the Contribution, the SPAC's public shareholders shall have had the right, through one or more corporate transactions, to redeem a portion of their shares of common stock (or, if units were sold in the SPAC's IPO, units) for their pro rata portion of the amount of the Contribution in lieu of being entitled to receive shares or units in the SpinCo SPAC;

(ii) the public shareholders of the SPAC receive shares or units of the SpinCo SPAC on a pro rata basis, except to the extent they have elected to redeem a portion of their shares of the SPAC in lieu of being entitled to receive shares or units in the SpinCo SPAC;

(iii) the amount distributed to the SpinCo SPAC will remain in a deposit account for the benefit of the shareholders of the SpinCo SPAC in the same manner as described in Nasdaq IM–5101–2(a);

(iv) the SpinCo SPAC meets all applicable initial listing requirements, as well as the conditions described in Nasdaq IM–5101–2(a) through (e); it being understood that, following such spin-off or similar corporate transaction: (A) For purposes of Nasdaq IM–5101–2(b) the 80% described therein shall,[19] in the case of the SPAC, be calculated based on the aggregate amount remaining in the deposit account of the SPAC at the time of the agreement to enter into the initial combination after the Contribution to the SpinCo SPAC, and, in the case of the SpinCo SPAC, be calculated based on the aggregate amount in its deposit account at the time of its agreement to enter into its initial combination,[20] and (B) for purposes of

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Nasdaq IM–5101–2.

[11] *See id.*

[12] *See* Nasdaq IM–5101–2(a).

[13] *See* Nasdaq IM–5101–2(b).

[14] *See* Nasdaq IM–5101–2(c).

[15] *See* Nasdaq IM–5101–2(d).

[16] *See* Nasdaq IM–5101–2(e).

[17] *See* Notice, *supra* note 3, at 36841. The Exchange further states that ''[t]his has resulted in the inefficient, current practice of SPAC sponsors creating multiple SPACs of different sizes at the same time, with the intention to use the SPAC that is closest in size to the amount a particular target needs.'' *Id.*

[18] *See id.* The 36-month period to complete a business combination under Nasdaq IM–5101–2 would, however, be calculated for each SpinCo SPAC based on the date of the original SPAC's effective registration statement.

[19] See *supra* note 13 and accompanying text, for a description of the requirements of Nasdaq IM–5101–2(b).

[20] As the Exchange states, this amount would be calculated after giving effect to the SpinCo SPAC's contribution to a subsequent SpinCo SPAC, if any. See Notice, *supra* note 3, at 36842.

Nasdaq IM–5101–2(d) and (e),[21] the right to convert and opportunity to redeem shares of common stock on a pro rata basis, respectively, shall, in the case of the SPAC, be deemed to apply to the aggregate amount remaining in the deposit account of the SPAC after the contribution to the SpinCo SPAC, and, in the case of the SpinCo SPAC, be deemed to apply to the aggregate amount in its deposit account;

(v) in the case of the SpinCo SPAC, and any additional entities spun off from the SpinCo SPAC, each of which will also be considered a SpinCo SPAC, the 36-month period described in Nasdaq IM–5101–2(b) (or such shorter period that the original SPAC specifies in its registration statement) will be calculated based on the date of effectiveness of the SPAC's IPO registration statement; and

(vi) in the aggregate, through one or more opportunities by the SPAC and one or more SpinCo SPACs, public shareholders will have the ability to convert or redeem shares, or receive amounts upon liquidation, for the full amount of the deposit account established by the SPAC as described in Nasdaq IM–5101–2(a) (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account).[22]

The Exchange states that, under the proposal, it expects that the new structure will be implemented in the following manner. If a listed SPAC (the ''Original SPAC'') determines that it will not need all the cash in its deposit account for its initial business combination, the Original SPAC will designate the excess cash for a new deposit account of a SpinCo SPAC (the ''SpinCo Deposit Account,'' and the amount retained in the deposit account of the Original SPAC, the ''Retained SPAC Deposit Account'').[23] The Exchange states that the amount designated for the SpinCo Deposit Account must continue to be held for the benefit of the shareholders of the Original SPAC until the completion of the spin-off transaction and, following the spin-off of the SpinCo SPAC to the Original SPAC's shareholders, the SpinCo Deposit Account would be subject to the same requirements as the deposit account of the Original SPAC.[24]

According to the Exchange, the SpinCo SPAC would file a registration statement under the Securities Act of 1933 for purposes of effecting the spin-off of the SpinCo SPAC and, prior to the effectiveness of the registration statement, the Original SPAC would provide its public shareholders through one or more corporate transactions with the opportunity to redeem a pro rata amount of their holdings equal to the amount of the SpinCo Deposit Account divided by the per share amount in the Original SPAC's deposit account (the ''redemption price'').[25] The Exchange further states that, after completing the tender offer for the redemption and the effectiveness of the SpinCo SPAC's registration statement, the Original SPAC would contribute the SpinCo Deposit Account to a deposit account held by the SpinCo SPAC in exchange for shares or units of the SpinCo SPAC, which the Original SPAC would then distribute to its public shareholders on a pro rata basis through one or more corporate transactions pursuant to the SpinCo SPAC's effective registration statement.[26]

According to the Exchange, the Original SPAC would then continue to operate as a SPAC until it completes its business combination and would offer redemption rights to its public shareholders in connection with that business combination in the same manner as a traditional SPAC, while the SpinCo SPAC would operate in the same manner as a traditional SPAC, except that it could effect a subsequent spin-off prior to its business combination like the Original SPAC.[27] The Exchange states that if SpinCo SPAC does not elect to effect a spin-off, it would proceed to complete an initial business combination and offer redemption rights in connection therewith like a traditional SPAC.[28]

The Commission received comments broadly supporting the proposed rule change. Specifically, one commenter stated that the proposed rule change would introduce a ''more efficient, cost-effective[,] and flexible'' structure than provided for by the current SPAC listing rules, ''while continuing to offer significant and appropriate protections to SPAC investors.'' [29] This commenter further argued that shareholders' ability under the proposed rule change to redeem their investment in connection with each specific business combination by the Original SPAC or a SpinCo SPAC would both increase flexibility and investors' ability to understand the companies that a SPAC plans to acquire and the risks associated with each such target company.[30] Another commenter similarly argued that the proposed rule change would permit a more efficient SPAC structure while ''maintaining all of the investor protections'' in the current SPAC listing rules.[31]

III. Discussion and Commission Findings

The Commission must consider whether the Exchange's proposal is consistent with the Act, including Section 6(b)(5), which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[32] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [33]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[34] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule

[21] See *supra* notes 15–16 and accompanying text, for a description of the requirements of Nasdaq IM–5101–2(d) and (e).

[22] Proposed Nasdaq IM–5101–2(f) provides that the conditions set forth in the proposed rule would similarly apply to successive spin-offs or similar corporate transactions, ''mutatis mutandis.''

[23] *See* Notice, *supra* note 3, at 36841–42.

[24] *See id.* at 36842.

[25] *See id.* According to the Exchange, the redemption could occur, for example, through a partial cash tender offer for shares of the Original SPAC pursuant to Rule 13e–4 and Regulation 14E of the Act, and the redemption may be of a separate class of shares distributed to unitholders of the Original SPAC for the purpose of facilitating the redemption. *See id.* at 36842 n.4.

[26] *See id.* at 36842.

[27] *See id.* The proposed rule would provide that, for purposes of Nasdaq IM–5101–2(b), the Original SPAC must complete one or more business combinations with an aggregate fair market value of at least 80% of the aggregate amount remaining in the Retained SPAC Deposit Account, after the contribution to the SpinCo SPAC, at the time of its agreement to enter into its initial combination. Nasdaq further states that, similarly, a SpinCo SPAC must complete one or more business combinations with an aggregate fair market value of at least 80% of the aggregate amount remaining in the SpinCo Deposit Account at the time of its agreement to enter into its initial combination after giving effect to its contribution to any subsequent SpinCo SPAC.

[28] *See id.*

[29] *See* letter from Kellen Carter, ARK Investment Management LLC, to Vanessa Countryman, Secretary, Commission, dated August 2, 2021, at 1–2.

[30] *See id.* at 2.

[31] *See* letter from White & Case LLP to Vanessa Countryman, Secretary, Commission, dated August 3, 2021, at 1.

[32] 15 U.S.C. 78f(b)(5). Pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act.

[33] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[34] *See id.*

change is consistent with the Act and the applicable rules and regulations.[35] Moreover, ''unquestioning reliance'' on a self-regulatory organization's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[36]

The Commission has consistently recognized the importance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[37] With respect to SPACs, Nasdaq's current listing standards provide important investor protections,[38] including that at least 90% of the SPAC's IPO proceeds be held in a deposit account; [39] that within 36 months of the effectiveness of its IPO registration statement (or such shorter time period specified in the registration statement) the SPAC complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account; [40] and that public shareholders have a right to redeem their pro rata share of the full amount of the deposit account prior to any proposed business combination.[41]

As discussed above, Nasdaq now proposes to amend its listing standards to allow the SPAC to contribute a portion of the funds held in its deposit account to the deposit account of a new SpinCo SPAC, rather than use those funds for a business combination with the Original SPAC. While Nasdaq would provide shareholders in the original SPAC redemption rights with respect to the funds contributed to the SpinCo SPAC, such rights would not extend to the funds retained by the Original SPAC. Instead, shareholders would be required to make a separate, later redemption decision with respect to the remaining funds in the Original SPAC's deposit account in connection with its business combination, once one is identified. Because Nasdaq proposes to permit successive SpinCo SPACs, shareholders could be required to evaluate multiple potential spin-offs and business combinations, and engage in multiple redemption processes if they desire to redeem their pro rata share of the full amount originally deposited in the SPAC's deposit account.

In support of its proposal, Nasdaq acknowledges this difference, but states its belief that it ''does not adversely affect shareholders because the shareholders will still have the opportunity to redeem for the entire pro rata share of the trust account prior to completion of the business combination,'' although ''the redemption right may be effected through two decisions.'' [42]

Current SPAC listing standards provide important protections for investors in SPACs, where the business plan is to engage in mergers or acquisitions with unidentified companies. As discussed above, Nasdaq's current SPAC listing standards require that SPAC IPO proceeds be held in a deposit account to be used for business combination purposes, and provide shareholders an efficient mechanism to redeem their entire pro rata share of those proceeds in a single transaction. This permits investors who do not support a business combination or otherwise lose faith in the abilities of the SPAC sponsors to fully redeem their pro rata share of the proceeds when a business combination is first presented to them. Under the Exchange's proposal, shareholders would lose this ability, and instead would have to wait until business combinations are presented by all successive SpinCo SPACs to fully redeem their pro rata share of the proceeds. By proposing to permit funds in the deposit account to be used to create new SPACs and to require shareholders to engage in a series of redemption processes in order to fully redeem their pro rata share of the funds originally deposited in the trust account, the efficiency of shareholder redemption rights and the effectiveness of the investor protections they were designed to provide could be undermined.

Further, by proposing to permit successive SpinCo SPACs, shareholders could be required to make assessments of a series of proposed business combinations of varying sizes as a result of their investment in the Original SPAC, rather than doing so once. As discussed above, SPACs are subject to heightened listing standards because of the special risks presented by an investment in a company where the business plan is to engage in a merger or acquisition of an unidentified company, and to ensure that appropriate investor protections are in place.[43] By

[35] *See id.*

[36] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017).

[37] The Commission has stated in approving national securities exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.,* Securities Exchange Act Release Nos. 91947 (May 19, 2021), 86 FR 28169, 28172 n.47 (May 25, 2021) (SR–NASDAQ–2020–057) (''Nasdaq 2021 Order''); 90768 (December 22, 2020), 85 FR 85807, 85811 n.55 (December 29, 2020) (SR–NYSE–2019–67) (''NYSE 2020 Order''); 82627 (February 2, 2018), 83 FR 5650, 5653 n.53 (February 8, 2018) (SR–NYSE–2017–30) (''NYSE 2018 Order''); 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* Nasdaq 2021 Order, 86 FR at 28172 n.47; NYSE 2020 Order, 85 FR at 85811 n.55; NYSE 2018 Order, 83 FR at 5653 n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314 n.42 (December 9, 2019) (SR–NASDAQ–2019–059); 88716 (April 21, 2020), 85 FR 23393, 23395 n.22 (April 27, 2020) (SR–NASDAQ–2020–001).

[38] *See* Securities Exchange Act Release No. 58228 (July 25, 2008), 73 FR 44794, 44796 (July 31, 2008) (Order Granting Approval to Proposed Rule Change, as modified by Amendment No. 1, to Adopt Additional Initial Listing Standards to list Securities of Special Purpose Acquisition Companies) (NASDAQ–2008–013) (''2008 Order'').

[39] *See* Nasdaq IM–5101–2(a).

[40] *See* Nasdaq IM–5101–2(b).

[41] *See* Nasdaq IM–5101–2(d). *See also supra* notes 12–16 and accompanying text.

[42] *See* Notice, *supra* note 3, at 36843. Nasdaq also states that the proposal would provide public shareholders an additional, early redemption opportunity with respect to a portion of their holdings, before the time they would be able to do so in a traditional SPAC, and that public shareholders would maintain the ability to redeem the portion of their investment attributable to each specific acquisition after reviewing all disclosure with respect to that acquisition. *See id.* at 36842. Nasdaq further states that all other protections provided under IM–5101–2 would continue to apply, with adjustments only to reflect the potential for a spin-off of a new SPAC that is subject to all of the requirements of IM–5101–2, and any SpinCo SPAC would be required to satisfy all applicable initial listing requirements, like any other SPAC listing on Nasdaq. *See id.* at 36842–43. Nasdaq argues that the proposal would provide shareholders the opportunity to invest with a SPAC sponsor without spreading that investment across the sponsor's multiple SPACs. *See id.* at 36842.

[43] In approving Nasdaq's original listing standards for SPACs, the Commission found that the investor protection requirements in IM–5101–2, including that at least 90% of the IPO proceeds and any concurrent sale be placed in a deposit account and that the public shareholders have conversion rights based on their share of the proceeds in that deposit account, provide additional safeguards for investors who invest in SPAC securities, and will help ensure that public shareholders who disagree with management's decision with respect to a business combination have adequate remedies. *See* 2008 Order, *supra* note 38, at 44796. The Commission further stated that those safeguards should help to ensure that SPACs that list securities on Nasdaq will have taken certain additional steps to address investor protection and other matters and that the rules provided baseline investor

Continued

increasing the number of decisions with respect to unidentified companies that SPAC investors would be required to make, and determine whether or not to exercise redemption rights, the Exchange's proposal could add considerable complexity to the structure and business combination strategies of SPACs, and exacerbate the investor protection concerns presented by companies where the business plan is to combine with another company that is unidentified at the time of investment.[44]

Nasdaq has not addressed these risks or how its proposal is consistent with Section 6(b)(5) of the Exchange Act in light of them, other than to state that shareholders will not be adversely affected because they still have the right to redeem their full pro rata share of the deposit account through more than one transaction.[45] Based on the above, the Commission cannot find that the proposal is consistent with the requirement under Section 6(b)(5) of the Act that the proposal be designed, among other things, to protect investors and the public interest.

As stated above, under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [46] For the foregoing reasons, the Exchange has not met its burden to demonstrate that its proposal is consistent with the Exchange Act. In particular, the Exchange has not adequately demonstrated that its proposal to allow a SPAC to contribute a portion of the amount held in its deposit account to the deposit account of a new SpinCo SPAC is consistent with investor protection, the public interest, and other relevant provisions of Section 6(b)(5) of the Exchange Act. Accordingly, for the reasons set forth above, the Commission must disapprove the proposed rule change because the Exchange has not met its burden to demonstrate that the proposal is consistent with Section 6(b)(5) of the Exchange Act.[47]

IV. Conclusion

The Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act,[48] that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[49] that the proposed rule change (SR–NASDAQ–2021–054) be, and hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

J. Matthew DeLesDernier,

Assistant Secretary.

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protections. *See id.* at 44796–97. The Commission has subsequently stated that ''[b]ecause of their unique structure, and the fact that at the outset investors will not know the ultimate business of the company similar to a blank check company, the Commission approved Nasdaq listing standards for SPACs that were similar in some respects to the investor protection measures contained in Rule 419 under the Securities Act of 1933.'' Securities Exchange Act Release No. 63607 (December 23, 2010), 75 FR 82420, 82422 (December 30, 2010) (order approving SR–NASDAQ–2010–137).

[44] *See supra* note 43 (describing how Nasdaq's listing standards for SPACs are designed to address additional investor protection concerns presented by SPAC issuers given their unique structure). *See also* Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597, 27599 (May 13, 2008) (SR–NYSE–2008–17) (approving listing standards for SPACs on NYSE and stating that SPACs are ''essentially shell companies'' and that the additional investor protection criteria on NYSE, which are comparable to those in IM–5101–2, ''should further the ability of investors to protect and monitor their investment pending a [b]usiness [c]ombination'').

[45] *See* Notice, *supra* note 3, at 36843; proposed IM–5101–2(f)(vi).

[46] 17 CFR 201.700(b)(3).

[47] In disapproving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). As described above, two commenters expressed their belief that the proposal would result in a more efficient SPAC structure and use of capital. *See supra* notes 29–31 and accompanying text. For the reasons discussed throughout, however, the Commission is disapproving the proposed rule change because it does not find that the proposed rule change is consistent with the Exchange Act.

[48] 15 U.S.C. 78s(b)(2).

[49] *Id.*

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94383; File No. SR–MSRB–2022–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Further Extend the Regulatory Relief and Permit Dealers To Conduct Office Inspections Remotely Until December 31, 2022 Pursuant to MSRB Rule G–27, on Supervision

March 9, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2022, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to amend Supplementary Material .01, Temporary Relief for Completing Office Inspections, of MSRB Rule G–27, on supervision, to further extend the regulatory relief and permit brokers, dealers and municipal securities dealers (collectively, ''dealers'') to conduct office inspections, due to be completed during calendar year 2022, remotely until December 31, 2022 (the ''proposed rule change'').

The MSRB has designated the proposed rule change as constituting a ''noncontroversial'' rule change under Section 19(b)(3)(A) [3] of the Act and Rule 19b–4(f)(6) [4] thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The MSRB proposes an operative date of May 2, 2022.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2022-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSRB continues to closely monitor the impact on municipal market participants resulting from the coronavirus disease (''COVID–19'' or ''pandemic'') and believes the additional six-month extension of time to conduct office inspections remotely, due to be completed in calendar year 2022, would allow dealers to better address ongoing operational challenges caused by the pandemic. In light of these operational challenges and disruptions to normal business functions as a result of the pandemic, the MSRB previously filed a proposed rule change for immediate effectiveness with the SEC in April 2020,[5] a second proposed rule change in December 2020,[6] and a third proposed rule change in October 2021 [7] (''April relief,'' ''December relief,'' and ''October relief''). In connection with the April relief, the MSRB provided an extension of time for dealers to complete certain supervisory obligations, including, among other things, that office inspections due to be conducted during calendar year 2020 could be conducted by March 31, 2021, but with the expectation that dealers would conduct their inspections on-site. The December relief provided dealers with the option to conduct their office inspections remotely that were due to be completed by March 31, 2021 (for calendar year 2020) and those for calendar year 2021, subject to certain conditions being met. The October relief provided an additional extension of time permitting dealers to continue to conduct office inspections remotely until June 30, 2022, for their office inspections that are due to be completed for calendar year 2022.[8]

Through stakeholder engagement, the MSRB notes that dealers have delayed their return to office plans due to the continued pandemic and are considering, or have implemented, hybrid work arrangements dependent on functions and regulatory requirements, which has created logistical challenges to conducting in-person office inspections. To that end, in order to address ongoing industry-wide concerns regarding having to conduct in-person office inspections while safety concerns related to the pandemic persist [9] and to align with the ongoing pandemic-related regulatory relief provided by FINRA,[10] the MSRB is proposing amendments to Supplementary Material .01 of MSRB Rule G–27. The proposed amendments to Supplementary Material .01 of MSRB Rule G–27 would allow dealers to satisfy their office inspection obligations by permitting dealers to conduct calendar year 2022 office inspections remotely for the remainder of calendar year 2022—extending the current relief for an additional six months from June 30, 2022, to December 31, 2022.[11]

The conditions required to be met for dealers to avail themselves of the option to conduct office inspections remotely remain unchanged; however, amendments are being proposed to paragraph (a) and (d) to reflect the additional extension of time under the proposed rule change. Pursuant to paragraphs (b)–(d) of Supplementary Material .01 of MSRB Rule G–27, in dealers electing to conduct their office inspections remotely, such dealers must (i) amend or supplement their written supervisory procedures as appropriate to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable Board rules; (ii) use remote office inspections as part of an effective supervisory system, which would include the ongoing review of activities and functions occurring at all offices and locations whether or not the dealer conducts inspections remotely; and (iii) make and maintain the required records for all offices or locations that had inspections that were conducted remotely; and any offices or locations for which the dealer determined to impose additional supervisory procedures or more frequent monitoring.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act,[12] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is designed to provide dealers additional time to comply with certain obligations under MSRB rules for a temporary period of time; it does not relieve dealers from compliance with their core regulatory obligations to establish and maintain a system to supervise the activities of each of its associated persons that is reasonably designed to achieve compliance with applicable rules and regulations, and with applicable MSRB rules, which serve to protect investors, municipal entities, obligated persons, and the public interest. The MSRB continues to believe extending the relief and affording dealers the option to conduct remote inspections due to be completed in calendar year 2022, an additional six-month extension, until December 31, 2022, is a prudent regulatory approach allowing dealers more time to assess when and how to have their employees safely return to

[5] *See* Exchange Act Release No. 88694 (April 20, 2020), 85 FR 23088 (April 24, 2020) (File No. SR–MSRB–2020–01).

[6] *See* Exchange Act Release No. 90621 (December 9, 2020), 85 FR 81254 (December 15, 2020) (File No. SR–MSRB–2020–09).

[7] *See* Exchange Act Release No. 93435 (October 27, 2021), 86 FR 60522 (November 2, 2021) (File No. SR–MSRB–2021–06).

[8] The MSRB noted in the October relief that it would continue to monitor the effectiveness of remote office inspections on dealers' overall supervisory systems and would consider more long-term regulatory initiatives that align with and promote the evolving ways dealers are doing business and supervising the activities of the dealer and its associated persons. *Id.* The MSRB is still undertaking such review.

[9] *See* The Centers for Disease Control and Prevention (''CDC''), Omicron Variant: What You Need to Know (stating, in part, that ''the Omicron variant spreads more easily than the original virus that causes COVID–19 and the Delta variant. [The] CDC expects that anyone with Omicron infection can spread the virus to others, even if they are vaccinated or don't have symptoms.'') available at *https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html* (updated February 2, 2022).

[10] On January 10, 2022, FINRA made a filing with the SEC for immediate effectiveness having noted that amendments to FINRA Rule 3110.17 provides a tailored regulatory alternative for their member firms to have the option, subject to specified conditions, to complete their inspection obligations remotely. *See* Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (File No. SR–FINRA–2022–001). Previously, on September 13, 2021, FINRA made a filing with the SEC for immediate effectiveness, noting that while some firms have taken affirmative steps to develop and implement phased-in office re-entry plans based on local conditions, there are many other firms that have not. *See* Exchange Act Release No. 93002 (September 15, 2021), 86 FR 52508 (September 21, 2021) (File No. SR–FINRA–2021–023).

[11] As previously noted, a temporary location established in response to the implementation of a business continuity plan is not deemed an office for purposes of complying with the office inspection obligations, under MSRB Rule G–27. *See supra* note 5.

[12] 15 U.S.C. 78*o*–4(b)(2)(C).

their offices while continuing to serve the important investor protection objectives of the inspection obligations under these unique circumstances.

In a time when faced with unique challenges resulting from the sustained pandemic, the proposed rule change will afford dealers the ability to safeguard the health and safety of their personnel and to more effectively allocate resources to serve and promote the protection of investors, municipal entities, obligated persons and the public interest while much uncertainty still remains. In addition, the proposed rule change will also alleviate some of the operational challenges dealers may be experiencing, which will allow them to more effectively allocate resources to the operations that facilitate transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act requires that MSRB rules be designed not to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[14] In fact, the MSRB does not believe that the proposed rule change will have any burden on competition because the proposed rule change treats all dealers equally in that all dealers have the option to elect to conduct remote inspections remotely through December 31, 2022. The goal of the proposed rule change is to grant additional time for dealers to assess their resources, establish office inspection schedules for the second half of 2022 and meet their office inspection obligations, under Supplementary Material .01 of Rule G–27, while also determining how to best implement their return to office plans in a safe and effective manner during the exigent circumstances of the COVID–19 pandemic. The temporary relief afforded does not alter dealers underlying obligations under the rule and with applicable MSRB rules that directly serve investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2022–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2022–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2022–01 and should be submitted on or before April 5, 2022.

For the Commission, by the Office of Municipal Securities, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05372 Filed 3–14–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94384; File No. SR–MIAX–2022–11]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Options Fee Schedule To Adopt Fees for a New Data Product Called the Liquidity Taker Event Report—Complex Orders

March 9, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 25, 2022, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

[13] The proposed amendments only create the option for dealers to conduct office inspections remotely through December 31, 2022. With that in mind, dealers should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the circumstances.

[14] 15 U.S.C. 78*o*–4(b)(2)(C).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 200.30–3a(a)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to adopt fees for a new data product known as the Liquidity Taker Event Report—Complex Orders.[3]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently established a new data product known as the Liquidity Taker Event Report—Complex Orders (the ''Complex Order Report''),[4] which will be available for purchase by Exchange Members [5] on a voluntary basis. The Exchange now proposes to adopt fees for the Complex Order Report, which is described under Exchange Rule 531(b).[6] The Complex Order Report is an optional product available to Members. The Exchange notes that the proposed fees for the Complex Order Report are identical to the fees the Exchange recently established for subscribers to a similar report known as the Liquidity Taker Event Report—Simple Orders (the ''Simple Order Report'').[7] As further described below, the Exchange proposes to also offer a discounted combined fee for Members who purchase annual subscriptions to both the Simple Order Report and Complex Order Report.

By way of background, the Complex Order Report is a daily report that provides a Member (''Recipient Member'') with its liquidity response time details for executions of a Complex Order resting on the Strategy Book,[8] where that Recipient Member attempted to execute against such resting Complex Order [9] within a certain timeframe. It is important to note that the content of the Complex Order Report is specific to the Recipient Member and the Complex Order Report will not include any information related to any Member other than the Recipient Member.

The following information is included in the Complex Order Report regarding the resting order: (A) The time the resting order was received by the Exchange; (B) symbol; (C) order reference number, which is a unique reference number assigned to a new Complex Order at the time of receipt; (D) whether the Recipient Member is an Affiliate [10] of the Member that entered the resting order; [11] (E) origin type (*e.g.,* Priority Customer,[12] Market Maker [13]); (F) side (buy or sell); and (G) displayed price and size of the resting order.[14]

The following information is included in the Complex Order Report regarding the execution of the resting order: (A) The Complex MBBO [15] at the time of execution; [16] (B) the Complex ABBO [17] at the time of execution; [18] (C) the time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response; [19] (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange; [20] and (E) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses,

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[3] *See, generally,* Exchange Rule 531(b).

[4] *See* Securities Exchange Act Release No. 94135 (February 2, 2022), 87 FR 7217 (February 8, 2022) (SR–MIAX–2022–06).

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* Exchange Rule 531(b).

[7] *See* Securities Exchange Act Release Nos. 92081 (June 1, 2021), 86 FR 30344 (June 7, 2021) (SR–MIAX–2021–21) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 531, Reports and Market Data Products, To Adopt the Liquidity Taker Event Report); 92208 (June 17, 2021), 86 FR 33442 (June 24, 2021) (SR–MIAX–2021–25) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for a New Data Product Known as the Liquidity Taker Event Report). *See* Exchange Rule 531(a) for the rule text of the Simple Order Report. *See also* Fee Schedule, Section 7), Reports, for the fees for the Simple Order Report.

[8] The term ''Strategy Book'' means the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[9] Only displayed orders will be included in the Complex Order Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

[10] The term ''affiliate'' of or person ''affiliated with'' another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. *See* Exchange Rule 100.

[11] The Report will simply indicate whether the Recipient Member is Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

[12] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. *See* Exchange Rule 100.

[13] The term ''Market Maker'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[14] This is the same type of information included in the Simple Order Report, with the only difference being the information is for Complex Orders on the Strategy Book. The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds. The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

[15] The term ''MBBO'' means the Exchange's best bid or offer. *See* Exchange Rule 100. The Complex MBBO for a particular Complex Strategy is calculated using the Implied Complex MIAX Best Bid or Offer (''icMBBO'') combined with the best price currently available for that particular Complex Strategy on the Strategy Book to establish the Exchange's best net bid or offer for that Complex Strategy. The icMBBO is calculated using the best price from the Simple Order Book for each component of a Complex Strategy including displayed and non-displayed trading interest. For stock-option orders, the icMBBO for a Complex Strategy is calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. *See* Exchange Rule 518(a)(11).

[16] Exchange Rule 531(b)(1)(ii)(A) provides that if the resting order executes against multiple contra-side responses, only the Complex MBBO at the time of the execution against the first response will be included.

[17] The term ''ABBO'' or ''Away Best Bid or Offer'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from the Options Price Reporting Authority (''OPRA''). *See* Exchange Rule 100. The Complex ABBO is calculated using the ABBO for each component of a Complex Strategy to establish the away markets' best net bid or offer for a Complex Strategy.

[18] Exchange Rule 531(b)(1)(ii)(B) further provides that if the resting order executes against multiple contra-side responses, only the Complex ABBO at the time of the execution against the first response will be included.

[19] The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System.

[20] The time difference would be provided in nanoseconds.

only the Complex MBBO and Complex ABBO at the time of the execution against the first response will be included.

The following information is included in the Complex Order Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each Complex Order sent by the Recipient Member, regardless of whether it executed or not; [21] (C) size and type of each Complex Order submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.

The Complex Order Report includes the data set for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. The Complex Order Report contains historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis. The Complex Order Report does not include real-time data.

The Exchange believes the additional data points from the matching engine outlined above may help Members gain a better understanding about their own interactions with the Exchange. The Exchange believes the Complex Order Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The Complex Order Report will increase transparency and democratize information so that all firms that subscribe to the Complex Order Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange.

Members generally would use a liquidity accessing Complex Order if there is a high probability that it will execute against an order resting on the Exchange's Strategy Book. The Complex Order Report identifies by how much time an order that may have been marketable missed an execution. The Complex Order Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

The Complex Order Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Exchange's Strategy Book.

The Exchange proposes to provide the Complex Order Report in response to Member demand for data concerning the timeliness of their incoming Complex Orders and executions against resting Complex Orders. Members have periodically requested from the Exchange's trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange's Strategy Book. The purpose of the Complex Order Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that subscribe to the Complex Order Report on an equal basis.

The product is offered to Members on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase the Complex Order Report only if they voluntarily choose to do so. It is a business decision of each Member whether to subscribe to the Complex Order Report or not.

The Exchange proposes to assess the same fees that it currently charges for Members that subscribe to the similar Simple Order Report. As such, the Exchange proposes to amend Section 7), Reports, of the Fee Schedule to provide that Members may purchase the Complex Order Report on a monthly or annual (12 month) basis. In particular, the Exchange proposes to assess Members a fee of $4,000 per month or $24,000 per year for a 12 month subscription to the Complex Order Report. Members may cancel their subscription at any time. Just as it does for the Simple Order Report, the Exchange proposes to specify that for mid-month subscriptions to the Complex Order Report, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Complex Order Report data for each trading day of the calendar month prior to the day on which they subscribed.

The Exchange also proposes to provide a discounted rate of $40,000 per year to Members that purchase 12 month annual subscriptions to both the Simple and Complex Order Reports (as compared to the 12 month subscription rate of $24,000 for each report on an individual subscription basis). The Exchange also proposes to pro-rate the discounted 12 month subscription fee for Members that seek to add either their Simple Order Report or the Complex Order Report to an existing subscription. In particular, the Exchange proposes that for those Members with an existing 12 month subscription to either the Simple Order Report or Complex Order Report, but not both, may add a subscription to the Simple Order Report or Complex Order Report during their current 12 month subscription. In such case, the fee for the added report will be pro-rated based on the $40,000 combined rate for the 12 month subscription discount for the remainder of the subscriber's current 12 month subscription, and the number of months remaining in the existing subscription until the Member's renewal date. Members would then receive the 12 month discount ($40,000 annually) for subscribing to both reports on the renewal date of their original subscription. For example, assume ''Member A'' previously subscribed to the Simple Order Report on September 1, 2021 and paid $24,000 for a 12 month subscription to the Simple Order Report. ''Member A's'' current subscription expires on August 31, 2022 for the Simple Order Report. Before ''Member A's'' subscription to the Simple Order Report expires, ''Member A'' decides to subscribe to the Complex Order Report, beginning March 1, 2022. Rather than being immediately charged $40,000 for the 12 month subscription discount for subscribing to both reports (''Member A'' already paid $24,000 upfront for the Simple Order Report 12 month subscription), ''Member A'' would only be charged an additional $8,000 to add the Complex Order Report for the remaining months of ''Member A's'' current 12 month subscription to the Simple Order Report. On September 1, 2022, assuming ''Member A'' decided to keep both reports, ''Member A'' would then be charged the 12 month discounted rate of $40,000 for both reports for the next year.

The Exchange proposes to determine the pro-rated fee described above as follows: On the date that ''Member A'' wanted to begin subscribing to the Complex Order Report (March 1, 2022), there were six months remaining on ''Member A's'' existing 12 month subscription to the Simple Order Report (March, April, May, June, July and August). The added cost would be

[21] For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member's response(s) is received by the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

calculated as ((6 months remaining/12 months total) * ($40,000 discounted annual subscription for both reports − $24,000 for annual subscription to each report individually) = $8,000 for remaining 6 months. Beginning September 1, 2022 (the original renewal date for the Simple Order Report), ''Member A'' would then be charged the discounted 12 month subscription rate of $40,000, assuming ''Member A'' renews their subscriptions to both the Simple Order Report and the Complex Order Report.

The Exchange intends to begin to offer the Complex Order Report and charge the proposed fees on March 1, 2022.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Complex Order Report is consistent with Section 6(b) of the Act [24] in general, and furthers the objectives of Section 6(b)(4) of the Act [25] in particular, in that it is an equitable allocation of dues, fees and other charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The Complex Order Report also promotes increased transparency through the dissemination of the Complex Order Report. Particularly, the Complex Order Report will benefit investors by facilitating their prompt access to the value added information that is included in the Complex Order Report. The Complex Order Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 12–13% of the equity options market share and currently the Exchange represents only approximately 5.90% of the market share.[26] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Complex Order Report.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and identical to the fees assessed by the Exchange for its substantially similar Simple Order Report.[28] Indeed, if the Exchange proposed fees that market participants viewed as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Other options exchanges are also free to introduce their own comparable data products with lower prices to better compete with the Exchange's offering. As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's Complex Order Report and instead purchase another exchange's similar data product, which may offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes providing an annual subscription for an overall lower fee than a monthly subscription is equitable and reasonable because it would enable the Exchange to gauge long-term interest in the Complex Order Report. A lower annual subscription fee would also incentivize Members to subscribe to the Complex Order Report on a long-term basis, thereby improving the efficiency by which the Exchange may deliver the Complex Order Report by doing so on a regular basis over a prolonged and set period of time. The Exchange notes it provides an identical annual subscription for its Simple Order Report data and that other exchanges provide annual subscriptions for reports concerning their data product offerings.[29]

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product to Members that are interested in gaining insight into latency in connection with Complex Orders that failed to execute against a Complex Order resting on the Exchange's Strategy Book. The Complex Order Report accomplishes this by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Strategy Book. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

Selling market data, such as the Complex Order Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Complex Order Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4).

[26] *See* ''The Market at a Glance,'' (last visited February 10, 2022), *available at https://www.miaxoptions.com/.*

[27] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[28] *See supra* note 7.

[29] Cboe Exchange, Inc. (''Cboe'') assesses a $24,000 annual fee for an intra-day subscription to Open-Close Data. *See https://datashop.cboe.com/options-summary-subscription.*

proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data. The Exchange therefore believes that the proposed fees for the Complex Order Report reflect the competitive environment and would be properly assessed on Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. It is a business decision of each Member that chooses to purchase the Complex Order Report. The Exchange's proposed fees would not differentiate between subscribers that purchase the Complex Order Report and are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the Complex Order Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Complex Order Report, and the Exchange is not required to make the Complex Order Report available to all investors. It is entirely a business decision of each Member to subscribe to the Complex Order Report. The Exchange offers the Complex Order Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Complex Order Report may discontinue receiving the Complex Order Report at any time if that Member determines that the information contained in the Complex Order Report is no longer useful.

The Exchange also believes providing a 12 month discounted fee for subscribers of both the Simple and Complex Order Reports is equitable and reasonable because it would enable the Exchange to gauge long-term interest in both reports. The Exchange believes that a lower annual combined subscription fee may incentivize Members to subscribe to both reports on a long-term basis, thereby allowing the Exchange to better gauge demand for both reports over a longer period of time. Doing so will enable the Exchange to better predict the future demand for both reports. This will allow the Exchange to better prepare and adjust resources for the production and delivery of both reports to Members, improving the efficiency by which the Exchange may deliver both reports over a prolonged and set period of time. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to offer a 12 month discounted fee for Members that subscribe to both reports because all Members may subscribe to both reports and receive the discounted rate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange made the Complex Order Report available in order to keep pace with changes in the industry and evolving customer needs and demands, and believes the data product will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange believes the proposed fees would not cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product with lower prices to better compete with the Exchange's offering. The Exchange operates in a highly competitive environment, and its ability to price the Complex Order Report is constrained by competition among exchanges who choose to adopt a similar product. The Exchange must consider this in its pricing discipline in order to compete for the market data. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also believes that the proposed fees do not cause any unnecessary or inappropriate burden on intermarket competition because the latency information that would be provided in the Complex Order Report would enhance competition between exchanges that offer complex order functionality. Members that subscribe to the Complex Order Report could use the information in the report to recalibrate their models and trading strategies to improve their overall trading experience on the Exchange. This may improve the Exchange's overall trading environment resulting in increased liquidity and order flow on the Exchange. In response, other exchanges may similarly seek ways to provide latency related data in an effort to improve their own market quality for complex orders.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the Complex Order Report. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[30] and Rule 19b–4(f)(2) [31] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2022–11 on the subject line.

[30] 15 U.S.C. 78s(b)(3)(A)(ii).

[31] 17 CFR 240.19b–4(f)(2).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2022–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2022–11, and should be submitted on or before April 5, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05373 Filed 3–14–22; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94386; File No. SR–EMERALD–2022–08]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Adopt Fees for a New Data Product Called the Liquidity Taker Event Report—Complex Orders

March 9, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 25, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to adopt fees for a new data product known as the Liquidity Taker Event Report—Complex Orders.[3]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, generally,* Exchange Rule 531(b).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently established a new data product known as the Liquidity Taker Event Report—Complex Orders (the ''Complex Order Report''),[4] which will be available for purchase by Exchange Members [5] on a voluntary basis. The Exchange now proposes to adopt fees for the Complex Order Report, which is described under Exchange Rule 531(b).[6] The Complex Order Report is an optional product available to Members. The Exchange notes that the proposed fees for the Complex Order Report are identical to the fees the Exchange recently established for subscribers to a similar report known as the Liquidity Taker Event Report—Simple Orders (the ''Simple Order Report'').[7] As further described below, the Exchange proposes to also offer a discounted combined fee for Members who purchase annual subscriptions to both the Simple Order Report and Complex Order Report.

By way of background, the Complex Order Report is a daily report that provides a Member (''Recipient Member'') with its liquidity response time details for executions of a Complex Order resting on the Strategy Book,[8] where that Recipient Member attempted to execute against such resting Complex Order [9] within a certain timeframe. It is important to note that the content of the Complex Order Report is specific to the Recipient Member and the Complex

[4] *See* Securities Exchange Act Release No. 94136 (February 2, 2022), 87 FR 7223 (February 8, 2022) (SR–EMERALD–2022–02).

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] *See* Exchange Rule 531(b).

[7] *See* Securities Exchange Act Release Nos. 91787 (May 6, 2021), 86 FR 26111 (May 12, 2021) (SR–EMERALD–2021–09) (Order Approving Proposed Rule Change To Adopt Exchange Rule 531(a), Reports, To Provide for a New ''Liquidity Taker Event Report''); 92028 (May 26, 2021), 86 FR 29608 (June 2, 2021) (SR–EMERALD–2021–19) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for a New Data Product Known as the Liquidity Taker Event Report). *See* Exchange Rule 531(a) for the rule text of the Simple Order Report. *See also* Fee Schedule, Section 7), Reports, for the fees for the Simple Order Report.

[8] The term ''Strategy Book'' means the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[9] Only displayed orders will be included in the Complex Order Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

Order Report will not include any information related to any Member other than the Recipient Member.

The following information is included in the Complex Order Report regarding the resting order: (A) The time the resting order was received by the Exchange; (B) symbol; (C) order reference number, which is a unique reference number assigned to a new Complex Order at the time of receipt; (D) whether the Recipient Member is an Affiliate [10] of the Member that entered the resting order; [11] (E) origin type (*e.g.,* Priority Customer,[12] Market Maker [13]); (F) side (buy or sell); and (G) displayed price and size of the resting order.[14]

The following information is included in the Complex Order Report regarding the execution of the resting order: (A) The Complex EBBO [15] at the time of execution; [16] (B) the Complex ABBO [17] at the time of execution; [18] (C) the time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response; [19] (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange; [20] and (E) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the Complex EBBO and Complex ABBO at the time of the execution against the first response will be included.

The following information is included in the Complex Order Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each Complex Order sent by the Recipient Member, regardless of whether it executed or not; [21] (C) size and type of each Complex Order submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.

The Complex Order Report includes the data set for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. The Complex Order Report contains historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis. The Complex Order Report does not include real-time data.

The Exchange believes the additional data points from the matching engine outlined above may help Members gain a better understanding about their own interactions with the Exchange. The Exchange believes the Complex Order Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The Complex Order Report will increase transparency and democratize information so that all firms that subscribe to the Complex Order Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange.

Members generally would use a liquidity accessing Complex Order if there is a high probability that it will execute against an order resting on the Exchange's Strategy Book. The Complex Order Report identifies by how much time an order that may have been marketable missed an execution. The Complex Order Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

The Complex Order Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Exchange's Strategy Book.

The Exchange proposes to provide the Complex Order Report in response to Member demand for data concerning the timeliness of their incoming Complex Orders and executions against resting Complex Orders. Members have periodically requested from the Exchange's trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange's Strategy Book. The purpose of the Complex Order Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that subscribe to the Complex Order Report on an equal basis.

The product is offered to Members on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase the Complex Order Report only if they voluntarily choose to do so. It is a business decision of each Member

[10] The term ''affiliate'' of or person ''affiliated with'' another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. *See* Exchange Rule 100.

[11] The Report will simply indicate whether the Recipient Member is Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

[12] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. *See* Exchange Rule 100.

[13] The term ''Market Maker'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[14] This is the same type of information included in the Simple Order Report, with the only difference being the information is for Complex Orders on the Strategy Book. The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds. The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

[15] The term ''EBBO'' means the Exchange's best bid or offer. *See* Exchange Rule 100. The Complex EBBO is calculated using the Implied Complex MIAX Emerald Best Bid or Offer (''icEBBO'') combined with the best price currently available on the Strategy Book to establish the Exchange's best net bid and offer for a Complex Strategy. The icEBBO is calculated using the best price from the Simple Order Book for each component of a Complex Strategy including displayed and non-displayed trading interest. For stock-option orders, the icEBBO for a Complex Strategy is calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. *See* Exchange Rule 518(a)(12).

[16] Exchange Rule 531(b)(1)(ii)(A) provides that if the resting order executes against multiple contra-side responses, only the Complex EBBO at the time of the execution against the first response will be included.

[17] The term ''ABBO'' or ''Away Best Bid or Offer'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from the Options Price Reporting Authority (''OPRA''). *See* Exchange Rule 100. The Complex ABBO is calculated using the ABBO for each component of a Complex Strategy to establish the best net bid and offer for a Complex Strategy.

[18] Exchange Rule 531(b)(1)(ii)(B) further provides that if the resting order executes against multiple contra-side responses, only the Complex ABBO at the time of the execution against the first response will be included.

[19] The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System.

[20] The time difference would be provided in nanoseconds.

[21] For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member's response(s) is received by the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

whether to subscribe to the Complex Order Report or not.

The Exchange proposes to assess the same fees that it currently charges for Members that subscribe to the similar Simple Order Report. As such, the Exchange proposes to amend Section 7), Reports, of the Fee Schedule to provide that Members may purchase the Complex Order Report on a monthly or annual (12 month) basis. In particular, the Exchange proposes to assess Members a fee of $4,000 per month or $24,000 per year for a 12 month subscription to the Complex Order Report. Members may cancel their subscription at any time. Just as it does for the Simple Order Report, the Exchange proposes to specify that for mid-month subscriptions to the Complex Order Report, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Complex Order Report data for each trading day of the calendar month prior to the day on which they subscribed.

The Exchange also proposes to provide a discounted rate of $40,000 per year to Members that purchase 12 month annual subscriptions to both the Simple and Complex Order Reports (as compared to the 12 month subscription rate of $24,000 for each report on an individual subscription basis). The Exchange also proposes to pro-rate the discounted 12 month subscription fee for Members that seek to add either their Simple Order Report or the Complex Order Report to an existing subscription. In particular, the Exchange proposes that for those Members with an existing 12 month subscription to either the Simple Order Report or Complex Order Report, but not both, may add a subscription to the Simple Order Report or Complex Order Report during their current 12 month subscription. In such case, the fee for the added report will be pro-rated based on the $40,000 combined rate for the 12 month subscription discount for the remainder of the subscriber's current 12 month subscription, and the number of months remaining in the existing subscription until the Member's renewal date. Members would then receive the 12 month discount ($40,000 annually) for subscribing to both reports on the renewal date of their original subscription. For example, assume ''Member A'' previously subscribed to the Simple Order Report on September 1, 2021 and paid $24,000 for a 12 month subscription to the Simple Order Report. ''Member A's'' current subscription expires on August 31, 2022 for the Simple Order Report. Before ''Member A's'' subscription to the Simple Order Report expires, ''Member A'' decides to subscribe to the Complex Order Report, beginning March 1, 2022. Rather than being immediately charged $40,000 for the 12 month subscription discount for subscribing to both reports (''Member A'' already paid $24,000 upfront for the Simple Order Report 12 month subscription), ''Member A'' would only be charged an additional $8,000 to add the Complex Order Report for the remaining months of ''Member A's'' current 12 month subscription to the Simple Order Report. On September 1, 2022, assuming ''Member A'' decided to keep both reports, ''Member A'' would then be charged the 12 month discounted rate of $40,000 for both reports for the next year.

The Exchange proposes to determine the pro-rated fee described above as follows: on the date that ''Member A'' wanted to begin subscribing to the Complex Order Report (March 1, 2022), there were six months remaining on ''Member A's'' existing 12 month subscription to the Simple Order Report (March, April, May, June, July and August). The added cost would be calculated as ((6 months remaining/12 months total) * ($40,000 discounted annual subscription for both reports − $24,000 for annual subscription to each report individually) = $8,000 for remaining 6 months. Beginning September 1, 2022 (the original renewal date for the Simple Order Report), ''Member A'' would then be charged the discounted 12 month subscription rate of $40,000, assuming ''Member A'' renews their subscriptions to both the Simple Order Report and the Complex Order Report.

The Exchange intends to begin to offer the Complex Order Report and charge the proposed fees on March 1, 2022.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Complex Order Report is consistent with Section 6(b) of the Act [24] in general, and furthers the objectives of Section 6(b)(4) of the Act [25] in particular, in that it is an equitable allocation of dues, fees and other charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The Complex Order Report also promotes increased transparency through the dissemination of the Complex Order Report. Particularly, the Complex Order Report will benefit investors by facilitating their prompt access to the value added information that is included in the Complex Order Report. The Complex Order Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 12–13% of the equity options market share and currently the Exchange represents only approximately 4.23% of the market share.[26] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27] Making similar data products available to market participants fosters competition in the marketplace, and

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4).

[26] *See* ''The Market at a Glance,'' (last visited January 11, 2022), *available at https://www.miaxoptions.com/.*

[27] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Complex Order Report.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and identical to the fees assessed by the Exchange for its substantially similar Simple Order Report.[28] Indeed, if the Exchange proposed fees that market participants viewed as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Other options exchanges are also free to introduce their own comparable data products with lower prices to better compete with the Exchange's offering. As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's Complex Order Report and instead purchase another exchange's similar data product, which may offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes providing an annual subscription for an overall lower fee than a monthly subscription is equitable and reasonable because it would enable the Exchange to gauge long-term interest in the Complex Order Report. A lower annual subscription fee would also incentivize Members to subscribe to the Complex Order Report on a long-term basis, thereby improving the efficiency by which the Exchange may deliver the Complex Order Report by doing so on a regular basis over a prolonged and set period of time. The Exchange notes it provides an identical annual subscription for its Simple Order Report data and that other exchanges provide annual subscriptions for reports concerning their data product offerings.[29]

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product to Members that are interested in gaining insight into latency in connection with Complex Orders that failed to execute against a Complex Order resting on the Exchange's Strategy Book. The Complex Order Report accomplishes this by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Strategy Book. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

Selling market data, such as the Complex Order Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Complex Order Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data. The Exchange therefore believes that the proposed fees for the Complex Order Report reflect the competitive environment and would be properly assessed on Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. It is a business decision of each Member that chooses to purchase the Complex Order Report. The Exchange's proposed fees would not differentiate between subscribers that purchase the Complex Order Report and are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the Complex Order Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Complex Order Report, and the Exchange is not required to make the Complex Order Report available to all investors. It is entirely a business decision of each Member to subscribe to the Complex Order Report. The Exchange offers the Complex Order Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Complex Order Report may discontinue receiving the Complex Order Report at any time if that Member determines that the information contained in the Complex Order Report is no longer useful.

The Exchange also believes providing a 12 month discounted fee for subscribers of both the Simple and Complex Order Reports is equitable and reasonable because it would enable the Exchange to gauge long-term interest in both reports. The Exchange believes that a lower annual combined subscription fee may incentivize Members to subscribe to both reports on a long-term basis, thereby allowing the Exchange to better gauge demand for both reports over a longer period of time. Doing so will enable the Exchange to better predict the future demand for both reports. This will allow the Exchange to better prepare and adjust resources for the production and delivery of both reports to Members, improving the efficiency by which the Exchange may deliver both reports over a prolonged and set period of time. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to offer a 12 month discounted fee for Members that subscribe to both reports because all Members may subscribe to both reports and receive the discounted rate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange made the Complex Order Report available in order to keep pace with changes in the industry and evolving customer needs and demands, and believes the data product will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange believes the proposed fees would not cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product with lower prices to better compete with the Exchange's offering. The Exchange operates in a highly competitive environment, and its ability to price the Complex Order Report is constrained by competition among exchanges who choose to adopt a similar product. The Exchange must consider this in its pricing discipline in

[28] *See supra* note 7.

[29] Cboe Exchange, Inc. (''Cboe'') assesses a $24,000 annual fee for an intra-day subscription to Open-Close Data. *See https://datashop.cboe.com/options-summary-subscription.*

order to compete for the market data. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also believes that the proposed fees do not cause any unnecessary or inappropriate burden on intermarket competition because the latency information that would be provided in the Complex Order Report would enhance competition between exchanges that offer complex order functionality. Members that subscribe to the Complex Order Report could use the information in the report to recalibrate their models and trading strategies to improve their overall trading experience on the Exchange. This may improve the Exchange's overall trading environment resulting in increased liquidity and order flow on the Exchange. In response, other exchanges may similarly seek ways to provide latency related data in an effort to improve their own market quality for complex orders.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the Complex Order Report. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[30] and Rule 19b–4(f)(2)[31] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2022–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2022–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2022–08, and should be submitted on or before April 5, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05374 Filed 3–14–22; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78s(b)(3)(A)(ii).

[31] 17 CFR 240.19b–4(f)(2).

[32] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2021–0031]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Department of Veterans Affairs (VA), Veterans Benefits Administration. Under this matching program, VA will provide SSA with VA compensation and pension payment data. SSA will use the data to determine the eligibility or amount of payment for Supplemental Security Income (SSI) or Special Veterans Benefit (SVB) recipients. SSA will also identify the income of individuals who may be eligible for Medicare cost-sharing assistance through the Medicare Savings Programs (MSP) as part of the agency's Medicare outreach efforts.

DATES: The deadline to submit comments on the proposed matching program is April 14, 2022. The matching program will be applicable on May 11, 2022, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2021–0031 so that we may associate your comments with the correct regulation. CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your

comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2021–0031 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–0869.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* Comments are also available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Melissa Feldhan, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 965–1416, or send an email to *Melissa.Feldhan@ssa.gov.*

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies

SSA and VA.

Authority for Conducting the Matching Program

The legal authorities for SSA to conduct this matching program are sections 806(b), 1144, and 1631(e)(1)(B) and (f) of the Social Security Act (Act) (42 U.S.C. 1006(b), 1320b–14, and 1383(e)(1)(B) and (f)).

The legal authority for VA to disclose information under this matching program is section 1631(f) of the Act (42 U.S.C. 1383(f)), which requires Federal agencies to provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

Purpose(s)

This matching program establishes the conditions under which VA will provide SSA with information necessary to: (1) Identify certain SSI and SVB recipients under Title XVI and Title VIII of the Act, respectively, who receive VA-administered benefits; (2) determine the eligibility or amount of payment for SSI and SVB recipients; and (3) identify the income of individuals who may be eligible for Medicare cost-sharing assistance through the MSP as part of the agency's Medicare outreach efforts.

Categories of Individuals

The individuals whose information is involved in this matching program are those individuals who are receiving VA compensation or pension benefits and SSI or SVB benefits.

Categories of Records

VA will provide SSA with electronic files containing compensation and pension payment data. SSA will match the VA data with its SSI/SVB payment information. SSA will conduct the match using the Social Security number, name, date of birth, and VA claim number on both the VA file and the SSI Record and SVB system of records (SOR).

System(s) of Records

VA will provide SSA with electronic files containing compensation and pension payment data from its SOR entitled the ''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA'' (58VA21/22/28), republished with updated name at 74 FR 14865 (April 1, 2009) and last amended at 84 FR 4138 (February 14, 2019). Routine use 30 of 58VA21/22/28 permits disclosure of the subject records for matching purposes.

SSA will match the VA data with SSI/SVB payment information maintained in its SOR entitled ''Supplemental Security Income Record and Special Veterans Benefits'' (60–0103), last fully published at 71 FR 1830 (January 11, 2006), and amended at 72 FR 69723 (December 10, 2007), 83 FR 31250–31251 (July 3, 2018), and 83 FR 54969 (November 1, 2018).

[FR Doc. 2022–05387 Filed 3–14–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11678]

Notice of Shipping Coordinating Committee Meeting in Preparation for International Maritime Organization MSC 105 Meeting

The Department of State will conduct a public meeting of the Shipping Coordinating Committee at 10:00 a.m. on Wednesday, April 13, 2022, by way of teleconference. The primary purpose of the meeting is to prepare for the one-hundred fifth session of the International Maritime Organization's (IMO) Maritime Safety Committee (MSC 105) to be held virtually from Wednesday, April 20, 2022 to Friday April 22, 2022 and Monday, April 25, 2022 to Friday, April 29, 2022.

Members of the public may participate up to the capacity of the teleconference phone line, which can handle 500 participants. To RSVP, participants should contact the meeting coordinator, LCDR Jessica Anderson, by email at *jessica.p.anderson@uscg.mil.* To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 877 239 87#.

The agenda items to be considered at the advisory committee meeting mirror those to be considered at MSC 105, and include:

—Adoption of the agenda; report on credentials
—Decisions of other IMO bodies
—Consideration and adoption of amendments to mandatory instruments
—Measures to improve domestic ferry safety
—Development of further measures to enhance safety of ships relating to the use of fuel oil
—Goal-based new ship construction standards
—Development of a goal-based instrument for Maritime Autonomous Surface Ships (MASS)
—Measures to enhance maritime security
—Piracy and armed robbery against ships
—Unsafe mixed migration by sea
—Formal safety assessment
—Cost implications for MSI and SAR information providers concerning the recognition of multiple GMDSS mobile satellite services
—Implementation of IMO instruments (Report of the seventh session of the Sub-Committee)
—Carriage of cargoes and containers (Report of the seventh session of the Sub-Committee)

—Ship design and construction (Report of the eighth session of the Sub-Committee)
—Human element, training and watchkeeping (Urgent matters emanating from the eighth session of the Sub-Committee)
—Application of the Committee's method of work
—Work programme
—Any other business
—Consideration of the report of the Committee on its 105th session

Please note: The IMO may, on short notice, adjust the MSC 105 agenda to accommodate the constraints associated with the virtual meeting format. Any changes to the agenda will be reported to those who RSVP.

Those who plan to participate may contact the meeting coordinator, LCDR Jessica Anderson, by email at *Jessica.P.Anderson@uscg.mil,* or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509. Members of the public needing reasonable accommodation should advise LCDR Jessica Anderson not later than April 6, 2022. Requests made after that date will be considered, but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Emily A. Rose,

Executive Secretary, Shipping Coordinating Committee, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2022–05434 Filed 3–14–22; 8:45 am]

BILLING CODE 4710–09–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Minor Modifications

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for a previously approved project by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: February 1–28, 2022.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modifications, described below, pursuant to 18 CFR 806.18 or to Commission Resolution Nos. 2013–11 and 2015–06 for the time period specified above:

Minor Modification Issued Under 18 CFR 806.18

1. Brymac, Inc.—Mountain View Country Club, Docket No. 20211212, Harris Township, Centre County, Pa.; modification approval to add the University Area Joint Authority as an additional source of water for consumptive use; Approval Date: February 7, 2022.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: March 9, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–05364 Filed 3–14–22; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: February 1–28, 2022.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (e) and 18 CFR 806.22 (f) for the time period specified above:

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. Chesapeake Appalachia, L.L.C.; Pad ID: Samantha; ABR–201501006.R1; Forkston Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 2, 2022.
2. Pennsylvania General Energy Company, L.L.C.; Pad ID: Huckleberry Pad C; ABR–202202001; Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.5000 mgd; Approval Date: February 8, 2022.
3. Chesapeake Appalachia, L.L.C.; Pad ID: Dan Ellis; ABR–20100210.R2; Monroe Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 16, 2022.
4. Seneca Resources Company, LLC; Pad ID: McClure 527; ABR–201001043.R2; Rutland Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 16, 2022.
5. EXCO Resources (PA), LLC; Pad ID: Edkin Hill Unit; ABR–201412004.R1; Shrewsbury Township, Sullivan County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: February 16, 2022.
6. SWN Production Company, LLC.; Pad ID: MacGeorge Well Pad; ABR–201202011.R2; Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: February 16, 2022.
7. Chief Oil & Gas, LLC; Pad ID: Wright A Drilling Pad #1; ABR–201202004.R2; Canton Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: February 18, 2022.
8. Chief Oil & Gas, LLC; Pad ID: L & L Construction A Drilling Pad #1; ABR–201202014.R2; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: February 18, 2022.
9. Repsol Oil & Gas USA, LLC; Pad ID: HEMLOCK VALLEY (05 265); ABR–201201035.R2; Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: February 18, 2022.
10. Coterra Energy Inc.; Pad ID: FoltzJ P2; ABR–201702003.R1; Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 18, 2022.
11. BKV Operating, LLC; Pad ID: Trecoske North Pad; ABR–201201023.R2; Silver Spring Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 23, 2022.
12. Repsol Oil & Gas USA, LLC; Pad ID: DCNR 587 (02 009); ABR–20100220.R2; Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: February 23, 2022.
13. Diversified Oil & Gas, LLC; Pad ID: Rhodes Well Pad; ABR–201201018.R2; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 3.6000 mgd; Approval Date: February 23, 2022.
14. SWN Production Company, LLC; Pad ID: TONYA WEST; ABR–201201026R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: February 23, 2022.

15. Chesapeake Appalachia, L.L.C.; Pad ID: Welles 5; ABR–20100217.R2; Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 24, 2022.

16. EQT ARO LLC; Pad ID: Mallory Group Pad A; ABR–202202002; Plunketts Creek Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 28, 2022.

17. Seneca Resources Company, LLC; Pad ID: Sharretts 805; ABR–201001043.R2; Clymer Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 28, 2022.

18. Seneca Resources Company, LLC; Pad ID: Burt 518; ABR–20100221.R2; Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 28, 2022.

19. Coterra Energy Inc.; Pad ID: BerryD P1; ABR–20100215.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 28, 2022.

20. Coterra Energy Inc.; Pad ID: RussoB P1; ABR–20100231.R1; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 28, 2022.

21. Repsol Oil & Gas USA, LLC; Pad ID: LONGNECKER(03 008) G; ABR–20100223.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: February 28, 2022.

22. Repsol Oil & Gas USA, LLC; Pad ID: BOOR (03 015) J; ABR–20100232.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: February 28, 2022.

23. Range Resources—Appalachia, LLC; Pad ID: Bobst Mtn Hunting Club 30H–33H; ABR–201202017.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 28, 2022.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: March 9, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–05366 Filed 3–14–22; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2021–0237]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Information Collection: Aviation Maintenance Technician Schools

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew information collection. The collection involves Aviation Maintenance Technician School (AMTS) applicants and certificate holders. The information to be collected will be used to ensure AMTS applicants and certificate holders meet the requirements of part 147 prior to being certificated, and on an ongoing basis following FAA certification.

DATES: Written comments should be submitted by May 16, 2022.

ADDRESSES: Please send written comments:

By Electronic Docket: https://www.regulations.gov (Enter docket number into search field).

By email: Tanya Glines, *Tanya.glines@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Tanya Glines by email at: *Tanya.glines@faa.gov;* phone: 202–380–5896.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0040.

Title: Aviation Maintenance Technician Schools.

Form Numbers: FAA Form 8610–6.

Type of Review: This is a renewal of an information collection.

Background: This information collection summarizes burden under 14 CFR part 147 regulations to be issued in accordance with Section 135 of the Aircraft Certification, Safety, and Accountability Act in Public Law 116–260, the Consolidated Appropriations Act of 2021. The collection of information includes both reporting and recordkeeping requirements related to AMTS. The information collected is provided to the certificate holder/applicant's appropriate FAA Flight Standards office in order to allow the FAA to determine compliance with the part 147 requirements for obtaining and/or retaining an FAA air agency certificate. For applicants, when all part 147 requirements have been met, an FAA air agency certificate is issued, with the appropriate ratings. For FAA certificated AMTS, the FAA uses the information collected to determine if the AMTS provides appropriate training at each location of the AMTS, meets quality control system requirements, and ensures that AMTS students receive an appropriate document showing the student is eligible to take the FAA tests to obtain a mechanic certificate.

Respondents: Approximately 10 AMTS applicants, and 182 FAA-certificated applicants respond to this collection annually.

Frequency: AMTS applicants respond one time, prior to certification. FAA-certificated AMTS respond occasionally after certification, and have ongoing recordkeeping requirements.

Estimated Average Burden per Response: 19 hours/response on average.

Estimated Total Annual Burden: 11,438 hours/year.

Issued in Washington, DC, on March 9, 2022.

Tanya A. Glines,

Aviation Safety Inspector, Office of Safety Standards, Aircraft Maintenance Division, General Aviation Branch.

[FR Doc. 2022–05352 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA 2022–0004]

Agency Information Collection Activities: Notice of Request for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to submit one information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 16, 2022.

ADDRESSES: You may submit comments identified by Docket ID FHWA 2022–0004 by any of the following methods:

Website: For access to the docket to read background documents or

comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title 1: Innovative Finance and Equal Access for Over the Road Busses.

OMB Control Number:

Abstract Innovative Finance: The Federal Highway Administration (FHWA), Office of Operations and Office of the Chief Financial Officer, jointly collection information related to State Infrastructure Banks (SIB), Grant Anticipation Revenue Vehicles, and Toll Credits. This information is published on FHWA's public websites to monitor activity in each innovative finance program. This information satisfies the requirement under 23 U.S.C. 610(g)(7) for each SIB to make an annual report to the Secretary on its status no later than September 30 of each year and such other reports as the Secretary may require. The data will also satisfy new requirements under section 11503 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117–58, effective November 15, 2021, requiring the Secretary to make available a publicly accessible website on which States shall post the amount of toll credits that are available for sale or transfer.

The data includes activity, volume, and balances. The data is published annually on the Center for Innovative Finance's website. Information from this collection is used for the proper stewardship and oversight of each program, as well as compliance with each program's Federal statute.

Abstract Equal Access for Over the Road Busses: Section 11523 of the recently enacted Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021) amended 23 U.S.C. 129 to add reporting requirements to the equal access provisions for over the road busses. Specifically, not later than 90 days after the date of enactment of the BIL, a public authority that operates a toll facility shall report to the Secretary any rates, terms, or conditions for access to the toll facility by public transportation vehicles that differ from the rates, terms, or conditions applicable to over-the-road buses.

Further, a public authority that operates a toll facility shall report to the Secretary any change to the rates, terms, or conditions for access to the toll facility by public transportation vehicles that differ from the rates, terms, or conditions applicable to over-the-road buses by not later than 30 days after the date on which the change takes effect.

Respondents: State governments of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, and the Virgin Islands share this burden.

Estimated Average Burden per Response: The estimated average reporting burden per response for the annual collection and processing of the data is 149 hours for each of the States (including local governments), the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, and the Virgin Islands.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 8,195 hours.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Essenmacher, (202) 366–780–6178, Department of Transportation, Federal Highway Administration, Office of Operations, Office of Transportation Management (HOTM–1), 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Public Comments Invited

You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Ch. 35, as amended; and 49 CFR 1.48.

Issued On: March 9, 2022.

Michael Howell,

Information Collection Officer.

[FR Doc. 2022–05356 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2022–0002]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 16, 2022.

ADDRESSES: You may submit comments identified by DOT Docket ID FHWA 2022–0002 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah Weissman Pascual, 202–366–0087, Office of Safety, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: High Risk Rural Roads (HRRR) Study Update and Report to Congress, Best Practices Manual Update.

Background: On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, also known as the ''Bipartisan Infrastructure Law'') into law. The 23 U.S.C. 148 note (135 STAT. 478) requires the USDOT to update the HRRR Study, report and Best Practices Manual first completed under MAP–21.

(b) HIGH-RISK RURAL ROADS.—

(1) STUDY.—Not later than 2 years after the date of enactment of this Act, the Secretary shall update the study under section 1112(b)(1) of MAP–21 (23 U.S.C. 148 note; Pub. L. 112–141).

(2) PUBLICATION OF REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall publish on the website of the Department of Transportation an update to the report described in section 1112(b)(2) of MAP–21 (23 U.S.C. 148 note; Pub. L. 112–141).

(3) BEST PRACTICES MANUAL.—Not later than 180 days after the date on which the report is published under paragraph (2), the Secretary shall update the best practices manual described in section 1112(b)(3) of MAP–21 (23 U.S.C. 148 note; Pub. L. 112–141).

In carrying out the study update, it is required to conduct a nationwide survey of the current practices of various agencies. The results of the survey are to be used in conjunction with a research study to prepare a report to be published on the Department of Transportation website. The report is required to include: (1) A summary of cost-effective roadway safety infrastructure improvements; (2) a summary of the latest research on the financial savings and reductions in fatalities and serious bodily injury crashes from the implementation of cost-effective roadway safety infrastructure improvements; (3) and recommendations for State and local governments on best practice methods to install cost-effective roadway safety infrastructure on high-risk rural roads. The legislation also requires the results of the survey and the report to be used to update a best practices manual to support Federal, State, and local efforts to reduce fatalities and serious injuries on high risk rural roads.

Respondents: The respondents will include all 52 State Departments of Transportation (including the District of Columbia and Puerto Rico). In addition, a representative sampling of 100 local agencies, including county highway departments and municipal public works agencies will be surveyed.

Frequency: Once.

Estimated Average Burden per Response: Approximately 4 hours per participant.

Estimated Total Annual Burden Hours: The total burden for this collection is approximately 608 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued On: March 9, 2022.

Michael Howell,

Information Collection Officer.

[FR Doc. 2022–05355 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA–2021–0010]

Notice of Availability of Initial Guidance Proposals for the Capital Investment Grants Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability of initial guidance proposals for the capital investment grants program.

SUMMARY: The Federal Transit Administration (FTA) invites public comment on initial guidance proposals to implement changes made to the Capital Investment Grants (CIG) program by the Infrastructure and Investment Jobs Act (IIJA) (also known as the ''Bipartisan Infrastructure Law''). The proposed guidance has been placed in the docket and posted on the FTA website. This policy guidance continues to complement FTA's regulations that govern the CIG program.

DATES: Comments must be received on or before April 14, 2022. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments to DOT docket number FTA–2021–0010 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

U.S. Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and docket number (FTA–2021–0010) for this notice at the beginning of your comments. You must submit two copies of your comments if you submit them by mail. If you wish to receive confirmation FTA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments may wish to consider using an express mail firm to ensure prompt filing of any submissions not filed electronically or by hand.

All comments received will be posted, without charge and including any personal information provided, to *http://www.regulations.gov,* where they will be available to internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477. For access to the docket and to read background documents and comments received, go to *http://regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Management Facility, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Day, FTA Office of Planning and Environment, telephone (202) 366–5159 or *Elizabeth.Day@dot.gov.*

SUPPLEMENTARY INFORMATION: FTA is seeking comment on three initial proposed changes to FTA's CIG Final Interim Policy Guidance last issued in June 2016. (*https://www.transit.dot.gov/funding/grant-programs/capital-investments/final-capital-investment-grant-program-interim-policy*). The proposals relate to changes made in the Infrastructure and Investment Jobs Act (IIJA) (Pub. L. 117–58, also known as the ''Bipartisan Infrastructure Law'') to 49

U.S.C. 5309 and cover three topics: Eligibility as a Core Capacity project; how FTA will determine that a CIG project sponsor has demonstrated progress on meeting Transit Asset Management targets; and how bundles of CIG projects can enter the Project Development phase of the program. The proposals being made today are available on the agency's public website at *https://www.transit.dot.gov/funding/grant-programs/capital-investments/capital-investment-grants-program-regulations-guidance* and in the docket to this notice.

After review and consideration of the comments provided on the three initial CIG proposals in this document, FTA will issue a final notice and incorporate these changes into the existing CIG Policy Guidance. No other changes to the CIG Policy Guidance are being proposed at this time. Instead, FTA intends in the future to propose a more comprehensive update of the CIG Policy Guidance for notice and comment, incorporating feedback FTA received in response to its Request for Information published in the **Federal Register** in July 2021 (86 FR 37402). The three initial topics covered in this document are intended to assist FTA in managing the CIG program in the near term while the more comprehensive CIG policy guidance changes are developed and proposed.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2022–05466 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0085]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Driver Alcohol Detection System for Safety Field Operational Test

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on an extension of a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This document describes the collection of information for which NHTSA intends to seek OMB approval to allow NHTSA to continue to conduct research on the development of a driver alcohol detection system. NHTSA is seeking an extension of the information collection, titled ''Driver Alcohol Detection System for Safety Field Operational Test'' (OMB Control Number 2127–0734), which is currently approved through March 31, 2022. The extension is necessary to complete data collection that was delayed due to COVID–19 restrictions. The burden hour and cost calculations have been adjusted to reflect only the remaining data collection, adjustments for recruitment based on current experience, and adjustments in participation based on current experience. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on December 30, 2021. One comment was received in response to this notice.

DATES: Comments must be submitted on or before April 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Eric Traube, Vehicle Safety Research, Human Factors/Engineering Integration Division (NSR–310), (202) 366–5673, National Highway Traffic Safety Administration, W46–424, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

Title: Driver Alcohol Detection System for Safety Field Operational Test.

OMB Control Number: 2127–0734.

Form Number: None.

Type of Request: Extension of a currently approved information collection.

Type of Review Requested: Regular.

Length of Approval Requested: Three years.

Summary of the Collection of Information: NHTSA and the Automotive Coalition for Traffic Safety (ACTS) began research in February 2008 to try to find potential in-vehicle approaches to the problem of alcohol-impaired driving. Members of ACTS comprise motor vehicle manufacturers representing approximately 99 percent of light vehicle sales in the U.S. This cooperative research partnership, known as the Driver Alcohol Detection System for Safety (DADSS) Program, is exploring the feasibility, the potential benefits of, and the public policy challenges associated with a more widespread use of non-invasive technology to prevent alcohol-impaired driving. The 2008 cooperative agreement between NHTSA and ACTS for Phases I and II outlined a program of research to assess the state of detection technologies that are capable of measuring blood alcohol concentration (BAC) or Breath Alcohol Concentration (BrAC). The 2008 cooperative agreement and a subsequent 2013 cooperative agreement support the creation and testing of prototypes and subsequent hardware that could be installed in vehicles. As part of this research program, and pursuant to the 2013 cooperative agreement, NHTSA and ACTS developed both breath- and touch-based sensors to evaluate the potential implementation and integration of both breath-and touch-based sensor technologies. The sensors are to be integrated into a vehicle in a manner that does not significantly alter the appearance of the vehicle interior. Further research is needed to evaluate the potential implementation and integration of both breath- and touch-based sensor technologies.

The purpose of this information collection is to collect data needed to evaluate the functionality of the touch- and breath- based sensors in varying operating conditions by having study participants provide breath and touch samples in DADSS research vehicles equipped with the sensors. Although the sensors will undergo significant laboratory testing, it is necessary to evaluate their function in extreme real-

world environmental conditions to ensure that they will be operational for the harshest conditions that the sensors will encounter.

The sensor-equipped research vehicles are used to gather data regarding sensor validity and reliability, as well as assess the real-world use of the sensors with human participants in varying environmental conditions, such as weather conditions, road conditions, temperatures, altitudes, air conditioner or heater status, window up or down, etc. These are the first vehicles ever to be equipped with systems designed to be unobtrusive that can measure driver alcohol levels. As such, it represents the first opportunity for researchers to gain an understanding of the use of the sensors in the operational context for which they were designed. Data collected from the study's Field Operational Test (FOT or DADSS FOT) will be used to further refine the DADSS Performance Specifications and evaluate subsystem/sensor performance.

The collection of information consists of: (1) An eligibility interview with COVID screening questions and COVID test, (2) a multi-day FOT of DADSS sensors, and (3) a post-test-day questionnaire. NHTSA is currently collecting information for the study and the data collection is ongoing. Extension of the study is necessary due to COVID-related delays which paused data collection for a period of time and during development of new COVID precautions.

Description of the Need for the Information and Proposed Use of the Information

60-Day Notice: A Federal Register notice with a 60-day comment period soliciting public comments on the following information collection was published on December 30, 2021 (89 FR 74427).

NHTSA received one comment in response to this notice. Mothers Against Drunk Driving (MADD) ''supports NHTSA's request for an extension of the information collection.'' They further urge action to help meet the deadline mandated in the advanced technology provisions of the Infrastructure Investment and Jobs Act calling for the Agency to mandate that drunk and impaired driving prevention technology become standard equipment in all new passenger motor vehicles. MADD recognizes the timing of completion of NHTSA efforts and ''adherence to the deadline mandated in the law is vital to the lives of the American public.'' NHTSA appreciates the time and consideration of MADD in responding to the 60-day **Federal Register** notice.

Affected Public: General Public.

Estimated Number of Respondents: 2,787.

When NHTSA sought approval for the currently approved information collection, it described its plan for collecting data from 480 unique respondents. In order to recruit 480 participants who would complete the field operational test, NHTSA estimated that 600 respondents would need to complete the initial eligibility screening (a 75% recruitment rate). Based on experience, NHTSA has found that the actual recruitment rate is much lower than anticipated. As of August 31, 2021, 62 participants had been successfully recruited and participated in the FOT. Successful recruitment involved a screening of 420 individuals, for a recruitment rate of 15 percent. Since NHTSA needs to recruit 418 more participants, NHTSA estimates that the research team would need to screen 2,787 individuals.

Frequency: Varies.

There are four different components to this information collection and the frequency for response varies across the components: The initial eligibility screening is conducted one-time; the full orientation is conducted one-time; the health screening is conducted each time that an individual participates in the FOT; and the FOT is conducted as many times as the individual wishes, up to 60 times.

Number of Responses: Varies.

Each of the different components in this information collection has a different number of responses: The initial eligibility screening is estimated at 2,787 responses; the full orientation is estimated at 418 responses; the health screening is estimated at 468 responses; and the FOT is estimated at 890 responses.

Estimated Total Annual Burden Hours: 3,249.

When NHTSA originally obtained clearance for this ICR, the agency did not expect to need to renew the collection. Instead, it was expected that the data collection would have been completed within the three-year clearance period. However, COVID–19 delayed the research effort, necessitating this request for extension. Accordingly, NHTSA is requesting an extension of this currently approved information collection for the portion of the planned data collection that still needs to be completed. As of August 31, 2021, collection is complete for 62 participants of the necessary 480 participants. Therefore, NHTSA is requesting approval for the collection of information from 418 remaining participants and individuals screened in order to recruit the 418 participants. In estimating the burden of this collection, NHTSA has made adjustments, based on its experience with recruitment and data collection under the current collection, to its estimates for numbers of screenings, duration associated with information collection, and frequency of data collection of various phases of the study. NHTSA has also added new COVID–19 screening questions and a COVID–19 test requirement for the safety of both researchers and study participants. These new COVID–19 safety measures will be carried out in accordance with CDC guidelines and the data from the screening questions and tests will not be retained nor used for analytic purposes.

When NHTSA originally sought approval for this research study, it estimated that each initial eligibility/demographic interview would take approximately 15 minutes. With experience, NHTSA is now revising the estimate to be 30 minutes. NHTSA is also revising its burden estimates to include time for health screenings each time a respondent participates in the FOT after their first day. On the first day, participants will go through a full orientation, which is expected to last 1 hour and includes both a health screening and in-vehicle instruction. NHTSA estimates that the health screening portion takes approximately 30 minutes.

NHTSA originally estimated burdens associated with this collection assuming that each participant would complete the FOT 60 times. This was based on the maximum amount of participation. However, based on the experience of the data collection through August 31, 2021, participants are, on average, completing the FOT 2.13 times. Of the 62 participants who have completed the FOT thus far, 27 participated only once. The remaining 35 participated an average of 3 times each. Using this average, NHTSA estimates that the remaining 418 participants will complete a total of 890 operational tests.

Based on experience, NHTSA has also revised the estimated burden hours for the FOT. NHTSA now estimates the average duration of the pre-drive, drive, and post-drive recovery to be five hours (this estimate does not include orientation time, which is estimated separately).

NHTSA has also revised estimates to include the time for test-day questions in the burden estimate for FOT. These questions were counted separately in the initial ICR. However, the question responses are collected during the post-drive recovery time and included in the

average time for participants in the FOT portion of the study.

NHTSA estimates the total burden for the remaining data collection to be 6,498 hours. The research team expects the data collection to take place over 24 months, for an average of 3,249 hours per year. This is longer than initially estimated due to observed difficulty in recruitment.

NHTSA estimates the opportunity cost associated with this information collection using the median hourly wage for the Southwest Virginia nonmetropolitan area of $15.34 per hour for all occupations,[1] resulting in a total opportunity cost of $99,679.32 and an annual opportunity cost of $49,839.66.

Table 1 provides a summary of the remaining burden hours for this information collection.

TABLE 1—ESTIMATED BURDEN HOURS AND ASSOCIATED OPPORTUNITY COSTS

Instrument	Number of responses	Number of respondents	Duration	Estimated burden hours	Cost per hour	Estimated opportunity cost
Eligibility/Demographic Interview	2,787	2,787	30 min (0.5 hrs)	1,393.5	$15.34	$21,376.29
Full Orientation	418	418	1 hour	418	15.34	6,412.12
Health Screening Only	468	234	30 min (0.5 hrs)	234	15.34	3,589.66
Field Operational Test	890	418	5 hours	4,452	15.34	68,293.68
Total (covering a 24-month period)				6,497.5 (6,498)		99,679.32
Estimated Annual Burden				3,249		49,839.66

The 30-day **Federal Register** notice contained errors in the estimated opportunity cost for the Full Orientation, Health Screening Only, and Field Operational Test. Those errors were typographical, did not affect the calculations for total, and have been corrected in this notice.

Estimated Total Annual Burden Cost: $0.

NHTSA estimates that there are no additional costs to respondents beyond those associated with opportunity cost. To offset these costs, NHTSA is paying respondents who participate in the FOT $19.50 per hour.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Cem Hatipoglu,

Associate Administrator, Vehicle Safety Research.

[FR Doc. 2022–05418 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Notice of Extension To Solicit Transit Advisory Committee for Safety Member Applications

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of extension to solicit Transit Advisory Committee for Safety Member Applications.

SUMMARY: The Federal Transit Administration (FTA) is extending the solicitation seeking applications for individuals to serve as members, for two-year terms, on the Transit Advisory Committee for Safety (TRACS), which was published on February 7, 2022, with the original solicitation closing date of March 9, 2022. The TRACS provides information, advice, and recommendations to the U.S. Secretary of Transportation (Secretary) and FTA Administrator (Administrator) in response to tasks assigned to TRACS. The TRACS does not exercise program management responsibilities and makes no decisions directly affecting the programs on which it provides advice. The Secretary may accept or reject a recommendation made by TRACS and is not bound to pursue any recommendation from TRACS.

DATES: Interested persons must submit their applications to FTA by April 8, 2022.

FOR FURTHER INFORMATION CONTACT: Joseph DeLorenzo, TRACS Designated Federal Officer, Associate Administrator, FTA Office of Transit Safety and Oversight, (202) 366–1783, *Joseph.DeLorenzo@dot.gov;* or Bridget Zamperini, TRACS Program Manager, FTA Office of Transit Safety and Oversight, *TRACS@dot.gov.* Please address all mail to the Office of Transit Safety and Oversight, Federal Transit Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Nominations

FTA invites qualified individuals interested in serving on TRACS to apply to FTA for appointment. The Administrator will recommend nominees for appointment by the Secretary. Appointments are for two-year terms; however, a member may reapply to serve additional terms, in the event that the TRACS Charter is renewed. Applicants should be knowledgeable of trends and issues related to rail transit and/or bus transit safety. Along with their experience in the rail transit and/or bus transit industry, applicants will also be evaluated and selected based on factors including leadership and organizational skills, region of the country represented,

[1] Occupational Employment and Wage Statistics. May 2020 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates-Southwest Virginia nonmetropolitan area. U.S. Bureau of Labor Statistics. *https://www.bls.gov/oes/2020/may/oes_5100001.htm.* Last Accessed 12/27/21.

diversity characteristics, and the overall balance of industry representation.

Each application should include the applicant's name and organizational affiliation; a cover letter describing the applicant's qualifications and interest in serving on TRACS; a curriculum vitae or resume of the applicant's qualifications; and contact information including the applicant's address, phone number, fax number, and email address. Self-application and application through nomination of others are acceptable. FTA prefers electronic submissions for all applications, via email to *TRACS@dot.gov.* Applications will also be accepted via mail at the address identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FTA expects to nominate up to 25 representatives from the public transportation safety community for immediate TRACS membership. The Secretary, in consultation with the Administrator, will make the final selection decision.

This notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2). Please see the TRACS website for additional information at *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs.*

Nuria I. Fernandez,

Administrator.

[FR Doc. 2022–05448 Filed 3–14–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2022–0014]

Air Travel by Persons Who Use Wheelchairs; Notice of Public Meeting

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the U.S. Department of Transportation (Department or DOT), to be held virtually, on the difficulties encountered during air travel by persons who use wheelchairs.

DATES: The virtual meeting will be held on Thursday, March 24, 2022, from 10:15 a.m. to 5:30 p.m., Eastern Daylight Time. The meeting is open to the public, subject to any technical and/or capacity limitations. Requests to attend the meeting must be submitted to *https://usdot.zoomgov.com/webinar/register/WN_cWNvnWKRQ26J4X0sbJClrw.* We encourage interested parties to register by Monday, March 21, 2022. Communication Access Real-time Translation (CART) and sign language interpretation will be provided during the meeting. Requests for additional accommodations because of a disability must be received at *FlyingWithWheelchairs@dot.gov* by March 21, 2022. If you wish to speak during the meeting or have written materials you submit discussed during the meeting, you should submit a request at *FlyingWithWheelchairs@dot.gov* no later than March 21, 2022.

ADDRESSES: The virtual meeting will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. A detailed agenda will be available on the Department's Office of Aviation Consumer Protection website at *https://www.transportation.gov/airconsumer/latest-news* and placed in the docket in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: To register and attend this virtual meeting, please contact the Department at: *https://usdot.zoomgov.com/webinar/register/WN_cWNvnWKRQ26J4X0sbJClrw.* Attendance is open to the public subject to any technical and/or capacity limitations. For further information, please contact Chris Miller, Attorney-Advisor, by phone at 202–366–4781, or by email at *Christopher.miller1@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Air travelers with disabilities who use wheelchairs often face serious problems when traveling that could impact their safety, including mishandled wheelchairs and scooters and improper transfers to and from aircraft seats. Since December 2018, the largest U.S. airlines have collectively mishandled more than one in every one-hundred wheelchairs they transported.[1]

Damaged, delayed and lost wheelchairs affect the mobility, independence, quality of life and, at times, health of people with disabilities. The Department is committed to improving the accessibility of air transportation for people with disabilities and is actively seeking information from the public to determine what appropriate steps can be taken to improve accessibility for wheelchair users.

Disability rights advocates have raised concerns with the Department about unsafe transfers to and from aircraft seats. These transfers are the most physically intensive type of assistance provided by airline personnel and contractors. The Department does not have data on the number of transfers or the number of passengers with disabilities injured during the transfer process. While complaints to the Department alleging assistance that jeopardizes the safety of passengers with disabilities are not as common as other types of wheelchair assistance-related complaints, these types of incidents can cause serious harm to passengers. Successful assistance is often dependent on sufficiently trained personnel with adequate strength, skill, knowledge, and available equipment.

Disability rights advocates have also expressed increased dissatisfaction with the level of accessibility during air travel for wheelchair users. On December 16, 2021, during a joint DOT and U.S. Access Board meeting about access to lavatories for on-board wheelchairs on single aisle aircraft, we announced that the Department would host a public meeting on the difficulties facing people who use wheelchairs during air travel. This public meeting will be an important step to tackle these challenges.

During this meeting, there will be an opportunity to listen to and learn from people who use wheelchairs on the difficulties that they encounter during air travel. There will also be an opportunity for airlines to discuss both the actions they are taking to provide accessible air transportation and the challenges they face in making these improvements. The Department will also request and gather relevant information from the public attendees on four different topics (listed below). The information gathered during the meeting will enable the Department to move more expeditiously on actions to advance safe accommodations for air travelers with disabilities using

[1] Pursuant to 14 CFR part 234, U.S. airlines classified as ''reporting carriers'' are required to report to the Department monthly data on the number of wheelchairs and scooters they transport in the aircraft cargo compartment and the number of wheelchairs and scooters that are mishandled (*i.e.,* damaged, delayed, lost, or pilfered). This reporting requirement has applied to reporting carriers for their operations on and after December 4, 2018. In addition, reporting carriers have been required to report for the operations of their branded codeshare partners on and after January 1, 2019. Mishandled wheelchair and scooter data are published monthly in the Department's Air Travel Consumer Report (ATCR) along with information on the number of disability-related complaints that aviation consumers file with the Department against airlines. The ATCRs are available on the Department's aviation consumer protection website at *https://www.transportation.gov/individuals/aviation-consumer-protection/air-travel-consumer-reports.*

wheelchairs. We specifically invite people with disabilities, disability advocates, airlines, aircraft manufacturers, wheelchair manufacturers, flight attendant associations, and other stakeholders to participate in the public meeting.

II. Announcement of Public Meeting

The March 24, 2022 meeting will be divided into a morning session and an afternoon session. In the morning, beginning at 10:15 a.m. EST, opening remarks and presentations on relevant regulations and the current state of affairs will be provided by the Department, advocates for people with disabilities, industry stakeholders, and the Air Carrier Access Act (ACAA) Advisory Committee. In the afternoon, there will be a question and answer session to help inform appropriate next steps for addressing the concerns of wheelchair users. The Department seeks information on the following:

Questions Relating to Challenges Encountered During Air Travel by Persons Who Use Wheelchairs and the Impacts of Unsafe or Inadequate Assistance

- What are the most significant problems that people with disabilities are currently experiencing when traveling by air with wheelchairs?
- How frequently do people with disabilities who use wheelchairs experience problems when traveling by air and what is the severity of physical harm or damages that can result?
- How do these problems affect the ability or willingness of people with disabilities to travel by air?
- What are the root causes of the problems associated with traveling by air with wheelchairs?
- What are the wait times for assistance to deplane/disembark aircraft for people who use wheelchairs?
- What changes to air travel are needed to address the problems encountered by people with disabilities who use wheelchairs?

Questions Relating to Actions To Prevent or Minimize Likelihood of Mishandled (Damaged, Delayed, and Lost) Wheelchairs

- At what point(s) during the handling process are wheelchairs damaged and what are the most common types of damage?
- What financial costs (medical, transportation, lost wages, etc.), if any, do people who use wheelchairs incur due to damage to their wheelchair during air travel?
- What best practices or procedures (*e.g.,* disassembly or loading techniques) could be implemented by airlines to reduce the risk of damaging a wheelchair?
- What additional information from passengers and device manufacturers would be useful to airlines to aid their employees who handle assistive devices?
- In circumstances where the passenger has not requested the return of the wheelchair at the baggage claim area, what are the wait times for wheelchairs to be returned to passengers at the gate?
- What are the root causes of wheelchairs becoming delayed or lost during air transportation?
- What improvements can be made to airline procedures to prevent or minimize the likelihood that a wheelchair is delayed or lost?
- Does hands-on training for employees who handle mobility aid devices lead to fewer cases of mishandled wheelchairs and, if so, what are the costs and benefits of hands-on training programs?

Questions Relating to Actions To Ensure Safe Transfers to and From the Aircraft Seat

- What problems do passengers who require physical assistance encounter when traveling by air?
- What types of harm can result from inadequate or unsafe physical assistance?
- What financial costs (medical, transportation, lost wages, etc.), if any, do people who use wheelchairs incur due to unsafe physical assistance or other injuries sustained when traveling by air?
- What strategies are airlines or their contractors implementing to ensure transfers to and from the aircraft seat are done safely?
- What new or additional practices or procedures could be implemented by airlines or their contractors to increase safety and reduce risks of harm when physically assisting passengers?
- What are the challenges and limitations associated with the equipment currently used by airlines or their contractors (*e.g.,* aisle chairs)?
- What new technologies or equipment exist that may improve safety for passengers who require physical assistance and for airline personnel, and what are the costs and benefits of implementing such new technologies or equipment?
- What data exist that show the effects of hands-on training for employees who physically assist persons with disabilities on safety, and what are the costs and benefits of hands-on training programs?

Questions Relating to Best Practices for Assisting Passengers When a Wheelchair Has Been Mishandled

- When a wheelchair has been mishandled, what resources or equipment are necessary to timely and safely assist the passenger at the airport?
- What types of wheelchairs are currently made available for passengers to temporarily use at the airport when their wheelchairs are mishandled and unavailable for use?
- How do airlines train frontline employees to address the needs of passengers whose wheelchairs were mishandled?
- What physical harm may result to people with disabilities when they cannot access their wheelchairs, and what measures can be implemented to prevent or reduce such harm?
- Do airlines have wheelchair repair/rental vendors that can assist with obtaining loaner chairs and with customized features and, if so, what are the associated costs?
- What improvements could be made to the damage claim, repair, and return process so that wheelchairs can be quickly returned or replaced?

Requests to make oral comments during the meeting or submit written materials to be reviewed during the meeting should be sent to *FlyingWithWheelchairs@dot.gov* no later than March 21, 2022. When making advance requests for oral comments, please identify which of the four topics identified above you wish to address. If there is an interest in addressing a topic not identified above but related to travel by individuals with disabilities who use wheelchairs, please identify that topic in your request. If time allows, questions or comments by those who did not make an advance request for oral comments will also be permitted. Participants may also submit comments or questions through Zoom's Chat feature to be addressed during the meeting as time permits.

III. Viewing Documents

You may view documents associated with this meeting at *https://www.regulations.gov.* After entering the docket number (DOT–OST–2022–0014), click the link to ''Open Docket Folder'' and choose the document to review.

Issued in Washington, DC, this 10th day of March 2022.

John E. Putnam,

Deputy General Counsel, U.S. Department of Transportation.

[FR Doc. 2022–05422 Filed 3–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 1041, U.S. Income Tax Return for Estates and Trusts, and related Schedules D, I, J, K–1, Form 1041–V, and Frequently Asked Questions (FAQs) relating to the elections of deferred foreign income.

DATES: Written comments should be received on or before May 16, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224 or by email to *omb.unit@irs.gov*. Please include the ''OMB Number 1545–0092'' in the Subject line. Written and electronic comments concerning Proposed § 1.958–1(e)(2) and Proposed § 1.964–1(c)(3) can be addressed to the information contact under 87 FR 3890.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202) 317–4542 or through the internet, at *Sara.L.Covington@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Estates and Trusts.

OMB Number: 1545–0092.

Form Number: Form 1041.

Abstract: IRC section 6012 requires that an annual income tax return be filed for estates and trusts. The data is used by the IRS to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax. Public Law 115–97, section 14103 has a retroactive effective date of 2017. In order for taxpayers to fulfill their filing obligations and report the correct amount of tax under Section 14103, the IRS developed FAQs to alert taxpayers how and where to report this income on their tax return. A critical part of this effort includes alerting taxpayers of their filing obligations and educating them on how and where this would be reported. The data will be utilized by the IRS to ensure that the correct amount of tax is paid. In general, the collections of information in proposed § 1.958–1(e) and proposed § 1.964–1(c)(3) impose a burden on certain domestic trusts and estates to attach statements to their tax returns, or notify certain prescribed persons, of elections permitted by those regulations' sections.

Current Actions: There were changes and updates made to the form since last renewal.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 10,067,925.

Estimated Time per Respondent: 32 hours, 38 minutes.

Estimated Total Annual Burden Hours: 331,507,546.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 8, 2022.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2022–05404 Filed 3–14–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. app. 2, that the Special Medical Advisory Group (the Committee) will meet on April 6, 2022, from 9:00 a.m. EDT to 3:30 p.m. EDT. The meeting is open to the public. The public will only be able to attend virtually. Members of the Committee may join in person or virtually. Join by phone: 1–404–397–1596, Access code 27620910241. Join via Webex (please contact POC below for assistance connecting): *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m8189db2dec142f2b5ac52cfcf9f302f8.*

The purpose of the Committee is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of Veterans, and other matters pertinent to the Veterans Health Administration.

On April 6, 2022, the agenda for the meeting will include discussions on Center for Care and Payment Innovation, H.R. National Green Alert Act of 2021, reinventing training and research at VA facilities, and VA's quality of care priorities, national leadership role and the post-pandemic way ahead.

Members of the public may submit written statements for review by the Committee to: Department of Veterans Affairs, Special Medical Advisory Group—Office of Under Secretary for Health (10), Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420 or by email at *VASMAGDFO@va.gov*. Comments will be accepted until close of business on Monday, April 4, 2022.

Any member of the public wishing to attend the meeting or seeking additional information should email *VASMAGDFO@va.gov* or call 202–461–7000.

Dated: March 10, 2022.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–05461 Filed 3–14–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–XXX]

Agency Information Collection Activity: Statement of a Person Claiming Loan Fee Refund Due a Deceased Veteran, Service Member, or Surviving Spouse

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 16, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–XXX'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–XXX'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 3729(c).

Title: Statement of a Person Claiming Loan Fee Refund Due a Deceased Veteran, Service Member, or Surviving Spouse, VA FORM 26–10280 and VA FORM 26–10280a.

OMB Control Number: 2900–XXX.

Type of Review: New Collection.

Abstract: This information will be used by VA to determine whether a refund owed to a Veteran may be remitted to another individual, including the Veteran's spouse, the executor or administrator of the Veteran's estate, or another individual with a relationship to the Veteran. The information collected is necessary for VA to ensure that it is releasing the refund to an appropriate individual who will disburse the refund according to the laws of the state where the Veteran was a legal resident (*e.g.,* estate laws).

Affected Public: Individuals and households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

By direction of the Secretary:

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–05450 Filed 3–14–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Tuesday,
No. 50 March 15, 2022

Part II

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedure for Consumer Boilers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2019–BT–TP–0037]

RIN 1904–AE83

Energy Conservation Program: Test Procedure for Consumer Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the test procedures for consumer boilers to incorporate by reference the latest version of the industry standards currently referenced in the Federal test procedure. DOE proposes to relocate the test procedure in a new appendix separate from the residential furnace test procedure. DOE also proposes to remove an extraneous definition from its regulatory definitions. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than May 16, 2022. See section V, ''Public Participation,'' for details. DOE will hold a webinar on Thursday, April 7, 2022, from 1 p.m. to 4 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar, it will be cancelled.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–TP–0037 and/or RIN 1904–AE83, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ConsumerBoilers2019TP0037@ee.doe.gov.* Include the docket number EERE–2019–BT–TP–0037 and/or RIN 1904–AE83 in the subject line of the message.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus (''COVID–19'') pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, webinar or public meeting attendee lists and transcripts (if a webinar or public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE-2019-BT-TP-0037.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6737. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in a public meeting (if one is held), contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to maintain and amend a previously approved incorporation by reference and to newly incorporate by reference the following industry standards into the Code of Federal Regulations (''CFR'') at 10 CFR part 430:

American National Standards Institute (''ANSI'')/American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') Standard 103–2017 (ANSI/ASHRAE 103–2017), ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' approved July 3, 2017.

ANSI/ASHRAE Standard 41.6–2014 (ANSI/ASHRAE 41.6–2014), ''Standard Method for Humidity Measurement,'' approved July 3, 2014. Copies of ANSI/ASHRAE 103–2017 and ANSI/ASHRAE 41.6–2014 can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 180 Technology Parkway NW, Peachtree Corners, GA 30092, (800) 527–4723 or (404) 636–8400, or online at: *www.ashrae.org.*

ASTM, International (''ASTM'') Standard D2156–09 (Reapproved 2018) (ASTM D2156–09 (R2018)), ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels,'' reapproved October 1, 2018.

Copies of ASTM D2156–09 (R2018) can be obtained from the ASTM, International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 or online at: *www.astm.org.*

International Electrotechnical Commission (''IEC'') 62301 (IEC 62301), ''Household electrical appliances-Measurement of standby power,'' (Edition 2.0 2011–01).

Copies of IEC 62301 can be obtained from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *webstore.ansi.org.*

See section IV.M of this document for a further discussion of these standards.

Table of Contents

I. Authority and Background

Furnaces, which includes consumer boilers, are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6291(23); 42 U.S.C. 6292(a)(5)) DOE's energy conservation standards and test procedures for consumer boilers are currently prescribed at title 10 CFR 430.32(e)(2), and 10 CFR part 430, subpart B, appendix N, *Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers* (''appendix N''). The following sections discuss DOE's authority to establish test procedures for consumer boilers and relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

Title III, Part B [1] of the Energy Policy and Conservation Act (''EPCA''),[2] Pub. L.'') 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include consumer boilers, which are the subject of this document. (42 U.S.C. 6292(a)(5))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, the statute sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including the consumer boilers that are the subject of this document, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days but may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this notice of proposed rulemaking (NOPR) in satisfaction of the 7-year lookback review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

As stated, DOE's existing test procedure for consumer boilers appears at Title 10 of the CFR part 430, subpart B, appendix N (''Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers'') and is used to determine the annual fuel utilization efficiency (''AFUE''), which is the regulatory metric for consumer boilers.

DOE most recently updated its test procedure for consumer boilers in a final rule published in the **Federal Register** on January 15, 2016 (''January 2016 final rule''). 81 FR 2628. The January 2016 final rule amended the existing DOE test procedure for

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and JobsEnergy Act of 2020, Public Law 117–58 (Nov. 15, 2021116–260 (Dec. 27, 2020).

consumer boilers to improve the consistency and accuracy of test results generated using the DOE test procedure and to reduce test burden. In particular, the modifications relevant to consumer boilers included: (1) Clarifying the definition of the electrical power term, ''PE''; (2) adopting a smoke stick test for determining whether minimum default draft factors can be applied; (3) allowing for optional measurement of condensate during establishment of steady-state conditions; (4) updating references to the applicable installation and operation (''I&O'') manual and providing clarifications for when the I&O manual does not specify test set-up; and (5) revising the AFUE reporting precision. DOE also revised the definitions of several terms in the test procedure and added an enforcement provision to provide a method of test for DOE to determine compliance with the automatic means design requirement mandated by the Energy Independence and Security Act of 2007, Public Law 110–140 (Dec. 19, 2007). 81 FR 2628, 2629–2630.

On May 15, 2020, DOE published in the **Federal Register** a request for information (''May 2020 RFI'') seeking comments on the existing DOE test procedure for consumer boilers, which incorporates by reference ANSI/ASHRAE Standard 103–1993. 85 FR 29352. ANSI/ASHRAE 103–1993 provides test procedures for determining the AFUE of residential central furnaces and boilers. In the May 2020 RFI, DOE requested comments, information, and data about a number of issues, including: (1) The test procedure's scope and definitions; (2) updates to industry standards; (3) ambient test conditions; (4) provisions for testing boilers with manually adjustable combustion airflow; (5) calculation of steady-state heat loss for condensing, modulating boilers; and (6) provisions for testing step modulating boilers. *Id.* at 85 FR 29354–29357. DOE also sought comment generally on whether the current test procedures are reasonably designed to produce results that measure energy efficiency during a representative average use cycle or period of use, whether any potential amendments would make the test procedure unduly burdensome to conduct, whether existing test procedures limit a manufacturer's ability to provide additional features, on the impact of any potential amendments on manufacturers including small businesses, on whether there are any potential issues related to emerging smart technologies, and generally on any other aspect of the test procedure for consumer boilers. *Id.* at 85 FR 23957.

DOE received comments in response to the May 2020 RFI from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO THE MAY 2020 RFI

Commenter(s)	Reference in this NOPR	Commenter type
Air-Conditioning, Heating and Refrigeration Institute	AHRI	Trade Association.
Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Edison (collectively referred to as the California Investor Owned Utilities).	CA IOUs	Utilities.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.
Weil-McLain	Weil-McLain	Manufacturer.
Bradford White Corporation	BWC	Manufacturer.
Rheem Manufacturing Company	Rheem	Manufacturer.
Burnham Holdings, Inc	BHI	Manufacturer.
Energy Kinetics, Inc	Energy Kinetics	Manufacturer.
Lochinvar	Lochinvar	Manufacturer.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for a test procedure rulemaking. Section 8(b) of appendix A states if DOE determines that it is appropriate to continue the test procedure rulemaking after the early assessment process, it will provide further opportunities for early public input through **Federal Register** documents, including notices of data availability and/or requests for information. DOE is opting to deviate from this provision due to the substantial feedback and information supplied by commenters in response to the May 2020 RFI. As discussed in section I.B of this NOPR, the May 2020 RFI requested submission of comments, data, and information pertinent to test procedures for consumer boilers. In response to the May 2020 RFI, stakeholders provided substantial comments and information, which DOE has found sufficient to identify the need to modify the test procedures for consumer boilers.

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to update appendix N to remove the provisions applicable only to consumer boilers and to rename the current appendix as ''Uniform Test Method for Measuring the Energy Consumption of Furnaces.'' Correspondingly, DOE proposes to create a new test procedure at 10 CFR 430 subpart B, appendix EE, ''Uniform Test Method for Measuring the Energy Consumption of Boilers'' (''appendix EE''). In the new appendix EE, DOE proposes to include all provisions currently included in appendix N relevant to consumer boilers, with the following modifications:

(1) Incorporate by reference the current revision to the applicable industry standard, ANSI/ASHRAE 103–2017, ''Methods of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers.''

(2) Incorporate by reference the current revision of ASTM Standard D2156–09 (Reapproved 2018), ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels.''

(3) Incorporate by reference ANSI/ASHRAE 41.6–2014, ''Standard Method for Humidity Measurement.''

(4) Update the definitions to reflect the changes in ANSI/ASHRAE 103–2017 as compared to ANSI/ASHRAE 103–1993.

DOE also proposes in this NOPR to remove the definition of outdoor furnace or boiler from 10 CFR 430.2.

DOE's proposed actions are summarized in Table II.1 compared to the current test procedure as well as the reason for the proposed change.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
Test procedure requirements based on industry standard ANSI/ASHRAE 103–1993.	Test procedure requirements based on ANSI/ASHRAE 103–2017.	Industry standard update to ANSI/ASHRAE 103–2017.
Procedure for adjusting oil-fired burner references industry standard ASTM D2156–09 (Reapproved 2013).	Procedure for adjusting oil-fired burner references industry standard ASTM D2156–09 (Reapproved 2018).	Industry standard update to ASTM D2156–09 (Reapproved 2018).
Limits the maximum relative humidity during certain tests, but does not provide specific instructions for how to measure relative humidity.	References ANSI/ASHRAE 41.6 for instructions for measuring relative humidity of the test room.	Referenced by industry standard ANSI/ASHRAE 103–2017, which is being proposed in this NOPR.
Includes a definition for ''outdoor furnace or boiler'' at 10 CFR 430.2.	Removes the definition for ''outdoor furnace or boiler''.	Remove an unused definition.

DOE tentatively determines that the proposed amendments described in section III of this document could minimally impact the measured efficiency of certain consumer boilers, but that if such impacts are realized, re-testing and re-rating would not be required. DOE also tentatively determines that the proposed test procedures improve the representativeness of the test method and would not be unduly burdensome to conduct. Discussion of DOE's proposed actions are addressed in detail in section III of this document.

III. Discussion

A. Scope of Applicability

As discussed, in the context of ''covered products,'' EPCA includes boilers in the definition of ''furnace.'' (42 U.S.C. 6291(23)) EPCA defines the term ''furnace'' to mean a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which: (1) Is designed to be the principal heating source for the living space of a residence; (2) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 British thermal units (''Btu'') per hour; (3) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and (4) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces. *Id.* DOE has codified this definition in its regulations at 10 CFR 430.2.

DOE defines ''electric boiler'' as an electrically powered furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 pounds per square inch gauge (''psig'') steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 degrees Fahrenheit (°F) water temperature. 10 CFR 430.2.

DOE defines ''low pressure steam or hot water boiler'' as an electric, gas or oil burning furnace designed to supply low pressure steam or hot water for space heating application. 10 CFR 430.2. As with an electric boiler, a low pressure steam boiler operates at or below 15 pounds psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F water temperature. *Id.*

The scope of the test procedure for consumer boilers is specified in section 1.0 of appendix N, which references section 2 of ANSI/ASHRAE 103–1993. In relevant part, section 2 of ANSI/ASHRAE 103–1993 states that the industry test standard applies to boilers [3] with inputs less than 300,000 Btu per hour (''Btu/h''); having gas, oil, or electric input; and intended for use in residential applications. Further, ANSI/ASHRAE 103–1993 applies to equipment that utilizes single-phase electric current or low-voltage DC current.

In the May 2020 RFI, DOE requested comment on whether any consumer boilers are available on the market that are covered by the scope provision of ANSI/ASHRAE 103–1993, but that are not covered by the definition of ''furnace'' as codified by DOE at 10 CFR 430.2. 85 FR 29352, 29354. DOE also requested comment on whether any consumer boilers on the market are covered by DOE's definition of ''furnace'' that are not covered by the scope provision of ANSI/ASHRAE 103–1993. *Id.*

AHRI, Rheem, and Weil-McLain stated that air-to-water and water-to-water heat pumps fall under the definition of ''furnace'' in the CFR, but are not covered by the current test procedures. (AHRI, No. 6 at p. 1; Rheem, No. 9 at p. 2; Weil-McLain, No. 5 at p. 3) [4] BHI commented that if DOE were to regulate hydronic heat pumps, such products should be classified as heat pumps and the boiler definition in 10 CFR 430.2 should be modified to explicitly exclude them. BHI also stated that ASHRAE 103 is not intended to evaluate such products. (BHI, No. 11 at p. 1)

NEEA recommended that DOE add a definition for combination space and domestic hot water boilers as the current DOE definitions are ambiguous when it comes to the developing product category as these products fit both the definition of consumer boiler and water heater. NEEA also suggested that DOE adopt a test procedure referencing industry standards ASHRAE 124 and Canadian Standards Association (CSA) P.9, as appropriate, once the ongoing revision to ASHRAE 124 is finalized. (NEEA, No. 10 at pp. 3–4) Rheem also recommended that DOE consider adopting a test procedure for combination boilers. (Rheem, No. 9 at p. 2)

DOE tentatively agrees with commenters that air-to-water and water-to-water heat pumps meet the definitional criteria to be classified as a consumer boiler. These products utilize only single-phase electric current, are designed to be the principal heating source for the living space of a residence, are not contained within the

[3] ASHRAE 103–1993 defines a ''boiler'' as: A self-contained fuel-burning or electrically heated appliance for supplying low-pressure steam or hot water for space heating application. This definition covers electric boilers and low-pressure steam or hot water boilers as those terms are defined by DOE at 10 CFR 430.2.

[4] This and subsequent parentheticals parenthetical provide a reference for information located in the docket of DOE's rulemaking to develop test procedures for consumer boilers. (Docket No. EERE–2019–BT–TP–0037, which is maintained at *www.regulations.gov/docket?D=EERE-2019-BT-TP-0037*). Parenthetical references are arranged as follows: (commenter name, comment docket ID number, page of that document).

same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour, meet the definition of an electric boiler,[5] and have a heat input rate of less than 300,000 Btu per hour (*i.e.,* the requirement for electric boilers). As such they meet the criteria of ''furnace'' as defined in 10 CFR 430.2. DOE also tentatively agrees with commenters that the current test procedure in appendix N does not address such products and would not provide a rated value that is representative of the performance of these products. In particular, the AFUE metric for electric boilers in ANSI/ASHRAE 103–1993 is calculated as 100 percent minus jacket loss.[6] This metric provides a representative measure of efficiency for electric boilers using electric resistance technology, for which an efficiency value of 100 percent (the ratio of heat output to energy input) is the maximum upper limit that technically could be achieved. The AFUE metric does not allow for ratings greater than 100 percent for electric boilers. However, this metric would not provide a representative or meaningful measure of efficiency for a boiler with a heat pump supplying the heat input, because heat pump efficiency (in terms of heat output to energy input) typically exceeds 100 percent.

Based on a review of the market, hydronic air-to-water and water-to-water heat pumps offered in the United States are often advertised as competing products for consumer boilers, but typically provide representations of energy efficiency using a Coefficient of Performance (''COP'') metric. They are often marketed for low-temperature radiator, floor heating, and domestic hot water applications, but also can be marketed for use in high-temperature radiator applications.

DOE tentatively proposes to determine that hydronic air-to-water and water-to-water heat pumps are consumer boilers under EPCA, but that due to the lack of a Federal test procedure, such products are not subject to the current performance standards at 10 CFR 430.32(e). DOE identified AHRI 550/590, 2020, ''Standard for Performance Rating of Water-Chilling and Heat Pump Water-Heating Packages Using the Vapor Compression Cycle'' (''AHRI 550/590''), as an industry test method that some manufacturers use for evaluating the heating efficiency of hydronic air-to-water and water-to-water heat pumps in terms of heating coefficient of performance (COP_H).[7] DOE was not able to identify any industry method for determining AFUE of such products. DOE further notes that AFUE is defined as the efficiency descriptor for boilers in EPCA. (*See* 42 U.S.C. 6291(20).)

DOE seeks comment on whether any other industry test methods exist for determining the heating efficiency of air-to-water or water-to-water heat pumps. DOE seeks comment specifically on AHRI 550/590, and whether it would be appropriate for adoption as a Federal test procedure for such products, and if so, whether modifications could be made to result in an AFUE rating.

Regarding NEEA's comment on combination space and domestic hot water boilers, DOE is aware that the industry standard for testing these products (ASHRAE 124, ''Methods of Testing for Rating Combination Space-Heating and Water-Heating Appliances'') is currently under revision. DOE plans to further evaluate the industry test method once it is finalized and available. DOE is not proposing a specific definition for combination space and water heating boilers at this time. DOE notes, however, that to the extent that a combination space and water heating product meets the definition of electric boiler or low pressure steam or hot water boiler, it is subject to the test procedure at appendix N and energy conservation standards for consumer boilers at 10 CFR 430.32(e)(2), and must be tested and rated accordingly. DOE is unaware of any design characteristics of combination space and water heating products that would prevent their testing according to appendix N.

B. Definitions

In addition to the overarching definition for a furnace (which includes boilers) and the associated definitions for ''electric boiler'' and ''low pressure steam or hot water boiler'' presented in section III.A of this document, DOE also has defined ''outdoor boilers'' and ''weatherized warm air boilers'' at 10 CFR 430.2 as follows:

- *Outdoor furnace or boiler* is a furnace or boiler normally intended for installation out-of-doors or in an unheated space (such as an attic or a crawl space).
- *Weatherized warm air furnace or boiler* means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

In the May 2020 RFI, DOE requested comment on the definitions currently applicable to consumer boilers and whether any of these definitions need to be revised, and if so, how. 85 FR 29352, 29355.

BWC stated that the definition for ''outdoor boiler''[8] should be made more similar to ''weatherized warm air furnace or boiler'' by adding the weather-resistant conditions, asserting that the only difference between these two products is that a weatherized warm air furnace or boiler requires that venting be supplied. BWC also commented that ANSI Z21.13, ''Gas-Fired Low Pressure Steam and Hot Water Boilers,'' does not differentiate between outdoor and weatherized boilers. (BWC, No. 4 at p. 1)

Lochinvar and CA IOUs commented that changes to the definitions are not needed. (Lochinvar, No. 8 at p. 1; CA IOUs, No. 7 at p. 4) CA IOUs also recommended that DOE avoid any modifications to existing definitions that would reduce the ability of the test procedure to compare performance across products that use different technologies to provide similar consumer utility. (CA IOUs, No. 7 at p. 4)

Regarding the definition of ''outdoor furnace or boiler,'' the energy conservation standards for boilers at 10 CFR 430.32(e)(2)(iii) do not distinguish between outdoor or weatherized boilers. With regard to the test procedure, different jacket loss factors are applied based on whether a boiler is intended to be installed indoors, outdoors, or as an isolated combustion system. The heating seasonal efficiency ($Effy_{HS}$) calculation, which is an element of AFUE, is based on the assumption that all weatherized boilers are located outdoors (see section 10.1 of appendix N). Appendix N does not specify a separate jacket loss assumption for ''outdoor furnaces or boilers.'' As such, DOE has initially determined that the definition for ''outdoor furnace or boiler'' is extraneous in that the boiler testing method is described based on whether the boiler is weatherized (and thus required to be tested under the assumption that it is intended for

[5] As discussed in section III.B of this document, ''electric boiler'' means an electrically powered furnace designed to supply low pressure steam or hot water for space heating application. A low-pressure steam boiler operates at or below 15 psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F water temperature. 10 CFR 430.2.

[6] The term ''jacket loss'' is used by industry to mean the transfer of heat from the outer surface (*i.e.,* jacket) of a boiler to the ambient air surrounding the boiler.

[7] AHRI 550/590 is available at: *www.ahrinet.org/App_Content/ahri/files/STANDARDS/AHRI/AHRI_Standard_550-590_I-P_2015_with_Errata.pdf.*

[8] DOE interprets BWC's comment as referring to the definition of ''outdoor furnace or boiler'' at 10 CFR 430.2.

installation outdoors), not whether it meets the definition of an ''outdoor boiler.'' For analogous reasons, the definition appears to be extraneous with regard to consumer furnaces. Further, the definition of ''outdoor boiler'' is not used elsewhere in the test method or energy conservation standards. For these reasons, DOE does not propose to modify the definition for outdoor furnace or boiler and instead proposes to remove this definition from its regulations.

DOE seeks comment on its proposal to remove the definition of ''outdoor furnace or boiler'' from its regulations. DOE seeks comment on whether removing the definition for ''outdoor furnace or boiler'' would impact the application of the test procedure or energy conservation standards for any such products.

In addition to the definitions included in 10 CFR 430.2, section 2.0 of appendix N incorporates by reference the definitions in Section 3 of ANSI/ASHRAE 103–1993, with modifications and additions as specified in section 2.0 of appendix N. Sections 2.1 through 2.13 of appendix N provide additional definitions relevant to the consumer boilers test procedure.

DOE requested comment on whether the definitions for consumer boilers in section 2.0 through section 2.13 of appendix N, including those from ANSI/ASHRAE 103–1993 that are incorporated by reference, are still appropriate or whether amendments are needed. 85 FR 29352, 29355.

Lochinvar and Weil McLain stated that the definitions in ASHRAE 103–1993 and the CFR are still adequate and/or do not require changes. (Lochinvar, No. 8 at p. 2; Weil McLain, No. 5 at p. 3) BWC stated that the definition listed in 10 CFR 430.2 and ANSI/ASHRAE 103–2017 definitions as being appropriate. (BWC, No. 4 at p. 2) The CA IOUs recommended that DOE make no changes to the current definitions for consumer boilers in the code and that the current definitions adequately cover these products for the purpose of performing the DOE test procedure. (CA IOUs, No. 7 at p. 4)

As discussed in section III.C of this document, DOE is proposing to incorporate by reference the most recent version of ASHRAE 103: ANSI/ASHRAE 103–2017. DOE is proposing minor modifications to the definitions in appendix N to account for the inclusion of several definitions in ANSI/ASHRAE 103–2017 that were not included ANSI/ASHRAE 103–1993. Specifically, ANSI/ASHRAE 103–2017 includes definitions for ''air intake terminal,'' ''control,'' and ''isolated combustion system'' that are not in ANSI/ASHRAE 103–1993. The definitions for ''control'' and ''isolated combustion system'' in ANSI/ASHRAE 103–2017 are almost identical as currently defined in sections 2.3 and 2.7 of appendix N, respectively. Therefore, DOE proposes to remove those two definitions from the consumer boiler test procedure in the CFR, as they would be redundant with the definitions incorporated by reference through ANSI/ASHRAE 103–2017.

DOE seeks comment on its proposal to incorporate by reference the definitions in ANSI/ASHRAE 103–2017 and to remove the definitions for ''control'' and ''isolated combustions system'' from the consumer boiler test procedure at appendix N accordingly.

As discussed further in section III.D of this document, DOE is proposing to move the consumer boiler testing provisions from appendix N to a proposed new appendix EE and maintain the consumer furnace test provisions in appendix N. The proposed changes to definitions, if made final, would be applicable only to the test procedure for consumer boilers in proposed new appendix EE.

C. Metric

As discussed, the energy conservation standards for consumer boilers rely on the AFUE metric. 10 CFR 430.32(e)(2). For gas-fired and oil-fired boilers, AFUE accounts for fossil fuel consumption in active, standby, and off modes, but does not include electrical energy consumption. For electric boilers, AFUE accounts for electrical energy consumption in active mode. EPCA defines the term ''annual fuel utilization efficiency,'' in part, as meaning the efficiency descriptor for furnaces and boilers. (42 U.S.C. 6291(20)). In addition, separate metrics for power consumption during standby mode and off mode ($P_{W,SB}$ and $P_{W,OFF}$, respectively) are used to regulate standby mode and off mode energy consumption. 10 CFR 430.32(e)(2)(iii)(B).

AFUE is defined by ASHRAE 103 (both the 1993 and 2017 version) as the ratio of annual output energy to annual input energy, which includes any non-heating-season pilot input loss, but, for gas- or oil-fired furnaces or boilers, does not include electric energy. For gas- and oil-fired boilers, the AFUE test generally consists of steady-state, cool down, and heat up tests, during which various measurements are taken (*e.g.,* flue gas temperature, concentration of CO_2 in the flue gas). (*See* Sections 9.1, 9.5, and 9.6, respectively, of both ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017.) For condensing boilers, condensate collection tests during steady state and cyclic operation are also specified. (*See* Sections 9.2 and 9.8 of both ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017.) The test measurements are used in conjunction with certain assumptions, to calculate the AFUE. (*See* Section 11 of both ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017.)

Energy Kinetics provided comments pertaining to the AFUE metric, including suggestions of how it could be made more representative of field performance. Energy Kinetics asserted that oversizing is not accurately reflected in AFUE; specifically, that the 0.7 oversize factor in the AFUE test method is too low, and that a more representative oversize factor would be a value of 3 to 4.[9] Energy Kinetics further asserted that AFUE does not appropriately account for idle losses and provided an example of a boiler with an AFUE of 83.5 percent and idle loss of 4.87 percent that the commenter argued would consume 63 percent more fuel than a boiler with an AFUE of 87.5 percent and an idle loss of 0.15 percent. (Energy Kinetics, No. 3 at p. 1)

Energy Kinetics suggested that DOE change from the AFUE metric to a combination of a thermal efficiency metric and an idle loss metric. The commenter argued that both AFUE and thermal efficiency are closely aligned to steady-state efficiency, but thermal efficiency is a faster and easier test to perform and is currently used in commercial boiler testing. Energy Kinetics suggested that idle loss could either be measured or a prescribed value to foster innovation and recognize better performing systems, while also simultaneously reducing test burden. (Energy Kinetics, No. 3 at p. 2)

Energy Kinetics stated that AFUE does not account for the impact of energy savings controls, which prevents comparisons of the performance of various types of boilers and controls. Energy Kinetics stated that AFUE assumes that the boiler is in the conditioned space and that any heat lost from the boiler is gained in the conditioned space; and asserted that in practice this heat is wasted in basements, up chimneys, and out draft hoods and draft regulators. Energy

[9] The oversize factor is applied to account for the typical practice of sizing a boiler such that the heating capacity exceeds the heating load. In ASHRAE 103–1993, for non-modulating boilers the oversize factor is assigned as a national average value of 0.7, and for modulating boilers the oversize factor is calculated based on the ratio of the heating capacity to the average design heating requirement. In ASHRAE 103–2017, the oversize factor at the maximum input rate is assigned as 0.7 for both modulating and non-modulating models.

Kinetics also argued that for combined heat and hot water boilers in the conditioned space, heat lost in summer while heating domestic water should have an impact on air conditioning cooling loads. Energy Kinetics asserted that AFUE does not apply to boilers that provide both space heating and domestic hot water. The commenter also asserted that use of AFUE for both boilers and furnaces creates the false implication that the products can be compared, but that they cannot be compared due to differences in distribution losses. (Energy Kinetics, No. 3 at p. 2)

As noted previously, EPCA defines AFUE as the efficiency descriptor for boilers. (42 U.S.C. 6291(20)) Therefore, DOE must use AFUE as the efficiency metric for boilers and cannot change to thermal efficiency and idle loss as suggested by Energy Kinetics. Further, EPCA prescribes a design requirement that hot water boilers must include an automatic means for adjusting water temperature, which will limit idle losses and reduce the potential for energy savings from further accounting for such losses as a separate metric or within the AFUE metric. (42 U.S.C. 6295(f)(3)(A)–(B)) Idle loss could be further addressed in the context of AFUE as opposed to evaluating a separate metric. At present time, DOE does not have sufficient data to propose prescribed values that would address idle loss. DOE seeks further comment from interested parties regarding whether idle losses could be better reflected in the test method. For the reasons discussed, DOE is not proposing to adopt an idle loss or thermal efficiency metric, or to incorporate a specific test for idle loss in the AFUE test method at this time.

Regarding the other issues identified with the AFUE metric, DOE notes that certain control systems, such as modulating burner control systems, are accounted for in the test procedure with specific instructions regarding how such units should be tested. (*See,* for example, sections 7.4 and 10.1 of appendix N, which provide specific instructions for testing and calculating AFUE of modulating boilers.) As discussed in the preceding paragraph, other control systems, such as an automatic means for adjusting water temperature, are required by prescriptive standard. (42 U.S.C. 6295(f)(3)(A)–(B)); 10 CFR 430.32(e)(2)(iii)(A). Energy Kinetics did not provide specific comments or recommendations regarding what additional control systems should be accounted for. DOE is not proposing additional changes related to controls.

Regarding the assumption that boilers are installed indoors, DOE notes that EPCA states that AFUE for boilers that are not weatherized is determined based on the assumption that they are located within the heated space. (*See* 42 U.S.C. 6291(20)(C).) Regarding boilers that provide both space heating and domestic hot water, DOE notes that such products can be tested separately for AFUE for space heating and for their water heating performance under the DOE test methods for water heaters. As discussed in section III.A of this document, an industry test method for combined heating and domestic hot water boiler systems (ASHRAE 124) is currently under revision, and DOE plans to evaluate the industry test method further once it is finalized and available. Lastly, regarding both boilers and furnaces using AFUE, DOE notes that EPCA prescribes AFUE as the metric for both furnaces and boilers. (*See* 42 U.S.C. 6291(20)).

D. Updates to Industry Standards

As discussed, ANSI/ASHRAE 103–1993 is referenced throughout appendix N for various testing requirements pertaining to determination of the AFUE of consumer boilers. Appendix N also references certain sections of IEC 62301 (Second Edition) for determining the electrical standby mode and off mode energy consumption, and ASTM D2156–09 (Reapproved 2013) for adjusting oil burners. DOE noted in the May 2020 RFI that in the case of IEC 62301, the version of the standard that is currently incorporated by reference is still the most recent version; and in the case of ASTM D2156–09, the most recent iteration of the standard is a version reapproved in 2018 that did not contain any changes from the 2009 version. 85 FR 29352, 29355. DOE did not receive any comments pertaining to its incorporation by reference of IEC 62301 or ASTM D2156–09 and continues to view these as the appropriate standards to reference. DOE proposes to maintain the current reference to IEC 62301, and to update the reference to ASTM D2156–09 to reflect the version that was reapproved in 2018.

As discussed, ANSI/ASHRAE 103–1993 provides procedures for determining the AFUE of consumer boilers (and furnaces). As mentioned previously, ANSI/ASHRAE 103–1993 has been updated multiple times since 1993. In the rulemaking that culminated in the January 2016 final rule, DOE initially proposed to incorporate by reference the most recent version of ANSI/ASHRAE 103 available at the time (*i.e.,* ANSI/ASHRAE 103–2007), but ultimately declined to adopt the proposal in the final rule based on concerns about the impact that changing to ANSI/ASHRAE 103–2007 would have on AFUE ratings of products distributed in commerce at that time. 81 FR 2628, 2632–2633 (Jan. 15, 2016). DOE stated that further evaluation was needed to determine the potential impacts of ANSI/ASHRAE 103–2007 on the measured AFUE of boilers. *Id.* DOE theorized that ANSI/ASHRAE 103–2007 might better account for the operation of two-stage and modulating products and stated that the Department may further investigate adopting it or a successor test procedure in the future. *Id.*

After the January 2016 final rule, ANSI/ASHRAE 103 was again updated to the current version (*i.e.,* ANSI/ASHRAE 103–2017). In the May 2020 RFI, DOE identified several substantive differences between ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017 that pertain to consumer boilers and requested further comment on the differences between ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017. 85 FR 29352, 29355. These differences included that:

1. ASHRAE 103–2017 includes calculations for determining the average on-time and off-time per cycle for two-stage and modulating boilers, rather than assigning fixed values as in ASHRAE 103–1993;

2. ASHRAE 103–2017 includes calculations for the part-load at maximum and reduced fuel input rates of condensing two-stage and modulating boilers when the heat up and cool down tests are omitted as per section 9.10, while ASHRAE 103–1993 does not include these calculations; [10]

3. ASHRAE 103–2017 increases post-purge time from less than 5 seconds in ASHRAE 103–1993 to less than or equal to 30 seconds for determining whether section 9.10, ''Optional Test Procedures for Conducting Furnaces and Boilers that have no OFF-Period Flue Loss,'' is applicable for units with no measurable airflow through the combustion chamber during the burner off-period, and it also makes the application for the default draft factor values in section 9.10 a requirement rather than optional;

4. ASHRAE 103–2017 changes the method for determining national average burner operating hours (BOH), average annual fuel energy consumption (EF), and average annual auxiliary electrical energy consumption (EAE), especially for two-stage and modulating products, based on a 2002 study from NIST.

Id.

[10] DOE published a final rule in the **Federal Register** on July 10, 2013, that added equations to appendix N to calculate the part-load efficiencies at the maximum input rate and reduced input rates for two-stage and modulating condensing furnaces and boilers when the manufacturer chooses to omit the heat-up and cool-down tests under the test procedure. 78 FR 41265. The equations in ASHRAE 103–2017 are identical to those in appendix N.

DOE requested information on whether any differences not identified by DOE in the May 2020 RFI would impact the consumer boiler test procedure. *Id.*

BWC stated that the only difference between ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017 is for the indoor air temperature requirements and noted that the 1993 version of the standard specifies a temperature of 70 °F, while the 2017 version simply references the actual indoor air temperature. (BWC, No. 4 at p. 2) BWC further stated that it believes this difference accounts for only slight changes in calculation with little to no added burden in the test procedure. (BWC, No. 4 at p. 2) Lochinvar identified a change that was not discussed in the RFI, which is that the oversize factor for non-condensing, modulating boilers has been changed from being calculated based on the design heating requirement (''DHR'') to a constant oversize factor of 0.7. Lochinvar also explained that the constant oversize factor removes variations based on where the boiler outputs fall in the ADHR ranges and is more representative and provides more consistent AFUE results across the range of boiler output capacities. (Lochinvar, No. 8, at p. 2)

While DOE acknowledges the change discussed by BWC, in that the equations in ANSI/ASHRAE 103–2017 refer to the indoor air temperature as the variable ''T_{IA},'' rather than defined as ''70,'' DOE notes that Section 11.2.10.1 of ANSI/ASHRAE 103–2017 defines T_{IA} as 70 °F, the ''assumed average indoor air temperature.'' Therefore, the use of T_{IA} in place of ''70'' in subsequent sections of ANSI/ASHRAE 103–2017 is equivalent to the use of ''70'' in each analogous equation in ANSI/ASHRAE 103–1993.

DOE also acknowledges the change identified by Lochinvar, and notes that this change resolves in part an issue with the calculations for modulating, condensing models in ANSI/ASHRAE 103–1993. In the May 2020 RFI, DOE discussed that the calculations in ANSI/ASHRAE 103–1993 either rely on certain values calculated for non-condensing, non-modulating boilers to determine the AFUE of condensing, modulating boilers, or result in a circular reference. 85 FR 29352, 29357. Changing the oversize factor to a constant 0.7 for condensing, modulating boilers, rather than basing it on an equation, appears to partially, but not fully, resolve the potential circular reference in ANSI/ASHRAE 103–2017. In further reviewing the calculations in ANSI/ASHRAE 103–2017, DOE interprets them to rely on certain values calculated for non-condensing, non-modulating boilers to determine the AFUE of condensing, modulating boilers to avoid a circular reference.

Specifically, the issue arises within the calculation of steady state efficiencies at maximum and minimum input rate, which depends in part on the steady-state heat loss due to condensate going down the drain at the maximum and reduced input rates. (*See* Section 11.5.7.3 of ANSI/ASHRAE 103–2017, which refers to Section 11.3.7.3.) The steady-state heat loss due to condensate going down the drain at the maximum and minimum input rates is calculated in part based on the national average outdoor air temperature at the maximum and minimum input rates. (*See* Section 11.5.7.2 of ANSI/ASHRAE 103–2017, which refers to Section 11.3.7.2.) The national average outdoor air temperatures at the maximum and minimum input rates are both a function of the balance point temperature. (*See* Section 11.5.8.3 of ANSI/ASHRAE 103–2017, which refers to Section 11.4.8.3.) The balance point temperature is calculated based on the oversize factor at maximum input rate (which is, as discussed previously, a constant value in ANSI/ASHRAE 103–2017) and the ratio of the heating capacity at the minimum input rate to the heating capacity at the maximum input rate. (*See* Section 11.5.8.4 of ANSI/ASHRAE 103–2017, which references Section 11.4.8.4.) The heating capacities at the minimum and maximum input rates are calculated based in part on the steady-state efficiencies at minimum and maximum input rates, respectively. (*See* Section 11.5.8.1 of ANSI/ASHRAE 103–2017, which references Section 11.4.8.1.) If the calculations were interpreted to refer back to the steady-state efficiencies at minimum and maximum input rates for a modulating, condensing model, as determined by Section 11.5.7.2 of ANSI/ASHRAE 103–2017, a circular reference would result. However, since there is no specific instruction to use the values as calculated by Section 11.5.7.2, DOE interprets ANSI/ASHRAE 103–2017 to instead instruct that the steady-state efficiency at maximum and reduced input rates be determined as specified in Section 11.4.8.1, which refers to Section 11.4.7, which in turn refers to Section 11.2.7 for the calculation of steady-state efficiency for non-condensing, non-modulating boilers. The steady-state efficiencies at maximum and minimum input calculated using Section 11.2.7 can then be used to obtain values for output capacities at the maximum and reduced input, which are needed to calculate the balance point temperature, the average outdoor air temperature at maximum and minimum input, and finally the heat loss due to condensate going down the drain at maximum and minimum input rates. DOE proposes to add provisions to clarify the approach for calculating steady-state efficiencies at maximum and minimum input rates for condensing, modulating boilers using ANSI/ASHRAE 103–2017.

DOE seeks comment on its proposal to clarify the calculation of steady-state efficiencies at maximum and minimum input rates for condensing, modulating boilers using ANSI/ASHRAE 103–2017.

DOE also considered the impact of the change in oversize factor from a calculated value to a constant value. DOE analysis suggests that changing the oversize factor from being determined by an equation to being specified as a constant value of 0.7 is unlikely to have a substantive impact on AFUE ratings, as DOE calculations indicate the AFUE value is not particularly sensitive to changes in the oversize factor value. For example, DOE reviewed test data for three modulating, condensing boilers and found that the change in oversize factor from a calculated value, as specified in ANSI/ASHRAE 103–1993, to 0.7 changed the AFUE rating by 0.01 AFUE percentage points or less for all 3 models. DOE also examined more extreme scenarios for these boilers, in which DOE assigned oversize factors from a minimum of 0 to a maximum of 1.31 and found that the resulting AFUE values differed by only up to 0.07 AFUE percentage points as compared to the AFUE with the assigned 0.7 oversize factor, and only up to 0.13 AFUE percentage points when comparing the AFUE result at the upper and lower bounds. These minimum and maximum oversize factors correspond to the minimum and maximum values that would result from calculation based on the procedure for determining these values in ANSI/ASHRAE 103–1993 (*i.e.,* heating capacity divided by design heating requirement minus one; *see* Section 11.4.8.2 of ANSI/ASHRAE 103–1993).

As such, DOE is proposing to adopt the constant 0.7 oversize factor through incorporation by reference of ANSI/ASHRAE 103–2017. Accordingly, DOE is also proposing to remove calculation requirements corresponding to multiple degrees of oversizing.

DOE also requested information on whether the differences between ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017 identified in the May 2020 RFI would impact the measured AFUE,

and if so, DOE requested test data demonstrating the degree of such impact. DOE also requested comment on whether the updates to ANSI/ASHRAE 103 are appropriate for adoption in the Federal test procedure for consumer boilers, whether the changes would allow for more representative energy efficiency ratings, and whether the changes would increase test burden. 85 FR 29352, 29355–29356.

AHRI, Rheem, BWC, Lochinvar, CA IOUs, and NEEA supported updating the test procedure to incorporate by reference ANSI/ASHRAE 103–2017. (AHRI, No. 6 at p. 3; Rheem, No. 9 at p. 3; BWC, No. 4 at p. 2; Lochinvar, No. 8 at p. 2; CA IOUs, No. 7 at p. 5; NEEA, No. 10 at p. 1) AHRI, Rheem, and Lochinvar encouraged DOE to gather data on whether the differences between the 1993 and 2017 versions of ANSI/ASHRAE 103–1993 would impact measured AFUE. (AHRI, No. 6 at p. 3 ; Rheem, No. 9 at p. 3; Lochinvar, No. 8 at p. 2)

AHRI stated that it does not believe that adopting the 2017 edition of ANSI/ASHRAE 103 would significantly affect the efficiency ratings or change the test burden. AHRI commented that members did not have sufficient time to reliably assess the impact on measure efficiency and encouraged DOE to generate data to determine if adopting ASHRAE 103–2017 would have any effect on the appliance efficiency rating. (AHRI, No. 6 at p. 3) Similarly, Rheem stated that it does not believe that adopting the 2017 edition of the ANSI/ASHRAE 103 would significantly affect the efficiency ratings, although retesting existing models to the new edition would temporarily increase the test burden. (Rheem, No. 9 at p. 3) The CA IOUs also stated that it believed that ASHRAE 103–2017 is more representative of typical operation for two-stage, modulating, and condensing boiler technologies and that updating to this standard should not create significant additional burden, as the majority of changes are reflected in the calculation methodology rather than the test procedure. (CA IOUs, No. 7 at p. 5)

Lochinvar asserted that the testing methods in ANSI/ASHRAE 103–2017 represent a significant improvement as compared to those referenced by DOE in ANSI/ASHRAE 103–1993 for residential boilers, and cited the use of calculated values rather than referencing graphs, more realistic on- and off-cycle times, and the uniform oversize factor regardless of output rate as providing a more representative average use cycle and more repeatable results. (Lochinvar, No. 8 at p. 2) Lochinvar stated that updating to the 2017 version may result in variations of up to 0.5 percent AFUE in either direction for any given model. (*Id.*) Lochinvar also stated that it does not believe that referencing ANSI/ASHRAE 103–2017 would change the measured efficiency enough to result in substantially different efficiency ratings as compared to those currently certified, and, therefore, does not believe that retesting would be necessary if the referenced industry standard were updated. (*Id.* at pp. 2–3)

BHI tentatively supported updating to ANSI/ASHRAE 103–2017, with the caveat that it has not fully studied the impacts of the potential changes. BHI also requested that DOE provide industry with a set of sample calculations for each type of boiler covered by the standard, if DOE adopts ASHRAE 103–2017, to ensure that everyone is operating from identical methods of calculating AFUE or provide industry with a vetted software tool. (BHI, No. 11 at p. 2)

NEEA stated that an update to ANSI/ASHRAE 103–2017 would better capture the performance of two stage and modulating units. (NEEA, No. 10 at pp. 1–2) NEEA explained that while the update my affect AFUE ratings, the revised ratings will better reflect annual energy performance leading to a more accurate representation of boiler energy use. *Id.*

Weil McLain recommended against updating to ANSI/ASHRAE 103–2017, arguing that the 1993 version of ASHRAE 103 is still appropriate and that the resulting increases in accuracy and resolution of the test method would not increase the accuracy of the test procedure due to the reporting of AFUE to the tenth of a percent, nor would be worth the burden of changing the test procedure. (Weil McLain, No. 5 at p. 3)

In this rulemaking, DOE evaluated whether the differences between the 1993 and 2017 editions of ASHRAE 103 would result in differences in the measured AFUE.

DOE's preliminary review of prior test data has indicated a potential for difference in AFUE for certain units, specifically two-stage or modulating models, due to the changes to the cycle times between the two editions. In the development of the January 2016 final rule, DOE conducted preliminary testing to examine the impacts of the changes in cycle times between the 1993 and 2007 editions of ASHRAE 103, which are comparable to the changes between the 1993 and 2017 editions of ASHRAE 103. 81 FR 2628, 2633. Data collected for the January 2016 final rule for three models of condensing, modulating boilers showed that the changes in on-cycle and off-cycle times resulted in changes in AFUE of 0.11, −0.50, and 0.22 percent, respectively. For two models of non-condensing, modulating boilers, calculating the AFUE based on the on-cycle and off-cycle times in ANSI/ASHRAE 103–2007 changed the AFUE by 0.11 and −0.14 percent, respectively.[11]

In addition, AHRI submitted data for testing it had conducted in response to the changes proposed in a test procedure NOPR for consumer furnaces and boilers that was published by DOE on March 11, 2015 (80 FR 12876). The data from AHRI, in relevant part, examined the change in AFUE resulting from using ANSI/ASHRAE 103–2007 as compared to ANSI/ASHRAE 103–1993 for three units. The data showed changes in AFUE of −0.05 percent for a non-condensing, modulating unit, and −0.03 and 0.23 percent for two condensing, modulating units. (*See* EERE–2012–BT–TP–0024–0036 at p. 10)

In reviewing ANSI/ASHRAE 103–2017 as compared to ANSI/ASHRAE 103–1993, DOE tentatively concludes that the improvements included in ANSI/ASHRAE 103–2017 provide a more representative average use cycle for consumer boilers, and in particular, for two-stage and modulating boilers. Specifically, DOE expects that the use of calculated values rather than referencing graphs, the specification of more representative on- and off-cycle times, and the specification of a constant oversize factor regardless of output rate would improve the results obtained from ANSI/ASHRAE 103–2017 as compared to ANSI/ASHRAE 103–1993.

Therefore, DOE proposes to update the reference to ANSI/ASHRAE 103 in the test procedure for consumer boilers to the 2017 edition. DOE tentatively concludes that a change from ANSI/ASHRAE 103–1993 to ANSI/ASHRAE 103–2017 would not materially alter the burden or cost of conducting an AFUE test. Additional details on DOE's assessment of the burden associated with this proposed change are in section III.G.1 of this document. DOE is proposing changes only with respect to consumer boilers, and not for consumer furnaces. DOE is not proposing to amend the reference to ANSI/ASHRAE 103–1993 for the provisions applicable to consumer furnaces. As discussed, to implement this change for boilers only, DOE proposes to move the test provisions for consumer boilers to a new appendix, appendix EE, ''Uniform

[11] These data were presented at a public meeting for the March 11, 2015 NOPR pertaining to test procedures for furnaces and boilers and can be found at: *www.regulations.gov/document/EERE-2012-BT-TP-0024-0021.*

Test Method for Measuring the Energy Consumption of Boilers.''

Corresponding to the updated industry standard, DOE proposes to make several modifications in the proposed new appendix EE as compared to the current test method in appendix N. As discussed in section III.B of this document, DOE proposes to remove from new appendix EE definitions for ''control'' and ''isolated combustion system,'' as these definitions are included in ANSI/ASHRAE 103–2017. DOE also proposes to remove the sections for calculating part-load efficiency at reduced and maximum fuel input rates (currently sections 10.2 and 10.3 in appendix N) from proposed new appendix EE. These sections were initially adopted by DOE because ANSI/ASHRAE 103–1993 did not provide calculations for the scenario allowed under section 9.10 of ASHRAE 103 (which is included in both the 1993 and 2017 versions), in which the heat up and cool down tests can be optionally skipped provided that certain criteria are met. ANSI/ASHRAE 103–2017 added equations to address that scenario that are identical to those previously adopted by DOE, rendering those sections duplicative. DOE is also proposing minor changes to the test method for models with post-purge times longer than 3 minutes, consistent with the updates included in ANSI/ASHRAE 103–2017. DOE is also proposing changes to the calculations in section 10, consistent with changes in ANSI/ASHRAE 103–2017. DOE notes that appendix N includes certain clarifications to ANSI/ASHRAE 103–1993 (*e.g.,* to specify a reference to a manufacturer's I&O manual rather than a manufacturer recommendation), and DOE proposes to maintain those clarifications in new appendix EE to the extent they apply to ANSI/ASHRAE 103–2017.

As discussed earlier in this section, test data indicate that the update to the 2017 edition of ASHRAE 103 could result in changes to the measured AFUE of two-stage and modulating boilers ranging from −0.50 percent to 0.23 percent, with no discernable trend in the direction or magnitude of change. DOE also notes that several commenters indicated that incorporating ANSI/ASHRAE 103–2017 would likely not significantly impact rated values.

DOE seeks further comment on its proposal to update the incorporation by reference of ASHRAE 103 to the most recent version (*i.e.,* ANSI/ASHRAE 103–2017) and in particular the potential impact on ratings and whether retesting would be required.

E. Test Procedure Requirements

1. Ambient Conditions

The current consumer boilers test procedure specifies that the ambient air temperature during testing must be between 65 °F and 100 °F for non-condensing boilers, and between 65 °F and 85 °F for condensing boilers. *See* section 7.0 of appendix N and Section 8.5.2 of ANSI/ASHRAE 103–1993. In addition, the relative humidity cannot exceed 80 percent during condensate measurement. Section 8.0 of appendix N and 9.2 of ANSI/ASHRAE 103–1993.

In the May 2020 RFI, DOE requested comment and data on the effects of ambient temperature and relative humidity on AFUE results, whether the current ranges of allowable conditions adversely impact the representativeness of AFUE values or repeatability of AFUE testing, and whether a narrower range of allowable ambient conditions would increase testing burden. 85 FR 29352, 29356.

AHRI and Rheem encouraged DOE to defer to the ambient conditions specified in ANSI/ASHRAE 103–2017, and stated that any changes would mainly impact condensing models. (AHRI, No. 6, at p. 4; Rheem, No. 9 at p. 3) Lochinvar stated that the prior record and DOE conclusions pertaining to ambient temperature ranges and relative humidity limits remain valid and that further revisions are not necessary. (Lochinvar, No. 8 at p. 3) Lochinvar also asserted that tightening ambient condition tolerances could disproportionately impact small businesses, as they are less likely to be able to absorb the costs of equipment to maintain such ambient conditions. (Lochinvar, No. 8 at p. 6) Weil McLain and BHI also supported the use of industry consensus test procedures and recommended maintaining the range of operating conditions established in industry standards. (Weil McLain, No. 5 at p. 4; BHI, No. 11 at p. 2)

CA IOUs recommended that DOE narrow the range of allowable ambient temperature to between 55 °F and 75 °F during the test, with a tolerance of ±2 °F, to better represent field conditions. (CA IOUs, No. 7 at p. 4) NEEA also recommended that DOE update ambient and combustion air temperatures to better reflect real world conditions that exist in basements, garages, or semi-conditioned spaces and operate during winter months when temperatures are colder. (NEEA, No. 10 at p. 2) Specifically, NEEA suggested limiting the range of ambient air temperatures to be reflective of temperatures in spaces where consumer boilers are likely to be installed; limiting the range of combustion air temperatures to reflect the likely conditioners boilers will see (*i.e.* reflective of the outside air temperature for condensing products; and limit the range of allowable conditions overall to reduce the opportunities for gaming the test procedure and ensure consistency of ratings across multiple tested products. (NEEA, No. 10 at p. 2) NEEA explained that the ambient air temperature and the combustion air temperature are likely to affect the boiler's performance and will affect radiation and convection losses and combustion efficiency, respectively. (NEEA, No. 10 at p. 2)

In the January 2016 final rule, DOE investigated concerns regarding the ambient air temperature and humidity ranges allowed by the test method. 81 FR 2628, 2638. In that rulemaking, some commenters raised concerns that the wide range of allowable ambient conditions could impact test results, and that the ranges were initially developed based on laboratory conditions that are now outdated, (*i.e.,* more closely controlled conditions may now be achievable). *Id.* DOE had tested one non-condensing boiler at several ambient conditions and found that the effects on AFUE were not statistically significant. DOE also conducted a series of eight AFUE tests on a condensing, modulating unit and found that the variations in AFUE could not be definitively attributed to changes in ambient conditions based on the data. 80 FR 12875, 12890 (Mar. 11, 2015) Therefore, DOE did not propose to update the ambient conditions in the NOPR that preceded the January 2016 final rule and stated in the January 2016 final rule that the impact of ambient conditions on AFUE values warranted further study, but that DOE did not have adequate data to justify changing the test procedure to narrow the ambient temperature or humidity ranges. *Id.*

In response to that NOPR, and again in response to the May 2020 RFI, BHI provided test data for a single condensing boiler which showed a change in AFUE of 1.3 percent when the relative humidity was changed from approximately 30 percent to 70 percent. BHI did not support changing the ambient temperature or humidity limitations in ANSI/ASHRAE 103–2017, stating in response to the May 2020 RFI that minimal changes should be made to industry standards. (BHI, No. 11 at pp. 2, 11 [12])

After considering these comments and test data, DOE tentatively concludes that it lacks sufficient evidence to determine

[12] See also Docket No. EERE–2012–BT–TP–0024–0035 at p. 7.

that ambient conditions affect AFUE to the extent that a model tested under different ambient conditions within the current allowable bounds of the test method could have significantly different AFUE ratings. Although BHI provided test data for a single unit showing a difference, DOE notes that DOE's previous test data, obtained from multiple units, did not indicate conclusively that ambient test conditions within the current bounds cause substantive differences in AFUE. Therefore, DOE is not proposing to change the ambient test condition requirements.

2. Combustion Airflow Settings

In the course of the rulemaking for the January 2016 final rule, to provide for greater consistency in burner airflow settings during testing, DOE proposed specifying that the excess air ratio, flue oxygen (''O_2'') percentage, or flue carbon dioxide (''CO_2'') percentage be within the middle 30th percentile of the acceptable range specified in the I&O manual. 80 FR 12876, 12883, 12906 (Mar. 11, 2015). In absence of a specified range in the I&O manual, DOE proposed requiring the combustion airflow to be adjusted to provide between 6.9 percent and 7.1 percent dry flue gas O_2, or the lowest dry flue gas O_2 percentage that produces a stable flame, no carbon deposits, and an air-free flue gas carbon monoxide (''CO'') ratio below 400 parts per million (''ppm'') during the steady-state test described in Section 9.1 of ANSI/ASHRAE 103–2007, whichever is higher. 80 FR 12876, 12906. However, after considering comments regarding the representativeness of the proposal and the potential impact on rated AFUE, DOE determined that further study was needed to determine how such changes would impact AFUE ratings. 81 FR 2628, 2636.

In the May 2020 RFI, DOE requested comment on whether more specific instructions for setting the excess air ratio, flue O_2 percentage, and/or flue CO_2 percentage should be provided in the consumer boilers test procedure, and if so, what those instructions should entail. 85 FR 29352, 29356. DOE was particularly interested in understanding whether such a change would improve the representativeness of the test method, and whether it would impact test burden.

AHRI suggested that for boilers with manually adjustable airflows, the CO_2 level be set to within 0.1 percent of the CO_2 level, if specified, or within 0.2 percent of the maximum if a range is given. In addition, the commenters recommended that flue CO levels be maintained below 400 ppm and, for oil boilers, that the smoke level not exceed smoke spot number 1 as measured by ASTM D–2156.[13] The commenters suggested that if those conditions are not met at the CO_2 levels described above, then the highest possible CO_2 level that meets the CO and smoke criteria (as applicable) should be used. (AHRI, No. 6 at p. 4) Rheem explained that more specific instructions for setting the excess air ratio, the flue O_2 level, and/or the flue CO_2 level should be added to the test procedure. Rheem further stated its support for the proposed language included with AHRI's comments. (Rheem, No. 9 at p. 3)

BWC stated that the AHRI residential boiler certification program operations manual sufficiently addresses setup and adjustment of O_2 and CO_2 and urged DOE to harmonize the Federal test procedure with these instructions in the AHRI operations manual. BWC explained that it would be more representative of how boilers will be setup and operate in the field. BWC stated that, for premix boilers, when O_2 and CO_2 values are not listed in the setup instructions the current test procedure requires conducting the tests at the CO air-free (COAF) limit, which is unrepresentative of manufacturer-recommended field setup, and could lead to inaccurate AFUE ratings. BWC stated that it believes capturing the original CO_2 level the unit was set at during its initial certification would provide greater consistency to test results. (BWC, No. 4 at p. 2)

Lochinvar suggested that, for boilers with adjustable combustion airflow, the CO_2 should be set to either the I&O manual specification or, if a range is specified, to the upper limit of the range. If no CO_2 setting is specified, Lochinvar suggested testing in the as-found condition. (Lochinvar, No. 8 at p. 3) Lochinvar also recommended the following requirements be added to the test method: (1) For oil or power gas burner units with natural or induced draft, the draft in the firebox be as specified in the manufacturer's I&O instructions; (2) on forced draft or pressure-fired boilers, the pressure at the vent connection be as specified in the manufacturer's I&O instructions, or when a range of pressure is provided combustion shall be set to the recommended pressure that results in the highest CO_2; (3) when tests are required at reduced input rates and I&O instructions include instruction for adjusting the air/fuel ratio, firebox pressure, or vent pressure at the minimum firing rate, the adjustments shall be made as specified in the previous paragraphs but to the values provided for the minimum firing rate, or otherwise, no adjustments to the air/fuel ratio, firebox pressure or vent pressure at the minimum firing rate shall be made; and (4) no firebox or vent pressure adjustments shall be made to outdoor boilers. (Lochinvar No. 8 at pp. 3–4)

CA IOUs requested that DOE add explicit guidelines for flue O_2, CO_2, or excess air ratios, but did not provide specific suggestions. (CA IOUs, No. 7 at p. 5) BHI expressed concern that the addition of CO_2 adjustment requirements would create significant burden in the form of requiring existing boilers to be retested, and that this change would result in significant reductions in AFUE ratings across the market. BHI recommended that if DOE elects to make this change, conditions similar to those recommended by AHRI should be adopted. (BHI, No. 11 at p. 3)

Weil McLain also expressed concern with the adoption of a requirement for CO_2 during testing for boilers with manually adjustable airflow, asserting that it could introduce an advantage or disadvantage to this product type relative to others that serve the same market (*i.e.,* including more combustion property requirements on one category of regulated product and not all gas-fired categories of regulated products), and may limit technologies and future enhancements in the field of combustion science. Weil-McLain stated that if the DOE pursues this topic, it recommended that DOE take a combustion technology neutral position by recognizing that: (A) Increasing the combustion CO_2 is ultimately constrained by a corresponding increase in the percentage of CO in the flue products and (B) there are gas-fired appliances for which the CO_2 is designed into the combustion system and require physically changing or modifying components to change the CO_2. Weil-McLain instead recommended establishing a limit of 400 ppm of CO on an air-free basis without additional constraints on combustion products for gas-fired appliances with the ability to adjust the CO_2. (Weil McLain, No. 5 at pp. 4–5)

[13] Section 3.1.1 of ASTM D2156–09 (R2018) defines ''smoke spot number, n'' as the number of the spot on the standard scale most closely matching the color (or shade) of the test spot. In section 4, ASTM D2156–09 (R2018) summarizes the test method for determining the smoke spot number as follows: A test smoke spot is obtained by pulling a fixed volume of flue gas through a fixed area of standard filter paper. The color (or shade) of the spot thus produced is visually matched with a standard scale, and the smoke density is expressed as a ''smoke spot number.''

After considering these comments, DOE tentatively concludes that it lacks sufficient data and information to indicate that establishing a requirement for setting the excess air ratio, flue O_2 percentage, and/or flue CO_2 percentage would provide ratings that are more representative than the ratings provided under the current approach. Therefore, DOE has tentatively determined to maintain the current test procedure and is not proposing to establish a requirement for setting the excess air ratio, flue O_2 percentage, and/or flue CO_2 percentage.

3. Input Rates for Step Modulating Boilers

Appendix N includes a number of specific provisions for consumer boilers with step modulating controls. Boilers with step modulating controls are capable of operating at reduced input rates (*i.e.,* less than that maximum nameplate input rate) and gradually or incrementally increasing or decreasing the input rate as needed to meet the heating load. The test procedure currently requires step modulating boilers to be tested at the maximum rate and a minimum (*i.e.,* ''reduced'') input rate for the steady-state test (referencing Section 9.1 of ASRHAE 103–1993), the reduced input rate for the cool-down test (referencing Section 9.5.2.4 of ASRHAE 103–1993), and the reduced input rate for the heat-up test (referencing Section 9.6.2.1 of ASRHAE 103–1993). In addition, both the optional tracer gas test and the measurement of condensate under cyclic conditions, when conducted, are performed at the reduced input rate (referencing Sections 9.7.5 and 9.8 of ANSI/ASHRAE 103–1993, respectively). ANSI/ASHRAE 103–2017 contains the same input rate requirements for modulating boilers as ANSI/ASHRAE 103–1993.

In the May 2020 RFI, DOE requested comment on whether the existing provisions for testing step modulating boilers appropriately reflect the performance of such boilers. If not, DOE sought specific recommendations on the changes that would be necessary to make the test procedure more representative for such products. 85 FR 29352, 29357.

AHRI, Rheem, BWC, and Weil McLain commented that the current federal test procedure for modulating units is representative and appropriate. (AHRI No. 6 at p. 5; Rheem, No. 9 at p. 4; BWC, No. 4 at p. 2; Weil McLain, No. 5 at p. 5)

Based on the comments received and absent information to the contrary, DOE is not proposing changes for step modulating units to account for operation at any additional input rates beyond those already specified by the test procedure.

4. Return Water Temperature

The test procedure at appendix N currently requires a nominal return water temperature of 120 °F to 124 °F for non-condensing boilers and 120 °F ± 2 °F for condensing boilers. (*See* section 7.0 of appendix N and Sections 8.4.2.3 and 8.4.2.3.2 of ANSI/ASHRAE 103–1993.)

CA IOUs recommended that DOE adopt multiple entering water temperatures for condensing and non-condensing boilers, respectively, consistent with the methodology developed by the ASHRAE 155P Committee for testing and rating commercial boilers. (CA IOUs, No. 7 at p. 2)

On January 15, 2016, DOE published a final rule amending the energy conservation standards for consumer furnaces (the ''January 2016 ECS final rule''). 81 FR 2320. For its analysis for the January 2016 ECS final rule, DOE investigated the relationship between return water temperature and field performance, and developed adjustment factors to modify the AFUE based on expected return water temperatures. DOE developed adjustment factors for low, medium, and high return water temperature scenarios and estimated that, on average, AFUE would vary from the rated value by −2.66 percent to +3.15 percent depending on the model characteristics and return water temperature.[14] While DOE developed three return water temperature scenarios, there is a wide range of potential return water temperatures in the field. 81 FR 2320, 2354.

EPCA requires DOE to establish test procedures that are reasonably designed to produce test results which measure energy efficiency of a consumer boilers during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) DOE tentatively concludes that given the wide potential range of operating conditions, the single return water temperature specified in ANSI/ASHRAE 103–2017 provides an average value that allows for a comparison of performance at comparable rating conditions and is reasonably representative.

DOE seeks additional comment on whether the return water temperature in the current test method and ANSI/ASHRAE 103–2017 are representative and appropriate, and whether any specific changes to the required conditions could improve representativeness. DOE is also interested in receiving comment on the test burden that would result from changing the return water temperature(s) specified in the test procedure.

5. Active Mode Electrical Energy Consumption

As noted in section III.C of this document, for gas-fired and oil-fired boilers, AFUE accounts for fossil fuel consumption in active, standby, and off modes, but does not include electrical energy consumption.

In response to the May 2020 RFI, CA IOUs recommended that all of the active mode energy use should be accounted for; however, information on the active mode electrical energy use be reported separately, as is done for off mode and standby mode, to enable product differentiation and to identify best performing boilers regarding electrical energy consumption. (CA IOUs, No. 7 at p. 4)

As stated, AFUE does not include active mode or standby mode and off mode electrical consumption for gas-fired and oil-fired boilers. As such, active mode and standby mode and off mode electrical energy consumption is not a factor in determining whether a gas-fired or oil-fired boiler complies with the applicable energy conservation standard, and is therefore not required to be reported. The DOE test procedure includes provisions for determining the average annual auxiliary electrical energy consumption for gas-fired and oil-fired boilers (E_{AE}), as a separate metric from AFUE, that accounts for active mode, standby mode, and off mode electrical consumption. (*See* appendix N, section 10.4.3.) E_{AE} is referenced by the calculations at 10 CFR 430.23(n)(1) for determining the estimated annual operating cost for furnaces. However, the provisions at 10 CFR 430.23(n) include several incorrect references to sections in appendix N. DOE is proposing to correct the incorrect section references as part of this NOPR, but does not view this as a substantive change to the requirements of 10 CFR 430.23(n). Specifically, DOE proposes to change references to sections 10.2, 10.3, 10.4, and 10.5 of appendix N to reference sections 10.4, 10.5, 10.6, and 10.7 of appendix N, respectively.

[14] See chapter 7 of the January 2016 ECS Final Rule technical support document (Document No. 70 in Docket No. EERE–2012–BT–STD–0047), found online at *www.regulations.gov/document/EERE-2012-BT-STD-0047-0070.*

Although not required to be reported separately to DOE, to the extent that a manufacturer voluntarily chooses to make representations as to the active mode and standby mode and off mode electrical consumption of a gas-fired or oil-fired boiler, such representations must fairly disclose the results of testing according to the DOE test procedure. (42 U.S.C. 6293(c)(1))

6. Standby Mode and Off Mode

As discussed in section III.C of this document, separate metrics for power consumption during standby mode and off mode ($P_{W,SB}$ and $P_{W,OFF}$, respectively) are used to regulate standby mode and off mode energy consumption. These values are measured in accordance with the procedures in IEC 62301, with certain exceptions specified regarding test conditions, instrumentation requirements, and rounding requirements. (*See* appendix N, section 8.11.)

AHRI recommended that DOE consider streamlining the standby and off mode power consumption test procedure. (AHRI, No. 6 at p. 6) AHRI stated that it will investigate means to streamline the process and will submit a proposal, but AHRI did not have sufficient time to develop a proposal for this comment deadline. (AHRI, No. 6 at p. 6) DOE has not received further input or detail from AHRI on this issue prior to the issuance of this NOPR.

Lochinvar suggested that the standby mode and off mode test procedure be simplified by allowing a measurement of standby and off mode energy consumption using a calibrated power meter. (Lochinvar, No. 8 at p. 5)

EPCA requires that DOE amend test procedures to include standby mode and off mode energy consumption, ''taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission.'' (42 U.S.C. 6295(gg)(2)(A)) The DOE test method currently references IEC 62301, which provides instructions for measuring standby mode and off mode energy consumption. IEC 62301 provides several options for measuring the standby mode and off mode power consumption using either the ''sampling method,'' ''average reading method,'' or ''direct meter reading method.'' Although these methods vary, if the standby or off mode consumption is stable, each method can be completed in under 1 hour, and the sampling method can be completed in as little as 15 minutes. DOE has determined that the provisions in IEC 62301 provide an appropriate representation of standby mode and off mode energy consumption and are not unduly burdensome. *See generally* 77 FR 76831 (Dec. 31, 2012). The commenters did not present data to show that a simplified method could produce results equivalent to IEC 62301. For these reasons, DOE is not proposing to amend the test method for standby mode and off mode energy consumption.

DOE seeks further comment on whether a simplified approach for measuring standby mode and off mode electrical energy consumption is appropriate and would provide accurate, representative results that are comparable to those obtained with IEC 62301.

7. Full Fuel Cycle

Energy Kinetics stated that Full Fuel Cycle (''FFC'') efficiency and source efficiency analysis should be incorporated into the test procedure to allow for comparisons between direct fired heat and hot water systems and electric grid-based systems. Energy Kinetics argued that low electric power generation efficiency and high transmission and distribution losses create a false sense of high efficiency for vapor compression cycle heating equipment when compared to direct fired heating equipment. (Energy Kinetics, No. 3 at p. 3)

The FFC accounts for the energy consumed in extracting, processing, and transporting fuels. Generally, DOE uses the National Energy Modeling System (''NEMS'') as the basis for deriving the energy and emission multipliers used to conduct FFC analyses in support of energy conservation standards rulemakings. 77 FR 49701 (Aug. 17, 2012). DOE also uses NEMS to derive factors to convert site electrical energy use or savings to primary energy consumption by the electric power sector. NEMS is updated annually in association with the preparation of the Energy Information Administration's *Annual Energy Outlook.* The energy and emission multipliers used to conduct FFC analyses are subject to change each year.

DOE has previously considered a FFC metric in the January 2016 final rule. In that final rule, DOE concluded that a mathematical adjustment to the test procedure to account for FFC is not appropriate, because the mathematical adjustment to the site-based energy descriptor relies on information that is updated annually, which would require annual updating of the test method. 81 FR 2628, 2639. DOE maintains that position for this NOPR, as the circumstances are the same as when DOE last considered this issue for the January 2016 final rule, and accordingly is not proposing to amend the test procedure to reflect FFC.

8. Conversion Factor for British Thermal Units

Upon its review of the current appendix N test procedure, DOE observed inconsistencies in the existing formulas with respect to the values used to convert energy in watts (W) or kilowatts (kW) to Btu/h. For example, section 10.5 of the current appendix N indicates that the conversion factor from watt-hours to Btu (*i.e.,* watts to Btu/h) is 3.412. Simultaneously, section 10.4 of the current appendix N includes equations which include 341,300 as the conversion factor between Watts and Btu/h expressed for percentage points (essentially identifying the conversion factor from watt-hours to Btu as 3.413 instead of 3.412).

ANSI/ASHRAE 103–1993 also has these inconsistencies. (See, for example, section 4 of ANSI/ASHRAE 103–1993 and Appendix B of ANSI/ASHRAE 103–1993, which use 3.412 W/(Btu/h) and 3.413 W/(Btu/h), respectively). ANSI/ASHRAE 103–2017 strictly uses the 3.413 W/(Btu/h) conversion factor, however.

DOE notes that the conversion factor between watts and Btu/h is generally accepted to be 1 watt = 3.412142 Btu/h (or 1 Btu/h = 0.2930711 watts), as published in the ASHRAE Fundamentals Handbook.[15] This value is more appropriately rounded to 3.412 W/(Btu/h); therefore, DOE is making a correction to the proposed appendix N and appendix EE test procedures to use 3.412 W/(Btu/h) in all calculations. This correction is not expected to affect AFUE ratings.

F. Alternative Efficiency Determination Methods

At 10 CFR 429.70, DOE includes provisions for alternative efficiency determination methods (''AEDMs''), which are computer modeling or mathematical tools that predict the performance of non-tested basic models. They are derived from mathematical models and engineering principles that govern the energy efficiency and energy consumption characteristics of a type of covered equipment. These computer modeling and mathematical tools, when properly developed, can provide a relatively straight-forward and reasonably accurate means to predict the energy usage or efficiency characteristics of a basic model of a

[15] *2021 ASHRAE Handbook: Fundamentals (I–P Edition).* Peachtree Corners, GA: American Society of Heating, Refrigeration and Air-Conditioning Engineers, 2021.

given covered product or equipment and reduce the burden and cost associated with testing. 78 FR 79579, 79580 (Dec. 31, 2013; the ''December 2013 AEDM Final Rule'').

Where authorized by regulation, AEDMs enable manufacturers to rate and certify their basic models by using the projected energy use or energy efficiency results derived from these simulation models in lieu of testing. *Id* at 78 FR 79580. DOE has authorized the use of AEDMs for certain covered products and equipment that are difficult or expensive to test in an effort to reduce the testing burden faced by manufacturers of expensive or highly customized basic models. *Id.* DOE's regulations currently permit manufacturers of certain products and equipment to use AEDMs to rate their non-tested basic models (and combinations, where applicable) provided they meet the Department's regulations governing such use.

Weil-McLain encouraged DOE to allow use of AEDMs for consumer boilers similar to DOE's existing approach to allow AEDMs for commercial equipment (which DOE understands to refer to commercial package boilers) in order to reduce testing burden and speed the new product development process while maintaining the intent of EPCA. (Weil-McLain, No. 5 at pp. 1–2)

Currently, manufacturers of consumer boilers (or furnaces more generally) are not authorized to use an AEDM to determine ratings for these products. However, as discussed in section III.G.1 of this NOPR, manufacturers of cast iron boilers may determine AFUE for models at a capacity other than the highest or lowest of the group of basic models having identical intermediate sections and combustion chambers through linear interpolation of data obtained for the smallest and largest capacity units of the family. See 10 CFR 429.18(a)(2)(iv)(A). These provisions already provide manufacturers with an alternative method of rating consumer boilers without testing every model, and this alternative method reduces manufacturer test burden. Further, DOE explained in the December 2013 AEDM Final Rule that the AEDM provisions extend to those products or equipment which ''have expensive or highly-customized basic models.'' 78 FR 79579, 79580. The current AEDM provisions for commercial HVAC equipment (including commercial package boilers, for example) were in part the result of a negotiated rulemaking effort by the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in 2013. *Id.* Boilers designed for residential applications were not considered at the time.[16] 78 FR 79579. Hence, at this time, DOE does not have sufficient information to propose AEDM regulations for consumer boilers.

DOE requests further comment on whether AEDM provisions similar to those in place for commercial equipment would be necessary and appropriate for consumer boilers.

G. Certification Requirements

1. Linear Interpolation

Certification requirements for consumer boilers are provided at 10 CFR 429.18. These requirements, in part, allow for manufacturers to make representations of efficiency for basic models of sectional cast-iron boilers having identical intermediate sections and combustion chambers using linear interpolation of data obtained for the smallest and largest capacity units of the family. 10 CFR 429.18(a)(2)(iv)(A). AHRI and Lochinvar recommended that DOE extend the applicability of the existing linear interpolation provisions to boilers with any type of heat exchanger material. Specifically, AHRI and Lochinvar suggested that DOE include an additional section to the linear interpolation provisions stating, ''for each basic model or input capacity of boilers having similar geometric construction other than the higher or lowest input capacity in the group of basic models and is not a sectional cast-iron boiler.'' Both commenters proposed language which reflects these potential changes and also includes editorial updates. (AHRI No. 6 at p. 2; Lochinvar, No. 8, at p. 5)

DOE adopted the linear interpolation provision applicable to cast-iron boilers in a final rule published on April 13, 1979 (''April 1979 Final Rule''). 44 FR 22410. In the April 1979 Final Rule, DOE discussed the effects of sectional design of cast-iron boilers. Data submitted showed that the annual fuel utilization efficiency, energy consumption and estimated annual operating cost of sectional cast iron boilers (*i.e.,* cast iron boilers consisting of an assembly of two end sections and a variable number of identical intermediate sections, the number of intermediate sections depending on the desired heating capacity) can be accurately predicted by a linear interpolation based on data obtained from units having the smallest and largest number of intermediate sections. *Id.* 44 FR 22415. Therefore, little or no new information would result from any requirement for actual testing of middle-sized units. *Id.* In particular, data was submitted that showed the efficiencies measured according to DOE test procedures of 15 groups of sectional cast-iron boilers, with each group comprising boilers identical except for the number of intermediate sections. *Id.* An analysis of the data showed that linear interpolation for the middle-sized units resulted in errors in the measured efficiency of less than 2 percent compared to actual test results. *Id.* DOE concluded that since the tolerance of all measures of energy consumption had been established as 5 percent (applicable to the test procedures at that time), the reliability of measured energy consumption for the middle-sized units would not be significantly diminished by a linear interpolation based on data obtained from testing units having the smallest and largest number of intermediate sections and the same combustion chamber. *Id.* As discussed, the analysis of this issue in the April 1979 Final Rule was limited to cast-iron boilers, for which a robust sample of test data was provided to justify the use of a linear interpolation approach. Commenters have not provided any data or other information to demonstrate that using a linear interpolation method with other types of heat exchanger materials would produce representative test results. Lacking such data or information that would justify extending the approach to other materials, DOE is not proposing to extend the linear interpolation approach to boilers with other heat exchanger materials. If presented with such data or other information, DOE could consider such a change.

DOE seeks comment on data or other information that demonstrates that using a linear interpolation method for heat exchanger materials other than cast iron would produce representative test results.

2. Supplemental Test Instructions

For commercial boilers, DOE provides that a certification report may include supplemental testing instructions, if such information is necessary to run a valid test. Specifically, supplemental information must include any additional testing and testing set up instructions (*e.g.,* specific operational or control codes or settings), which would be necessary to operate the basic model under the required conditions specified by the relevant test procedure. 10 CFR 429.60(b)(4).

BHI suggested the creation of a repository for test instructions, similar to that currently in place for commercial boilers, instead of requiring a waiver to

[16] Working group meeting transcripts can be found at *www.regulations.gov* under Docket No. EERE–2013–BT–NOC–0023.

allow for use of specific test instructions not included in the I&O manual or the DOE test procedure. BHI stated that control systems are increasingly complex, which it asserted makes it impractical to run the test without special tools or codes in many cases. Further, BHI stated there are safety and reliability concerns with putting testing-specific instructions in the I&O manual. BHI also asserted that the use of the waiver process for these test instruction issues is burdensome, unnecessary, and is unjustifiably inconsistent with the test procedure rule for commercial boilers. (BHI, No. 11 at pp. 3–4)

BHI did not provide specific examples of test instructions that could not be included in the I&O manual due to concerns about safety or reliability, and that would thus need to be presented in a waiver. In addition, DOE has not received any petitions for waiver for any basic models of consumer boilers, indicating that there is not a problem with testing absent such additional information. Therefore, DOE is not proposing to establish a repository for test instructions for consumer boilers. Should testing of a consumer boiler necessitate controls or instructions other than those included in the I&O manual, manufacturers may petition for a waiver under the process established at 10 CFR 430.27.

DOE seeks further comment on whether supplemental test instructions are necessary for testing consumer boilers.

3. Standby Mode and Off Mode Certification

Lochinvar suggested that standby mode and off mode power consumption determined for a single basic model be permitted to be used for a product line. Lochinvar stated that the variation in standby and off mode power consumption between products of the same basic model are small enough to utilize the basic model's rating for the entire product line. (Lochinvar, No. 8 at p. 5)

DOE defines ''basic model'' in relevant part as meaning all units of a given type of covered product (or class thereof) manufactured by one manufacturer; having the same primary energy source; and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency. 10 CFR 430.2. If consumer boiler models are sufficiently similar that they can be grouped as a single basic model consistent with the definition above, it would be expected that these individual models would have nearly identical standby mode and off mode power consumption. In such an instance, standby mode and off mode power consumption determined for an individual model could be used for all individual models within the same basic model.

H. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

In response to the May 2020 RFI, Weil-McLain encouraged DOE to evaluate the cumulative burden upon industry based upon the average number of regulated product categories and active regulations for manufacturers during future product efficiency rulemakings. (Weil-McLain, No. 5 at p. 2)

EPCA requires that any amended test procedures prescribed must be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In proposing amendments to the test procedure for consumer boilers, DOE considers the burden to industry. In this NOPR, DOE proposes to amend the existing test procedure for consumer boilers by updating the references to industry standards to reference the most recent versions, *i.e.,* to reference ANSI/ASHRAE 103–2017 and ASTM D2156–09 (R2018). DOE has tentatively determined that these proposed amendments would not impact testing costs or increase burden, as discussed in the following paragraphs.

a. ASTM D2156–09 (R2018)

DOE proposes to incorporate by reference the most recent version of ASTM D2156–09, which was reaffirmed in 2018. Because the relevant provisions of ASTM D2156–09 (R2018) are unchanged from the version of ASTM D2156–09 currently incorporated by reference, this proposed change would not result in any change to how the test procedure is conducted, would not impact the measured AFUE ratings, and would not result in any change to the burden associated with the test procedure.

b. ANSI/ASHRAE 103–2017

DOE proposes to incorporate by reference the most recent version of ANSI/ASHRAE 103, ANSI/ASHRAE 103–2017. DOE has tentatively concluded that the test procedure referencing ANSI/ASHRAE 103–2017 would not impact the test procedure burden as compared to the current test procedure. As discussed in section III.D of this document, based on a review of test data and comments from stakeholders, DOE has tentatively determined that while the proposed amendment could result in differences in the measured values, such differences would be minimal and would not require re-testing or re-rating of any consumer boilers.

Based on this initial determination, manufacturers would be able to rely on data generated under the current test procedure, should the proposed amendments be finalized. As such, it would be unlikely that retesting of consumer boilers would be required solely as a result of DOE's adoption of the proposed amendments to the test procedure. However, if a manufacturer were to re-test a model using the proposed procedure, DOE estimates that the cost of performing the proposed AFUE test at a third-party laboratory would be $3,000.

DOE requests comment on DOE's tentative determination as to the impact and associated costs of the proposed incorporation by reference of ANSI/ASHRAE 103–2017.

c. ANSI/ASHRAE 41.6–2014

DOE proposes to incorporate by reference the most recent version of ANSI/ASHRAE 41.6, ANSI/ASHRAE 41.6–2014. ANSI/ASHRAE 41.6–2014 is referenced in ANSI/ASHRAE 103–2017 for determining the relative humidity of the room air during testing of condensing boilers. (*See* Section 8.5.1 of ANSI/ASHRAE 103–2017.) The previous version of ANSI/ASHRAE 103, ANSI/ASHRAE 103–1993, includes limitations on the relative humidity of the test room during testing of condensing boilers (*see* Sections 9.2 and 9.8.1 of ANSI/ASHRAE 103–1993), but does not provide instructions on how the measurements must be obtained. The reference to ASHRAE 41.6–2014 in ANSI/ASHRAE 103–2017 will ensure a consistent approach to determining the relative humidity for the purpose of meeting the test conditions. Because the DOE test method and ANSI/ASHRAE 103–1993 currently limit relative humidity allowed during testing, DOE reasons that relative humidity already must be measured under the current procedure. DOE has thus tentatively concluded that the incorporation by reference of ANSI/ASHRAE 41.6–2014 would not impact the test procedure burden as compared to the current test procedure, as the method would likely be similar to current practices.

DOE requests comment on DOE's tentative determination the proposed incorporation by reference of ASHRAE 41.6–2014 will not increase test burden.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle or period of use. Section 8(c) of appendix A of 10 CFR part 430 subpart C. In cases where the industry standard does not meet this EPCA statutory criteria for test procedures, DOE will make modifications as part of the rulemaking process.

Appendix N incorporates by reference ANSI/ASHRAE Standard 103 for scope, definitions, classifications, requirements, instruments, apparatus, testing conditions, testing procedure, nomenclature, and calculations for determining AFUE. Appendix N also incorporates by reference IEC 62301 for measuring standby mode and off mode power consumption, and ASTM D2156–09 (Reapproved 2013) for adjusting oil burners. The industry standards DOE proposes to incorporate by reference via amendments described in this NOPR are discussed in further detail in section IV.M of this document. DOE notes that DOE has previously established certain modifications to ANSI/ASHRAE 103–1993 to improve representativeness and repeatability, provide additional direction, and reduce burden. Similarly, DOE has established modifications to IEC 62301 to substitute conditions for room ambient temperature and electrical supply from ANSI/ASHRAE 103–1993 to reduce burden. In general, DOE has determined that those modifications remain relevant to the updated editions of the referenced industry test standards and is not proposing to amend or delete those previously established modifications.

DOE requests comments on the benefits and burdens of the proposed updates and additions to industry standards referenced in the test procedure for consumer boilers.

I. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2))

If DOE were to publish an amended test procedure, EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined that this test procedure rulemaking does not constitute a ''significant regulatory action'' under section 3(f) of Executive Order (''E.O.'') 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *energy.gov/gc/office-general-counsel.*

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis of this certification is set forth in the following paragraphs.

Under 42 U.S.C. 6293, the statute sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In this NOPR, DOE proposes to update 10 CFR part 430 subpart B, appendix N, ''Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers,'' to remove the provisions applicable only to consumer boilers and rename the appendix ''Uniform Test Method for Measuring the Energy Consumption of Furnaces.'' Correspondingly, DOE proposes to create a new appendix EE, ''Uniform Test Method for Measuring the Energy Consumption of Boilers.'' In the proposed new appendix EE, DOE proposes to include all provisions currently included in appendix N for consumer boilers, with the following modifications:

(1) Incorporate by reference the current revision to the applicable industry standard, ANSI/ASHRAE 103–2017, ''Methods of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers''

(2) Incorporate by reference the current revision of ASTM Standard D2156–09 (Reapproved 2018), ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels'' (ASTM D2156–09)

(3) Incorporate by reference ASHRAE 41.6–2014, ''Standard Method for Humidity Measurement''

(4) Update the definitions to reflect the changes in ANSI/ASHRAE 103–2017 as compared to ANSI/ASHRAE 103–1993. Also remove definition of outdoor furnace or boiler from 10 CFR 430.2

For manufacturers of consumer boilers, the Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The equipment covered by this rule is classified under North American Industry Classification System

(''NAICS'') code 333414,[17] ''Heating Equipment (except Warm Air Furnaces) Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 500 employees or fewer for an entity to be considered as a small business for this category. DOE identified manufacturers using DOE's Compliance Certification Database (''CCD''),[18] the AHRI database,[19] the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[20] the ENERGY STAR Product Finder database,[21] and the prior consumer boiler energy conservation standards rulemaking. DOE used the publicly available information and subscription-based market research tools (*e.g.,* reports from Dun & Bradstreet [22]) to identify 28 original equipment manufacturers (''OEMs'') of the covered equipment. Of the 28 OEMs, DOE identified seven domestic manufacturers of consumer boilers that met the SBA definition of a ''small business.''

As stated earlier, in this NOPR, DOE proposes to amend the existing test procedure for consumer boilers by updating the references to industry standards to reference the most recent versions. Based on a review of test data and stakeholder comments, DOE has initially determined that the proposed amendments to reference ANSI/ASHRAE 103–2017 in the test procedure would not require retesting or re-rating. DOE conducted testing to compare the results from testing in accordance with ANSI/ASHRAE 103–1993 (the 1993 version is currently incorporated by reference in the DOE test procedure) with results using the more recent editions of ANSI/ASHRAE 103 to reach this tentative determination, which is further supported by a majority of comments from industry stakeholders indicating no expected impact of updating this test standard reference. ASTM Standard D2156–09, which is currently incorporated by reference, was reapproved in 2018 with no substantial differences. Therefore, DOE's proposal to incorporate the version of ASTM D2156–09 reapproved in 2018 would not result in any impact on results or test burden. DOE also proposes to incorporate by reference ANSI/ASHRAE 41.6–2014, a test method for determination of relative humidity. ANSI/ASHRAE 103–1993 (and by extension, the current DOE test procedure) includes limitations on the relative humidity of the test room during certain testing, but it does not provide instructions on how the measurements must be obtained. ASHRAE 41.6–2014 is referenced in ANSI/ASHRAE 103–2017 as the required approach to determining the relative humidity for the purpose of meeting the test conditions. The test method in ASHARE 41.6–2014 is understood to be similar to current industry practices and is thus not expected to introduce any new test burden for manufacturers.

As such, the test procedure amendments would not result in any change in burden associated the DOE test procedure for consumer boilers.

Therefore, DOE initially concludes that the test procedure amendments proposed in this NOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE welcomes comment on the Regulatory Flexibility certification conclusion.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of consumer boilers must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including consumer boilers. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In this NOPR, DOE is proposing to update references to industry test standards to reference the most current versions. DOE is also proposing to reorganize the test procedures so that boilers are addressed in an appendix separate from furnaces generally. The proposed amendments would not establish new or amended reporting requirements.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for consumer boilers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE

[17] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support--table-size-standards* (Last accessed on September 22, 2021).

[18] DOE's Compliance Certification Database is available at: *www.regulations.doe.gov/ccms* (last accessed July 12, 2021).

[19] The AHRI Database is available at: *www.ahridirectory.org* (last accessed March 3, 2021).

[20] California Energy Commission's MAEDbS is available at *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (last accessed September 22, 2021).

[21] The ENERGY STAR Product Finder database is available at *energystar.gov/productfinder/* (last accessed September 22, 2021).

[22] *app.dnbhoovers.com.*

published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of consumer boilers is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy

Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for consumer boilers would reference testing methods contained in certain sections of the following commercial standards: ANSI/ASHRAE Standard 103 (ANSI/ASHRAE 103–2017), ASTM D2156–09 (R2018), and ANSI/ASHRAE Standard 41.6–2014 (ANSI/ASHRAE 41.6–2014). DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the test standard published by ANSI/ASHRAE, titled ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' ANSI/ASHRAE 103–2017. The purpose of ANSI/ASHRAE 103–2017 is to provide procedures for determining the annual fuel utilization efficiency of consumer furnaces and boilers. Relevant to the DOE test procedure, the standard includes test methods for cyclic and part-load performance and calculation procedures for establishing seasonal performance. The standard provides information on definitions, classifications, requirements, instruments, methods of testing, testing procedures, nomenclature, and calculations for determining the AFUE of consumer boilers.

ANSI/ASHRAE 103–2017 includes a reference to ANSI/ASHRAE 41.6–2014, ''Standard Method for Humidity Measurement,'' which DOE also proposes to incorporate by reference. ANSI/ASHRAE 41.6–2014 includes instructions for measuring the relative humidity of the test room air.

Copies of ANSI/ASHRAE 103–2017 and ANSI/ASHRAE 41.6–2014 can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., Publication Sales, 180 Technology Parkway NW, Peachtree Corners, GA 30092, (800) 527–4723 or (404) 636–8400, or online at: *www.ashrae.org.*

In this NOPR, DOE also proposes to incorporate by reference the test standard published by ASTM, titled ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels,'' ASTM D2156–09 (R2018)). ASTM D2156–09 (R2018) includes instructions for determining the amount of smoke produced by an oil burner to ensure the burner is adjusted properly.

Copies of ASTM D2156–09 (R2018) can be obtained from the ASTM International,100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 or online at: *www.astm.org.*

In this NOPR, DOE also proposes to incorporate by reference the test standard published by IEC, titled ''Household electrical appliances—Measurement of standby power,'' Edition 2.0 2011–01 (IEC 62301). IEC 62301 includes instructions for determining the electrical power consumption during standby mode.

Copies of IEC 62301 can be obtained from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *webstore.ansi.org.*

V. Public Participation

A. Participation in the Webinar

The time and date for the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar, it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=45&action=viewcurrent.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will allow time for prepared general statements by participants and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants

to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar/public meeting will be included in the docket, which can be viewed as described in the Docket section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views from interested parties concerning the following issues:

(1) DOE seeks comment on whether any other industry test methods exist for determining the heating efficiency of air-to-water or water-to-water heat pumps. DOE seeks comment specifically on AHRI 550/590, and whether it would be appropriate for adoption as a Federal test procedure for such products, and if so, whether modifications could be made to result in an AFUE rating.

(2) DOE seeks comment on its proposal to remove the definition of ''outdoor furnace or boiler'' from its regulations. DOE seeks comment on whether removing the definition for ''outdoor furnace or boiler'' would impact the application of the test procedure or energy conservation standards for any such products.

(3) DOE seeks comment on its proposal to incorporate by reference the definitions in ANSI/ASHRAE 103–2017 and to remove the definitions for ''control'' and ''isolated combustions system'' from the consumer boiler test procedure at appendix N accordingly.

(4) DOE seeks comment on its proposal to clarify the calculation of steady-state efficiencies at maximum and minimum input rates for condensing, modulating boilers using ANSI/ASHRAE 103–2017.

(5) DOE seeks further comment on its proposal to update the incorporation by reference of ASHRAE 103 to the most recent version (*i.e.,* ANSI/ASHRAE 103–2017) and in particular the potential impact on ratings and whether retesting would be required.

(6) DOE seeks additional comment on whether the return water temperature in the current test method and ANSI/ASHRAE 103–2017 are representative and appropriate, and whether any specific changes to the required conditions could improve

representativeness. DOE is also interested in receiving comment on the test burden that would result from changing the return water temperature(s) specified in the test procedure.

(7) DOE seeks further comment on whether a simplified approach for measuring standby mode and off mode electrical energy consumption is appropriate and would provide accurate, representative results that are comparable to those obtained with IEC 62301.

(8) DOE requests further comment on whether AEDM provisions similar to those in place for commercial equipment would be necessary and appropriate for consumer boilers.

(9) DOE seeks comment on data or other information that demonstrates that using a linear interpolation method for heat exchanger materials other than cast iron would produce representative test results.

(10) DOE seeks further comment on whether supplemental test instructions are necessary for testing consumer boilers.

(11) DOE requests comment on DOE's tentative determination as to the impact and associated costs of the proposed incorporation by reference of ANSI/ASHRAE 103–2017.

(12) DOE requests comment on DOE's tentative determination the proposed incorporation by reference of ASHRAE 41.6–2014 will not increase test burden.

(13) DOE requests comments on the benefits and burdens of the proposed updates and additions to industry standards referenced in the test procedure for consumer boilers.

(14) DOE welcomes comment on the Regulatory Flexibility certification conclusion.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on February 17, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 22, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION COMPLIANCE AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.134 is amended by revising paragraphs (h) introductory text, (h)(1)(i)(A), and (h)(2)(i)(A) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(h) *Residential boilers—test protocols for functional verification of automatic means for adjusting water temperature.* These tests are intended to verify the functionality of the design requirement that a boiler has an automatic means for adjusting water temperature for single-stage, two-stage, and modulating boilers. These test methods are intended to permit the functional testing of a range of control strategies used to fulfill this design requirement. Section 2, Definitions, and paragraph 6.1.a of appendix EE to subpart B of part 430 of this chapter apply for the purposes of this paragraph (h).

(1) * * *

(i) * * *

(A) *Boiler installation.* Boiler installation in the test room shall be in accordance with the setup and apparatus requirements of section 6.0 of appendix EE to subpart B of part 430 of this chapter.

* * * * *

(2) * * *

(i) * * *

(A) *Boiler installation.* Boiler installation in the test room shall be in accordance with the setup and apparatus requirements by section 6.0 of appendix EE to subpart B of part 430 of this chapter.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.2 [Amended]

■ 4. Section 430.2 is amended by removing the definition of ''outdoor furnace or boiler''.

■ 5. Section 430.3 is amended by:

■ a. Revising paragraph (a);

■ b. Revising paragraphs (g) introductory text and (g)(11);

■ c. Redesignating paragraphs (g)(17) and (18) as paragraphs (g)(18) and (19), respectively, and adding new paragraph (g)(17); and

■ d. Revising paragraph (j) introductory text;

■ e. Adding paragraph (j)(3); and

■ f. Revising paragraph (o)(6).

The revisions and additions read as follows:

§ 430.3 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this [chapter/subchapter/part/subpart] with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Energy (DOE) must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at DOE and at the National Archives and Records Administration (NARA). Contact DOE at: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–2945, *https://www.energy.gov/eere/buildings/*

appliance-and-equipment-standards-program. For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

(g) *ASHRAE.* American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., Publication Sales, 180 Technology Parkway NW, Peachtree Corners, GA 30092, 800–527–4723 or 404–636–8400, or go to *www.ashrae.org.*

* * * * *

(11) ANSI/ASHRAE Standard 41.6–2014, (''ASHRAE 41.6–2014''), Standard Method for Humidity Measurement, ANSI approved July 3, 2014, IBR approved for appendices F and EE to subpart B of this part.

* * * * *

(17) ANSI/ASHRAE Standard 103–2017, (''ANSI/ASHRAE 103–2017''), Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers, ANSI approved July 3, 2017, IBR approved for § 430.23 and appendix EE to subpart B of this part.

* * * * *

(j) ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959, telephone (877) 909–2786, website: *www.astm.org;*

* * * * *

(3) ASTM D2156–09 (Reapproved 2018) (''ASTM D2156–09 (R2018)''), Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels, approved October 1, 2018, IBR approved for appendix EE to subpart B of this part.

* * * * *

(o) * * *

(6) IEC 62301 (''IEC 62301''), Household electrical appliances—Measurement of standby power, (Edition 2.0, 2011–01), IBR approved for appendices C1, D1, D2, F, G, H, I, J2, N, O, P, Q, X, X1, Y, Z, BB, CC, and EE to subpart B of this part.

* * * * *

■ 6. Section 430.23 is amended by revising paragraph (n) to read as follows:

§ 430.23 Test Procedures for the measurement of energy and water consumption.

* * * * *

(n) *Furnaces.* (1) The estimated annual operating cost for furnaces is the sum of:

(i) Product of the average annual fuel energy consumption, in Btu's per year for gas or oil furnaces or in kilowatt-hours per year for electric furnaces, determined according to section 10.2.2 or 10.3 of appendix N (furnaces, excluding low pressure steam or hot water boilers and electric boilers) or appendix EE (low pressure steam or hot water boilers and electric boilers) of this subpart, as applicable, and the representative average unit cost in dollars per Btu for gas or oil, or dollars per kilowatt-hour for electric, as appropriate, as provided pursuant to section 323(b)(2) of the Act; plus

(ii) The product of the average annual auxiliary electric energy consumption in kilowatt-hours per year determined according to section 10.2.3 of appendix N (furnaces, excluding low pressure steam or hot water boilers and electric boilers) or appendix EE (low pressure steam or hot water boilers and electric boilers) of this subpart, as applicable, and the representative average unit cost in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act.

(iii) Round the resulting sum to the nearest dollar per year.

(2) The annual fuel utilization efficiency (AFUE) for furnaces, expressed in percent, is the ratio of the annual fuel output of useful energy delivered to the heated space to the annual fuel energy input to the furnace.

(i) For gas and oil furnaces, determine AFUE according to section 10.1 of appendix N (furnaces, excluding low pressure steam or hot water boilers and electric boilers) or appendix EE (low pressure steam or hot water boilers and electric boilers) of this subpart, as applicable.

(ii) For electric furnaces, excluding electric boilers, determine AFUE in accordance with Section 11.1 of ANSI/ASHRAE) 103–1993 (incorporated by reference, see § 430.3); for electric boilers, determine AFUE in accordance with ANSI/ASHRAE 103–2017.

(iii) Round the annual fuel utilization efficiency to one-tenth of a percentage point.

(3) The estimated regional annual operating cost for furnaces must be rounded off to the nearest dollar per year and is defined as follows:

(i) When using appendix N for furnaces excluding low pressure steam or hot water boilers and electric boilers (see the note at the beginning of appendix N),

(A) For gas or oil-fueled furnaces,

$(E_{FR} \times C_{BTU}) = (E_{AER} \times C_{KWH})$

Where:

E_{FR} = the regional annual fuel energy consumption in Btu per year, determined according to section 10.7.1 of appendix N;

C_{BTU} = the representative average unit cost in dollars per Btu of gas or oil, as provided pursuant to section 323(b)(2) of the Act;

E_{AER} = the regional annual auxiliary electrical energy consumption in kilowatt-hours per year, determined according to section 10.7.2 of appendix N; and

C_{KWH} = the representative average unit cost in dollars per kilowatt-hour of electricity, as provided pursuant to section 323(b)(2) of the Act.

(B) For electric furnaces,

$(E_{ER} \times C_{KWH})$

Where:

E_{ER} = the regional annual fuel energy consumption in kilowatt-hours per year, determined according to section 10.7.3 of appendix N; and

C_{KWH} is as defined in paragraph (n)(3)(i)(A) of this section.

(ii) When using appendix EE for low pressure steam or hot water boilers and electric boilers (see the note at the beginning of appendix EE),

(A) For gas or oil-fueled boilers,

$(E_{FR} \times C_{BTU}) + (E_{AER} \times C_{KWH})$

Where:

E_{FR} = the regional annual fuel energy consumption in Btu per year, determined according to section 10.5.1 of appendix EE;

C_{BTU} and C_{KWH} are as defined in paragraph (n)(3)(i)(A) of this section; and

E_{AER} = the regional annual auxiliary electrical energy consumption in kilowatt-hours per year, determined according to section 10.5.2 of appendix EE.

(B) For electric boilers,

$(E_{ER} \times C_{KWH})$

Where:

E_{ER} = the regional annual fuel energy consumption in kilowatt hours per year, determined according to section 10.5.3 of appendix EE; and

C_{KWH} is as defined in paragraph (n)(3)(i)(A) of this section.

(4) The energy factor for furnaces, expressed in percent, is the ratio of annual fuel output of useful energy delivered to the heated space to the total annual energy input to the furnace determined according to either section 10.6 of appendix N (furnaces, excluding low pressure steam or hot water boilers and electric boilers) or section 10.4 of appendix EE (low pressure steam or hot water boilers and electric boilers) of this subpart, as applicable.

(5) The average standby mode and off mode electrical power consumption for furnaces shall be determined according to section 8.10 of appendix N (furnaces, excluding low pressure steam or hot water boilers and electric boilers) or section 8.9 of appendix EE (low

pressure steam or hot water boilers and electric boilers) of this subpart, as applicable. Round the average standby mode and off mode electrical power consumption to the nearest tenth of a watt.

(6) Other useful measures of energy consumption for furnaces shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix N (furnaces, excluding low pressure steam or hot water boilers and electric boilers) or appendix EE (low pressure steam or hot water boilers and electric boilers) of this subpart.

* * * * *

■ 7. Appendix N to subpart B of part 430 is revised to read as follows:

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Consumer Furnaces Other Than Boilers

0. *Incorporation by reference.*

DOE incorporated by reference in § 430.3, the entire standards for ASHRAE Standard 103–1993, ASTM D2156–09 (R2018), and IEC 62301. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over the incorporated standards. However, only the following enumerated provisions of ASHRAE 103–1993 apply to this appendix:

(1) ASHRAE 103–1993

(i) section 2 ''Scope'' as referenced in section 1.0 of this appendix;

(ii) section 3 ''Definitions'' as referenced in section 2.0 of this appendix;

(iii) section 4 ''Classifications'' as referenced in section 3.0 of this appendix;

(iv) section 5 ''Requirements'' as referenced in section 4.0 of this appendix;

(v) section 6 ''Instruments'' as referenced in section 5.0 of this appendix;

(vi) section 7 ''Apparatus'' (except for sections 7.1, 7.2.2.2, 7.2.2.5, 7.2.3.1, and 7.8) as referenced in section 6.0 of this appendix;

(vii) section 8 ''Methods of Testing'' (except for sections 8.2.1.3, 8.4.1.1, 8.4.1.1.2, 8.4.1.2, 8.4.2.1.4, 8.4.2.1.6, 8.6.1.1, 8.7.2, and 8.8.3) as referenced in section 7.0 of this appendix;

(viii) section 9 ''Test Procedure'' (except for sections 9.1.2.2.1, 9.1.2.2.2, 9.5.1.1, 9.5.1.2.1, 9.5.1.2.2,, 9.7.4, and 9.10) as referenced in section 8.0 of this appendix;

(ix) section 10 ''Nomenclature'' as referenced in section 9.0 of this appendix; and

(x) section 11 ''Calculations'' (except for sections 11.5.11.1, 11.5.11.2) as referenced in section 10.0 of this appendix.

1.0 *Scope.* The scope of this appendix is as specified in Section 2 of ASHRAE 103–1993 as it pertains to furnaces other than low pressure steam or hot water boilers or to electric boilers. Low pressure steam or hot water boilers and electric boilers are addressed in appendix EE of this subpart.

2.0 *Definitions.* Definitions include those specified in Section 3 of ASHRAE 103–1993 and the following additional and modified definitions.

Active mode means the condition in which the furnace is connected to the power source, and at least one of the burner, electric resistance elements, or any electrical auxiliaries such as blowers, are activated.

Control means a device used to regulate the operation of a piece of equipment and the supply of fuel, electricity, air, or water.

Draft inducer means a fan incorporated in the furnace that either draws or forces air into the combustion chamber.

Gas valve means an automatic or semi-automatic device consisting essentially of a valve and operator that controls the gas supply to the burner(s) during normal operation of an appliance. The operator may be actuated by application of gas pressure on a flexible diaphragm, by electrical means, by mechanical means or by other means.

Installation and operation (I&O) manual means instructions for installing, commissioning, and operating the furnace, which are supplied with the product when shipped by the manufacturer.

Isolated combustion system means a system where a unit is installed within the structure, but isolated from the heated space. A portion of the jacket heat from the unit is lost, and air for ventilation, combustion and draft control comes from outside the heated space.

Multi-position furnace means a furnace that can be installed in more than one airflow configuration (*i.e.,* upflow or horizontal; downflow or horizontal; upflow or downflow; and upflow, or downflow, or horizontal).

Off mode means a mode in which the furnace is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. The existence of an off switch in off position (a disconnected circuit) is included within the classification of off mode.

Off switch means the switch on the furnace that, when activated, results in a measurable change in energy consumption between the standby and off modes.

Oil control valve means an automatically or manually operated device consisting of an oil valve for controlling the fuel supply to a burner to regulate burner input.

Standby mode means any mode in which the furnace is connected to a mains power source and offers one or more of the following space heating functions that may persist:

a. Activation of other modes (including activation or deactivation of active mode) by remote switch (including thermostat or remote control), internal or external sensors, and/or timer; and

b. Continuous functions, including information or status displays or sensor-based functions.

Thermal stack damper means a type of stack damper that relies exclusively upon the changes in temperature in the stack gases to open or close the damper.

3.0 *Classifications.* Classifications are as specified in Section 4 of ASHRAE 103–1993 for furnaces.

4.0 *Requirements.* Requirements are as specified in Section 5 of ASHRAE 103–1993 for furnaces.

5.0 *Instruments.* Instruments must be as specified in Section 6 of ASHRAE 103–1993.

6.0 *Apparatus.* The apparatus used in conjunction with the furnace during the testing must be as specified in Section 7 of ASHRAE 103–1993 except for Sections 7.1, 7.2.2.2, 7.2.2.5, 7.2.3.1, and 7.8; and as specified in sections 6.1 through 6.5 of this appendix.

6.1 *General.*

a. Install the furnace in the test room in accordance with the I&O manual, as defined in section 2.6 of this appendix, except that if provisions within this appendix are specified, then the provisions herein drafted and prescribed by DOE govern. If the I&O manual and any additional provisions of this appendix are not sufficient for testing a furnace, the manufacturer must request a waiver from the test procedure pursuant to 10 CFR 430.27.

b. If the I&O manual indicates the unit should not be installed with a return duct, then the return (inlet) duct specified in Section 7.2.1 of ASHRAE 103–1993 is not required.

c. Test multi-position furnaces in the least efficient configuration. Testing of multi-position furnaces in other configurations is permitted if energy use or efficiency is represented pursuant to the requirements in 10 CFR part 429.

d. The apparatuses described in section 6 of this appendix are used in conjunction with the furnace during testing. Each piece of apparatus shall conform to material and construction specifications listed in this appendix and in ASHRAE 103–1993, and the reference standards cited in this appendix and in ASHRAE 103–1993.

e. Test rooms containing equipment must have suitable facilities for providing the utilities (including but not limited to environmental controls, applicable measurement equipment, and any other technology or tools) necessary for performance of the test and must be able to maintain conditions within the limits specified in section 6 of this appendix.

6.2 *Forced-air central furnaces (direct vent and direct exhaust).*

a. Units not equipped with a draft hood or draft diverter must be provided with the minimum-length vent configuration recommended in the I&O manual or a 5-ft flue pipe if there is no recommendation provided in the I&O manual (*see* Figure 4 of ASHRAE 103–1993). For a direct exhaust system, insulate the minimum-length vent configuration or the 5-ft flue pipe with insulation having an R-value not less than 7 and an outer layer of aluminum foil. For a direct vent system, *see* Section 7.5 of ASHRAE 103–1993 for insulation requirements.

b. For units with power burners, cover the flue collection box with insulation having an R-value of not less than 7 and an outer layer of aluminum foil before the cool-down and heat-up tests described in Sections 9.5 and 9.6 of ASHRAE 103–1993, respectively. However, do not apply the insulation for the jacket loss test (if conducted) described in

Section 8.6 of ASHRAE 103–1993 or the steady-state test described in Section 9.1 of ASHRAE 103–1993.

c. For power-vented units, insulate the shroud surrounding the blower impeller with insulation having an R-value of not less than 7 and an outer layer of aluminum foil before the cool-down and heat-up tests described in Sections 9.5 and 9.6, respectively, of ASHRAE 103–1993. Do not apply the insulation for the jacket loss test (if conducted) described in Section 8.6 of ASHRAE 103–1993 or the steady-state test described in Section 9.1 of ASHRAE 103–1993. Do not insulate the blower motor or block the airflow openings that facilitate the cooling of the combustion blower motor or bearings.

6.3 *Downflow furnaces.* Install an internal section of vent pipe the same size as the flue collar for connecting the flue collar to the top of the unit, if not supplied by the manufacturer. Do not insulate the internal vent pipe during the jacket loss test (if conducted) described in Section 8.6 of ASHRAE 103–1993 or the steady-state test described in Section 9.1 of ASHRAE 103–1993. Do not insulate the internal vent pipe before the cool-down and heat-up tests described in Sections 9.5 and 9.6, respectively, of ASHRAE 103–1993. If the vent pipe is surrounded by a metal jacket, do not insulate the metal jacket. Install a 5-ft test stack of the same cross-sectional area or perimeter as the vent pipe above the top of the furnace. Tape or seal around the junction connecting the vent pipe and the 5-ft test stack. Insulate the 5-ft test stack with insulation having an R-value not less than 7 and an outer layer of aluminum foil. (*See* Figure 3–E of ASHRAE 103–1993.)

6.4 *Units with draft hoods or draft diverters.* Install the stack damper in accordance with the I&O manual. Install 5 feet of stack above the damper.

a. For units with an integral draft diverter, cover the 5-ft stack with insulation having an R-value of not less than 7 and an outer layer of aluminum foil.

b. For units with draft hoods, insulate the flue pipe between the outlet of the furnace and the draft hood with insulation having an R-value of not less than 7 and an outer layer of aluminum foil.

c. For units with integral draft diverters that are mounted in an exposed position (not inside the overall unit cabinet), cover the diverter boxes (excluding any openings through which draft relief air flows) before the beginning of any test (including jacket loss test) with insulation having an R-value of not less than 7 and an outer layer of aluminum foil.

d. For units equipped with integral draft diverters that are enclosed within the overall unit cabinet, insulate the draft diverter box with insulation as described in Section 6.4.c before the cool-down and heat-up tests described in Sections 9.5 and 9.6, respectively, of ASHRAE 103–1993. Do not apply the insulation for the jacket loss test (if conducted) described in Section 8.6 of ASHRAE 103–1993 or the steady-state test described in Section 9.1 of ASHRAE 103–1993.

6.5 *Condensate collection.* Attach condensate drain lines to the unit as specified in the I&O manual. Maintain a continuous downward slope of drain lines from the unit. Additional precautions (such as eliminating any line configuration or position that would otherwise restrict or block the flow of condensate or checking to ensure a proper connection with condensate drain spout that allows for unobstructed flow) must be taken to facilitate uninterrupted flow of condensate during the test. Collection containers must be glass or polished stainless steel to facilitate removal of interior deposits. The collection container must have a vent opening to the atmosphere.

7.0 *Testing conditions.* The testing conditions must be as specified in Section 8 of ASHRAE 103–1993, except for Sections 8.2.1.3, 8.4.1.1, 8.4.1.1.2, 8.4.1.2, 8.4.2.1.4, 8.4.2.1.6, 8.6.1.1, 8.7.2, and 8.8.3; and as specified in sections 7.1 to 7.9 of this appendix, respectively.

7.1 *Fuel supply, gas.* In conducting the tests specified herein, gases with characteristics as shown in Table 1 of ASHRAE 103–1993 shall be used. Maintain the gas supply, ahead of all controls for a furnace, at a test pressure between the normal and increased values shown in Table 1 of ASHRAE 103–1993. Maintain the regulator outlet pressure at a level approximating that recommended in the I&O manual, as defined in section 2.6 of this appendix, or, in the absence of such recommendation, to the nominal regulator settings used when the product is shipped by the manufacturer. Use a gas having a specific gravity as shown in Table 1 of ASHRAE 103–1993 and with a higher heating value within ±5% of the higher heating value shown in Table 1 of ASHRAE 103–1993. Determine the actual higher heating value in Btu per standard cubic foot for the gas to be used in the test within an error no greater than 1%.

7.2 *Gas burner.* Adjust the burners of gas-fired furnaces to their maximum Btu input ratings at the normal test pressure specified by section 7.1 of this appendix. Correct the burner input rate to reflect gas characteristics at a temperature of 60 °F and atmospheric pressure of 30 in of Hg and adjust down to within ±2 percent of the hourly Btu nameplate input rating specified by the manufacturer as measured during the steady-state performance test in section 8 of this appendix. Set the primary air shutters in accordance with the I&O manual to give a good flame at this condition. If, however, the setting results in the deposit of carbon on the burners during any test specified herein, the tester shall adjust the shutters and burners until no more carbon is deposited and shall perform the tests again with the new settings (*see* Figure 9 of ASHRAE 103–1993). After the steady-state performance test has been started, do not make additional adjustments to the burners during the required series of performance tests specified in section 9 of ASHRAE 103–1993. If a vent-limiting means is provided on a gas pressure regulator, keep it in place during all tests.

7.3 *Modulating gas burner adjustment at reduced input rate.* For gas-fired furnaces equipped with modulating-type controls, adjust the controls to operate the unit at the nameplate minimum input rate. If the modulating control is of a non-automatic type, adjust the control to the setting recommended in the I&O manual. In the absence of such recommendation, the midpoint setting of the non-automatic control shall be used as the setting for determining the reduced fuel input rate. Start the furnace by turning the safety control valve to the ''ON'' position.

7.4 *Oil burner.* Adjust the burners of oil-fired furnaces to give a CO_2 reading specified in the I&O manual and an hourly Btu input during the steady-state performance test described in section 8 of this appendix. Ensure the hourly BTU input is within ±2% of the normal hourly Btu input rating as specified in the I&O manual. Smoke in the flue may not exceed a No. 1 smoke during the steady-state performance test as measured by the procedure in ASTM D2156R13). Maintain the average draft over the fire and in the flue during the steady-state performance test at the value specified in the I&O manual. Do not allow draft fluctuations exceeding 0.005 in. water. Do not make additional adjustments to the burner during the required series of performance tests. The instruments and measuring apparatus for this test are described in section 6 of this appendix and shown in Figure 8 of ASHRAE 103–1993.

7.5 Adjust air throughputs to achieve a temperature rise that is the higher of a and b, below, unless c applies. A tolerance of ±2 °F is permitted.

a. 15 °F less than the nameplate maximum temperature rise or

b. 15 °F higher than the minimum temperature rise specified in the I&O manual.

c. A furnace with a non-adjustable air temperature rise range and an automatically controlled airflow that does not permit a temperature rise range of 30 °F or more must be tested at the midpoint of the rise range.

7.6 Establish the temperature rise specified in section 7.5 of this appendix by adjusting the circulating airflow. This adjustment must be accomplished by symmetrically restricting the outlet air duct and varying blower speed selection to obtain the desired temperature rise and minimum external static pressure, as specified in Table 4 of ASHRAE 103–1993. If the required temperature rise cannot be obtained at the minimum specified external static pressure by adjusting blower speed selection and duct outlet restriction, then the following applies.

a. If the resultant temperature rise is less than the required temperature rise, vary the blower speed by gradually adjusting the blower voltage so as to maintain the minimum external static pressure listed in Table 4 of ASHRAE 103–1993. The airflow restrictions shall then remain unchanged. If static pressure must be varied to prevent unstable blower operation, then increase the static pressure until blower operation is stabilized, except that the static pressure must not exceed the maximum external static pressure as specified by the manufacturer in the I&O manual.

b. If the resultant temperature rise is greater than the required temperature rise, then the unit can be tested at a higher temperature rise value, but one not greater than nameplate maximum temperature rise. In order not to exceed the maximum

temperature rise, the speed of a direct-driven blower may be increased by increasing the circulating air blower motor voltage.

7.7 *Measurement of jacket surface temperature.* Divide the jacket of the furnace into 6-inch squares when practical, and otherwise into 36-square-inch regions comprising 4-inch by 9-inch or 3-inch by 12-inch sections, and determine the surface temperature at the center of each square or section with a surface thermocouple. Record the surface temperature of the 36-square-inch areas in groups where the temperature differential of the 36-square-inch areas is less than 10 °F for temperature up to 100 °F above room temperature, and less than 20 °F for temperatures more than 100 °F above room temperature. For forced-air central furnaces, the circulating air blower compartment is considered as part of the duct system, and no surface temperature measurement of the blower compartment needs to be recorded for the purpose of this test. For downflow furnaces, measure all cabinet surface temperatures of the heat exchanger and combustion section, including the bottom around the outlet duct and the burner door, using the 36-square-inch thermocouple grid. The cabinet surface temperatures around the blower section do not need to be measured (*See* Figure 3–E of ASHRAE 103–1993).

7.8 *Installation of vent system.* Keep the vent or air intake system supplied by the manufacturer in place during all tests. Test units intended for installation with a variety of vent pipe lengths with the minimum vent length as specified in the I&O manual, or a 5-ft. flue pipe if there are no recommendations in the I&O manual. Do not connect a furnace employing a direct vent system to a chimney or induced-draft source. Vent combustion products solely by using the venting incorporated in the furnace and the vent or air intake system supplied by the manufacturer. For units that are not designed to significantly preheat the incoming air, *see* section 7.4 of this appendix and Figure 4a or 4b of ASHRAE 103–1993. For units that do significantly preheat the incoming air, *see* Figure 4c or 4d of ASHRAE 103–1993.

7.9 *Additional optional method of testing for determining D_P and D_F for furnaces.* On units whose design is such that there is no measurable airflow through the combustion chamber and heat exchanger when the burner(s) is (are) off as determined by the optional test procedure in section 7.9.1 of this appendix, D_F and D_P may be set equal to 0.05.

7.9.1 *Optional test method for indicating the absence of flow through the heat exchanger.* Manufacturers may use the following test protocol to determine whether air flows through the combustion chamber and heat exchanger when the burner(s) is (are) off. The minimum default draft factor (as allowed per Sections 8.8.3 and 9.10 of ASHRAE 103–1993) may be used only for units determined pursuant to this protocol to have no airflow through the combustion chamber and heat exchanger.

7.9.1.1 *Test apparatus.* Use a smoke stick that produces smoke that is easily visible and has a density less than or approximately equal to air. Use a smoke stick that produces smoke that is non-toxic to the test personnel and produces gas that is unreactive with the environment in the test chamber.

7.9.1.2 *Test conditions.* Minimize all air currents and drafts in the test chamber, including turning off ventilation if the test chamber is mechanically ventilated. Wait at least two minutes following the termination of the furnace on-cycle before beginning the optional test method for indicating the absence of flow through the heat exchanger.

7.9.1.3 *Location of the test apparatus.* After all air currents and drafts in the test chamber have been eliminated or minimized, position the smoke stick based on the following equipment configuration:

(a) For horizontal combustion air intakes, approximately 4 inches from the vertical plane at the termination of the intake vent and 4 inches below the bottom edge of the combustion air intake; or

(b) for vertical combustion air intakes, approximately 4 inches horizontal from vent perimeter at the termination of the intake vent and 4 inches down (parallel to the vertical axis of the vent).

7.9.1.4 *Duration of test.* Establish the presence of smoke from the smoke stick and then monitor the direction of the smoke flow for no less than 30 seconds.

7.9.1.5 *Test results.* During visual assessment, determine whether there is any draw of smoke into the combustion air intake vent.

(a) If absolutely no smoke is drawn into the combustion air intake, the furnace meets the requirements to allow use of the minimum default draft factor pursuant to Section 8.8.3 and/or Section 9.10 of ASHRAE 103–1993.

(b) If there is any smoke drawn into the intake, proceed with the methods of testing as prescribed in Section 8.8 of ASHRAE 103–1993.

8.0 *Test procedure.* Conduct testing and measurements as specified in Section 9 of ASHRAE 103–1993 except for Sections 9.1.2.2.1, 9.1.2.2.2, 9.5.1.1, 9.5.1.2.1, 9.5.1.2.2, 9.7.4, and 9.10; and as specified in sections 8.1 through 8.10 of this appendix. Section 8.4 of this appendix may be used in lieu of Section 9.2 of ASHRAE 103–1993.

8.1 *Fuel input.* For gas units, measure and record the steady-state gas input rate in Btu/hr, including pilot gas, corrected to standard conditions of 60 °F and 30 in. Hg. Use measured values of gas temperature and pressure at the meter and barometric pressure to correct the metered gas flow rate to the above standard conditions. For oil units, measure and record the steady-state fuel input rate.

8.2 *Electrical input.* During the steady-state test, perform a single measurement of all of the electrical power involved in burner operation (PE), including energizing the ignition system, controls, gas valve or oil control valve, and draft inducer, if applicable.

During the steady-state test, perform a single measurement of the electrical power to the circulating air blower (BE).

8.3 *Input to interrupted ignition device.* For burners equipped with an interrupted ignition device, record the nameplate electric power used by the ignition device, PE_{IG}, or record that PE_{IG} = 0.4 kW if no nameplate power input is provided. Record the nameplate ignition device on-time interval, t_{IG}, or, if the nameplate does not provide the ignition device on-time interval, measure the on-time interval with a stopwatch at the beginning of the test, starting when the burner is turned on. Set t_{IG} = 0 and PE_{IG} = 0 if the device on-time interval is less than or equal to 5 seconds after the burner is on.

8.4 *Optional test procedures for condensing furnaces, measurement of condensate during the establishment of steady-state conditions.* For units with step-modulating or two-stage controls, conduct the test at both the maximum and reduced inputs. In lieu of collecting the condensate immediately after the steady state conditions have been reached as required by Section 9.2 of ASHRAE 103–1993, condensate may be collected during the establishment of steady state conditions as defined by Section 9.1.2.1 of ASHRAE 103–1993. Perform condensate collection for at least 30 minutes. Measure condensate mass immediately at the end of the collection period to prevent evaporation loss from the sample. Record fuel input for the 30-minute condensate collection test period. Observe and record fuel higher heating value (HHV), temperature, and pressures necessary for determining fuel energy input ($Q_{c,ss}$). Measure the fuel quantity and HHV with errors no greater than 1%. The humidity for the room air shall at no time exceed 80%. Determine the mass of condensate for the establishment of steady state conditions ($M_{c,ss}$) in pounds by subtracting the tare container weight from the total container and condensate weight measured at the end of the 30-minute condensate collection test period.

8.5 *Cool-down test for gas- and oil-fueled gravity and forced-air central furnaces without stack dampers.* Turn off the main burner after completing steady-state testing, and measure the flue gas temperature by means of the thermocouple grid described in Section 7.6 of ASHRAE 103–1993 at 1.5 minutes ($T_{F,OFF}(t_3)$) and 9 minutes ($T_{F,OFF}(t_4)$) after shutting off the burner. When taking these temperature readings, the integral draft diverter must remain blocked and insulated, and the stack restriction must remain in place. On atmospheric systems with an integral draft diverter or draft hood and equipped with either an electromechanical inlet damper or an electromechanical flue damper that closes within 10 seconds after the burner shuts off to restrict the flow through the heat exchanger in the off-cycle, bypass or adjust the control for the electromechanical damper so that the damper remains open during the cool-down test.

For furnaces that employ post-purge, measure the length of the post-purge period with a stopwatch. Record the time from burner ''OFF'' to combustion blower ''OFF'' (electrically de-energized) as t_P. If the measured t_P is less than or equal to 30 seconds, set t_P at 0 and conduct the cool-down test as if there is no post-purge. If t_P is prescribed by the I&O manual or measured to be greater than 180 seconds, stop the combustion blower at 180 seconds and use that value for t_P. Measure the flue gas temperature by means of the thermocouple grid described in Section 7.6 of ASHRAE 103–1993 at the end of the post-purge period,

t_P($T_{F,OFF}$ (t_P)), and at the time (1.5 + t_P) minutes ($T_{F,OFF}$(t_3)) and (9.0 + t_P) minutes ($T_{F,OFF}$(t_4)) after the main burner shuts off.

8.6 *Cool-down test for gas- and oil-fueled gravity and forced-air central furnaces without stack dampers and with adjustable fan control.* For a furnace with adjustable fan control, measure the time delay between burner shutdown and blower shutdown, t^+. This time delay, t^+, will be 3.0 minutes for non-condensing furnaces or 1.5 minutes for condensing furnaces or until the supply air temperature drops to a value of 40 °F above the inlet air temperature, whichever results in the longest fan on-time. For a furnace without adjustable fan control or with the type of adjustable fan control whose range of adjustment does not allow for the time delay, t^+, specified above, bypass the fan control and manually control the fan to allow for the appropriate delay time as specified in Section 9.5.1.2 of ASHRAE 103–1993. For a furnace that employs a single motor to drive both the power burner and the indoor air circulating blower, the power burner and indoor air circulating blower must be stopped at the same time.

8.7 *Direct measurement of off-cycle losses testing method.* [Reserved.]

8.8 *Calculation options.* The rate of the flue gas mass flow through the furnace and the factors D_P, D_F, and D_S are calculated by the equations in Sections 11.6.1, 11.6.2, 11.6.3, 11.6.4, 11.7.1, and 11.7.2 of ASHRAE 103–1993. On units whose design is such that there is no measurable airflow through the combustion chamber and heat exchanger when the burner(s) is (are) off (as determined by the optional test procedure in section 7.9 of this appendix), D_F and D_P may be set equal to 0.05.

8.10 *Optional test procedures for condensing furnaces that have no off-period flue losses.* For units that have applied the test method in section 7.9 of this appendix to determine that no measurable airflow exists through the combustion chamber and heat exchanger during the burner off-period and having post-purge periods of less than 5 seconds, the cool-down and heat-up tests specified in Sections 9.5 and 9.6 of ASHRAE 103–1993 may be omitted. In lieu of conducting the cool-down and heat-up tests, the tester may use the losses determined during the steady-state test described in Section 9.1 of ASHRAE 103–1993 when calculating heating seasonal efficiency, $Effy_{HS}$.

8.10 *Measurement of electrical standby and off mode power.*

8.10.1 *Standby power measurement.* With all electrical auxiliaries of the furnace not activated, measure the standby power ($P_{W,SB}$) in accordance with the procedures in IEC 62301, except that Section 8.5, *Room Ambient Temperature,* of ASHRAE 103–1993 and the voltage provision of Section 8.2.1.4, *Electrical Supply,* of ASHRAE 103–1993 shall apply in lieu of the corresponding provisions of IEC 62301 at Section 4.2, *Test room,* and the voltage specification of Section 4.3, *Power supply.* Frequency shall be 60Hz. Clarifying further, IEC 62301 Section 4.4, *Power measurement instruments,* and Section 5, *Measurements,* apply in lieu of ASHRAE 103–1993 Section 6.10, *Energy Flow Rate.* Measure the wattage so that all possible standby mode wattage for the entire appliance is recorded, not just the standby mode wattage of a single auxiliary. Round the recorded standby power ($P_{W,SB}$) to the second decimal place, except for loads greater than or equal to 10W, which must be recorded to at least three significant figures.

8.10.2 *Off mode power measurement.* If the unit is equipped with an off switch or there is an expected difference between off mode power and standby mode power, measure off mode power ($P_{W,OFF}$) in accordance with the standby power procedures in IEC 62301, except that Section 8.5, *Room Ambient Temperature,* of ASHRAE 103–1993 and the voltage provision of Section 8.2.1.4, *Electrical Supply,* of ASHRAE 103–1993 shall apply in lieu of the corresponding provisions of IEC 62301 at Section 4.2, *Test room,* and the voltage specification of Section 4.3, *Power supply.* Frequency shall be 60Hz. Clarifying further, IEC 62301 Section 4.4, *Power measurement instruments,* and Section 5, *Measurements,* apply for this measurement in lieu of ASHRAE 103–1993 Section 6.10, *Energy Flow Rate.* Measure the wattage so that all possible off mode wattage for the entire appliance is recorded, not just the off mode wattage of a single auxiliary. If there is no expected difference in off mode power and standby mode power, let $P_{W,OFF} = P_{W,SB}$, in which case no separate measurement of off mode power is necessary. Round the recorded off mode power ($P_{W,OFF}$) to the second decimal place, except for loads greater than or equal to 10W, in which case round the recorded value to at least three significant figures.

9.0 *Nomenclature.* Nomenclature includes the nomenclature specified in Section 10 of ASHRAE 103–1993 and the following additional variables:

Eff_{motor} = Efficiency of power burner motor

PE_{IG} = Electrical power to the interrupted ignition device, kW

$R_{T,a}$ = $R_{T,F}$ if flue gas is measured

= $R_{T,S}$ if stack gas is measured

$R_{T,F}$ = Ratio of combustion air mass flow rate to stoichiometric air mass flow rate

$R_{T,S}$ = Ratio of the sum of combustion air and relief air mass flow rate to stoichiometric air mass flow rate

t_{IG} = Electrical interrupted ignition device on-time, min.

$T_{a,SS,X}$ = $T_{F,SS,X}$ if flue gas temperature is measured, °F

= $T_{S,SS,X}$ if stack gas temperature is measured, °F

y_{IG} = Ratio of electrical interrupted ignition device on-time to average burner on-time

y_P = Ratio of power burner combustion blower on-time to average burner on-time

E_{SO} = Average annual electric standby mode and off mode energy consumption, in kilowatt-hours

$P_{W,OFF}$ = Furnace off mode power, in watts

$P_{W,SB}$ = Furnace standby mode power, in watts

10.0 *Calculation of derived results from test measurements.* Perform calculations as specified in Section 11 of ASHRAE 103–1993, except for Sections 11.5.11.1, 11.5.11.2, and appendices B and C; and as specified in Sections 10.1 through 10.11 and Figure 1 of this appendix.

10.1 *Annual fuel utilization efficiency.* The annual fuel utilization efficiency (AFUE) is as defined in Sections 11.2.12 (non-condensing systems), 11.3.12 (condensing systems), 11.4.12 (non-condensing modulating systems) and 11.5.12 (condensing modulating systems) of ASHRAE 103–1993, except for the definition for the term $Effy_{HS}$ in the defining equation for AFUE. $Effy_{HS}$ is defined as:

$Effy_{HS}$ = heating seasonal efficiency as defined in Sections 11.2.11 (non-condensing systems), 11.3.11 (condensing systems), 11.4.11 (non-condensing modulating systems) and 11.5.11 (condensing modulating systems) of ASHRAE 103–1993, except that for condensing modulating systems Sections 11.5.11.1 and 11.5.11.2 are replaced by Sections 10.2 and 10.3 of this appendix. $Effy_{HS}$ is based on the assumptions that all weatherized warm air furnaces are located outdoors and that non-weatherized warm air furnaces are installed as isolated combustion systems.

10.2 *Part-load efficiency at reduced fuel input rate.* If the option in Section 8.9 of this appendix is not employed, calculate the part-load efficiency at the reduced fuel input rate, $Effy_{U,R,}$ for condensing furnaces equipped with either step-modulating or two-stage controls, expressed as a percent and defined as:

$$Effy_{U,H} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right](L_{S,ON} + L_{S,OFF} + L_{I,ON} + L_{I,OFF})$$

If the option in section 8.9 of this appendix is employed, calculate $Effy_{U,R}$ as follows:

$$Effy_{U,H} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right](C_S)(L_{S,SS})$$

Where:

$L_{L,A}$ = value as defined in Section 11.2.7 of ASHRAE 103–1993,

L_G = value as defined in Section 11.3.11.1 of ASHRAE 103–1993, at reduced input rate,

L_C = value as defined in Section 11.3.11.2 of ASHRAE 103–1993 at reduced input rate,

L_J = value as defined in Section 11.4.8.1.1 of ASHRAE 103–1993 at maximum input rate,

t_{ON} = value as defined in Section 11.4.9.11 of ASHRAE 103–1993,

Q_P = pilot fuel input rate determined in accordance with Section 9.2 of ASHRAE 103–1993 in Btu/h,

Q_{IN} = value as defined in Section 11.4.8.1.1 of ASHRAE 103–1993,

t_{OFF} = value as defined in Section 11.4.9.12 of ASHRAE 103–1993 at reduced input rate,

$L_{S,ON}$ = value as defined in Section 11.4.10.5 of ASHRAE 103–1993 at reduced input rate,

$L_{S,OFF}$ = value as defined in Section 11.4.10.6 of ASHRAE 103–1993 at reduced input rate,

$L_{I,ON}$ = value as defined in Section 11.4.10.7 of ASHRAE 103–1993 at reduced input rate,

$L_{I,OFF}$ = value as defined in Section 11.4.10.8 of ASHRAE 103–1993 at reduced input rate,

C_J = jacket loss factor and equal to:

= 0.0 for furnaces intended to be installed indoors

= 1.7 for furnaces intended to be installed as isolated combustion systems

= 3.3 for furnaces intended to be installed outdoors

$L_{S,SS}$ = value as defined in Section 11.4.6 of ASHRAE 103–1993 at reduced input rate,

C_S = value as defined in Section 11.3.10.1 of ASHRAE 103–1993 at reduced input rate.

10.3 *Part-Load Efficiency at Maximum Fuel Input Rate.* If the option in section 8.9 of this appendix is not employed, calculate the part-load efficiency at maximum fuel input rate, $Effy_{U,H}$, for condensing furnaces equipped with two-stage controls, expressed as a percent and defined as:

$$Effy_{U,R} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right](L_{S,ON} + L_{S,OFF} + L_{I,ON} + L_{I,OFF})$$

If the option in section 8.9 of this appendix is employed, calculate $Effy_{U,H}$ as follows:

$$Effy_{U,R} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right](C_S)(L_{S,SS})$$

Where:

$L_{L,A}$ = value as defined in Section 11.2.7 of ASHRAE 103–1993,

L_G = value as defined in Section 11.3.11.1 of ASHRAE 103–1993 at maximum input rate,

L_C = value as defined in Section 11.3.11.2 of ASHRAE 103–1993 at maximum input rate,

L_J = value as defined in Section 11.4.8.1.1 of ASHRAE 103–1993 at maximum input rate,

t_{ON} = value as defined in Section 11.4.9.11 of ASHRAE 103–1993,

Q_P = pilot fuel input rate determined in accordance with Section 9.2 of ASHRAE 103–1993 in Btu/h,

Q_{IN} = value as defined in Section 11.4.8.1.1 of ASHRAE 103–1993,

t_{OFF} = value as defined in Section 11.4.9.12 of ASHRAE 103–1993 at maximum input rate,

$L_{S,ON}$ = value as defined in Section 11.4.10.5 of ASHRAE 103–1993 at maximum input rate,

$L_{S,OFF}$ = value as defined in Section 11.4.10.6 of ASHRAE 103–1993 at maximum input rate,

$L_{I,ON}$ = value as defined in Section 11.4.10.7 of ASHRAE 103–1993 at maximum input rate,

$L_{I,OFF}$ = value as defined in Section 11.4.10.8 of ASHRAE 103–1993 at maximum input rate,

C_J = value as defined in Section 10.2 of this appendix,

$L_{S,SS}$ = value as defined in Section 11.4.6 of ASHRAE 103–1993 at maximum input rate,

C_S = value as defined in Section 11.4.10.1 of ASHRAE 103–1993 at maximum input rate.

10.4 *National average burner operating hours, average annual fuel energy consumption, and average annual auxiliary electrical energy consumption for gas or oil furnaces.*

10.4.1 *National average number of burner operating hours.* For furnaces equipped with single-stage controls, the national average number of burner operating hours is defined as:

BOH_{SS} = 2,080 (0.77) (A) DHR − 2,080 (B)

Where:

2,080 = national average heating load hours

0.77 = adjustment factor to adjust the calculated design heating requirement and heating load hours to the actual heating load experienced by the heating system

A = 100,000/[341,200 (y_P PE + y_{IG} PE_{IG} + y BE) + (Q_{IN} − Q_P) $Effy_{HS}$], for forced draft unit, indoors

= 100,000/[341,200 (y_P PE Eff_{motor} + y_{IG} PE_{IG} + y BE) + (Q_{IN} − Q_P) $Effy_{HS}$], for

forced draft unit, isolated combustion system,
= 100,000/[341,200 (y_P PE (1 − Eff_{motor}) + y_{IG} PE_{IG} + y BE) + (Q_{IN} − Q_P) $Effy_{HS}$], for induced draft unit, indoors, and
= 100,000/[341,200 (y_{IG} PE_{IG} + y BE) + (Q_{IN} − Q_P) $Effy_{HS}$], for induced draft unit, isolated combustion system.

DHR = typical design heating requirements as listed in Table 8 (in kBtu/h) of ASHRAE 103–1993, using the proper value of Q_{OUT} defined in Section 11.2.8.1 of ASHRAE 103–1993.

B = 2 Q_P ($Effy_{HS}$) (A)/100,000

Where:

Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer,
= 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

100,000 = factor that accounts for percent and kBtu

y_P = ratio of induced or forced draft blower on-time to average burner on-time, as follows:
1 for units without post-purge;
1 + (t_P/3.87) for single stage furnaces with post purge; or
1 + (t_P/10) for two-stage and step modulating furnaces with post purge.

PE = all electrical power related to burner operation at full load steady-state operation, including electrical ignition device if energized, controls, gas valve or oil control valve, and draft inducer, as determined in section 8.2 of this appendix.

y_{IG} = ratio of burner interrupted ignition device on-time to average burner on-time, as follows:
0 for burners not equipped with interrupted ignition device;
(t_{IG}/3.87) for single-stage furnaces; or
(t_{IG}/10) for two-stage and step modulating furnaces;

PE_{IG} = electrical input rate to the interrupted ignition device on burner (if employed), as defined in section 8.3 of this appendix

y = ratio of blower on-time to average burner on-time, as follows:
1 for furnaces without fan delay;
1 + (t^+ − t^-)/3.87 for single-stage furnaces with fan delay; or
1 + (t^+ − t^-)/10 for two-stage and step modulating furnaces with fan delay.

BE = circulating air fan electrical energy input rate at full-load steady-state operation as defined in section 8.2 of this appendix.

t_P = post-purge time as defined in section 8.5 of this appendix
= 0 if t_P is equal to or less than 30 seconds

t_{IG} = on-time of the burner interrupted ignition device, as defined in section 8.3 of this appendix

Q_{IN} = as defined in Section 11.2.8.1 of ASHRAE 103–1993

Q_P = as defined in Section 11.2.11 of ASHRAE 103–1993

$Effy_{HS}$ = as defined in Section 11.2.11 (non-condensing systems) or Section 11.3.11.3 (condensing systems) of ASHRAE 103–1993, percent, and calculated on the basis of:
isolated combustion system installation, for non-weatherized warm air furnaces; or
outdoor installation, for furnaces that are weatherized.

2 = ratio of the average length of the heating season in hours to the average heating load hours

t^+ = delay time between burner shutoff and the blower shutoff measured as defined in Section 9.5.1.2 of ASHRAE 103–1993

t^- = as defined in Section 9.6.1 of ASHRAE 103–1993

10.4.1.1 For furnaces equipped with two stage or step modulating controls the average annual energy used during the heating season, E_M, is defined as:

E_M = (Q_{IN} − Q_P) BOH_{SS} + (8,760 − 4,600) Q_P

Where:

Q_{IN} = as defined in Section 11.4.8.1.1 of ASHRAE 103–1993

Q_P = as defined in Section 11.4.12 of ASHRAE 103–1993

BOH_{SS} = as defined in section 10.4.1 of this appendix, in which the weighted $Effy_{HS}$ as defined in Section 11.4.11.3 or 11.5.11.3 of ASHRAE 103–1993 is used for calculating the values of A and B, the term DHR is based on the value of Q_{OUT} defined in Section 11.4.8.1.1 or 11.5.8.1.1 of ASHRAE 103–1993, and the term (y_PPE + $y_{IG}$$PE_{IG}$ + yBE) in the factor A is increased by the factor R, which is defined as:
R = 2.3 for two stage controls
= 2.3 for step modulating controls when the ratio of minimum-to-maximum output is greater than or equal to 0.5
= 3.0 for step modulating controls when the ratio of minimum-to-maximum output is less than 0.5

A = 100,000/[341,200 (y_P PE + y_{IG} PE_{IG} + y BE) R + (Q_{IN} − Q_P) $Effy_{HS}$], for forced draft unit, indoors
= 100,000/[341,200 (y_P PE Eff_{motor} + y_{IG} PE_{IG} + y BE) R + (Q_{IN} − Q_P) $Effy_{HS}$], for forced draft unit, isolated combustion system,
= 100,000/[341,200 (y_P PE (1 − Eff_{motor}) + y_{IG} PE_{IG} + y BE) R + (Q_{IN} − Q_P) $Effy_{HS}$], for induced draft unit, indoors, and
= 100,000/[341,200 (y_{IG} PE_{IG} + y BE) R + (Q_{IN} − Q_P) $Effy_{HS}$], for induced draft unit, isolated combustion system.

Where:

Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer,
= 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

$Effy_{HS}$ = as defined in Section 11.4.11.3 or 11.5.11.3 of ASHRAE 103–1993, and calculated on the basis of:
isolated combustion system installation, for non-weatherized warm air furnaces; or
outdoor installation, for furnaces that are weatherized.

8,760 = total number of hours per year

4,600 = as defined in Section 11.4.12 of ASHRAE 103–1993

10.4.1.2 For furnaces equipped with two-stage or step-modulating controls, the national average number of burner operating hours at the reduced operating mode (BOH_R) is defined as:

BOH_R = X_R E_M/$Q_{IN,R}$

Where:

X_R = as defined in Section 11.4.8.7 of ASHRAE 103–1993

E_M = as defined in section 10.4.1.1 of this appendix

$Q_{IN,R}$ = as defined in Section 11.4.8.1.2 of ASHRAE 103–1993

10.4.1.3 For furnaces equipped with two-stage controls, the national average number of burner operating hours at the maximum operating mode (BOH_H) is defined as:

BOH_H = X_H E_M/Q_{IN}

Where:

X_H = as defined in Section 11.4.8.6 of ASHRAE 103–1993

E_M = as defined in section 10.4.1.1 of this appendix

Q_{IN} = as defined in Section 11.4.8.1.1 of ASHRAE 103–1993

10.4.1.4 For furnaces equipped with step-modulating controls, the national average number of burner operating hours at the modulating operating mode (BOH_M) is defined as:

BOH_M = X_H E_M/$Q_{IN,M}$

Where:

X_H = as defined in Section 11.4.8.6 of ASHRAE 103–1993

E_M = as defined in section 10.4.1.1 of this appendix

$Q_{IN,M}$ = $Q_{OUT,M}$/($Effy_{SS,M}$/100)

$Q_{OUT,M}$ = as defined in Section 11.4.8.10 or 11.5.8.10 of ASHRAE 103–1993, as appropriate

$Effy_{SS,M}$ = as defined in Section 11.4.8.8 or 11.5.8.8 of ASHRAE 103–1993, as appropriate, in percent

100 = factor that accounts for percent

10.4.2 *Average annual fuel energy consumption for gas or oil fueled furnaces.* For furnaces equipped with single-stage controls, the average annual fuel energy consumption (E_F) is expressed in Btu per year and defined as:

E_F = BOH_{SS} (Q_{IN} − Q_P) + 8,760 Q_P

Where:

BOH_{SS} = as defined in section 10.4.1 of this appendix

Q_{IN} = as defined in Section 11.2.8.1 of ASHRAE 103–1993

Q_P = as defined in Section 11.2.11 of ASHRAE 103–1993

8,760 = as defined in section 10.4.1.1 of this appendix

10.4.2.1 For furnaces equipped with either two-stage or step modulating controls, E_F is defined as:

E_F = E_M + 4,600 Q_P

Where:

E_M = as defined in section 10.4.1.1 of this appendix

4,600 = as defined in Section 11.4.12 of ASHRAE 103–1993

Q_P = as defined in Section 11.2.11 of ASHRAE 103–1993

10.4.3 *Average annual auxiliary electrical energy consumption for gas or oil-fueled furnaces.* For furnaces equipped with single-stage controls, the average annual auxiliary

electrical consumption (E_{AE}) is expressed in kilowatt-hours and defined as:

$E_{AE} = BOH_{SS} (y_P PE + y_{IG} PE_{IG} + yBE) + E_{SO}$

Where:

BOH_{SS} = as defined in section 10.4.1 of this appendix
y_P = as defined in section 10.4.1 of this appendix
PE = as defined in section 10.4.1 of this appendix
y_{IG} = as defined in section 10.4.1 of this appendix
PE_{IG} = as defined in section 10.4.1 of this appendix
y = as defined in section 10.4.1 of this appendix
BE = as defined in section 10.4.1 of this appendix
E_{SO} = as defined in section 10.11 of this appendix

10.4.3.1 For furnaces equipped with two-stage controls, E_{AE} is defined as:

$E_{AE} = BOH_R (y_P PE_R + y_{IG} PE_{IG} + yBE_R) + BOH_H (y_P PE_H + y_{IG} PE_{IG} + y BE_H) + E_{SO}$

Where:

BOH_R = as defined in section 10.4.1.2 of this appendix
y_P = as defined in section 10.4.1 of this appendix
PE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
y_{IG} = as defined in section 10.4.1 of this appendix
PE_{IG} = as defined in section 10.4.1 of this appendix
y = as defined in section 10.4.1 of this appendix
BE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
BOH_H = as defined in section 10.4.1.3 of this appendix
PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
E_{SO} = as defined in section 10.11 of this appendix

10.4.3.2 For furnaces equipped with step-modulating controls, E_{AE} is defined as:

$E_{AE} = BOH_R (y_P PE_R + y_{IG} PE_{IG} + y BE_R) + BOH_M (y_P PE_H + y_{IG} PE_{IG} + y BE_H) + E_{SO}$

Where:

BOH_R = as defined in section 10.4.1.2 of this appendix
y_P = as defined in section 10.4.1 of this appendix
PE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
y_{IG} = as defined in section 10.4.1 of this appendix
PE_{IG} = as defined in section 10.4.1 of this appendix
y = as defined in section 10.4.1 of this appendix
BE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
BOH_M = as defined in 10.4.1.4 of this appendix
PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
E_{SO} = as defined in section 10.11 of this appendix

10.5 *Average annual electric energy consumption for electric furnaces.* For electric furnaces, the average annual electrical energy consumption (E_E) is expressed in kilowatt-hours and defined as:

$E_E = 100 (2{,}080) (0.77) DHR/(3.412 AFUE) + E_{SO}$

Where:

100 = to express a percent as a decimal
2,080 = as defined in section 10.4.1 of this appendix
0.77 = as defined in section 10.4.1 of this appendix
DHR = as defined in section 10.4.1 of this appendix
3.412 = conversion factor from watt-hours to Btu
AFUE = as defined in Section 11.1 of ASHRAE 103–1993, in percent, and calculated on the basis of:
Isolated combustion system installation, for non-weatherized warm air furnaces; or
outdoor installation, for furnaces that are weatherized.
E_{SO} = as defined in section 10.11 of this appendix.

10.6 *Energy factor.*

10.6.1 *Energy factor for gas or oil furnaces.* Calculate the energy factor, EF, for gas or oil furnaces defined as, in percent:

$EF = (E_F - 4{,}600 (Q_P))(Effy_{HS})/(E_F + 3{,}412 (E_{AE}))$

Where:

E_F = average annual fuel consumption as defined in section 10.4.2 of this appendix
4,600 = as defined in Section 11.4.12 of ASHRAE 103–1993
Q_P = pilot fuel input rate determined in accordance with Section 9.2 of ASHRAE 103–1993 in Btu/h
$Effy_{HS}$ = annual fuel utilization efficiency as defined in Sections 11.2.11, 11.3.11, 11.4.11 or 11.5.11 of ASHRAE 103–1993, in percent, and calculated on the basis of:
Isolated combustion system installation, for non-weatherized warm air furnaces; or
outdoor installation, for furnaces that are weatherized.
3,412 = conversion factor from kW to Btu/h
E_{AE} = as defined in section 10.4.3 of this appendix

10.6.2 *Energy factor for electric furnaces.* The energy factor, EF, for electric furnaces is defined as:

EF = AFUE

Where:

AFUE = annual fuel utilization efficiency as defined in section 10.4.3 of this appendix, in percent

10.7 *Average annual energy consumption for furnaces located in a different geographic region of the United States and in buildings with different design heating requirements.*

10.7.1 *Average annual fuel energy consumption for gas or oil-fueled furnaces located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil-fueled furnaces, the average annual fuel energy consumption for a specific geographic region and a specific typical design heating requirement (E_{FR}) is expressed in Btu per year and defined as:

$E_{FR} = (E_F - 8{,}760 Q_P) (HLH/2{,}080) + 8{,}760 Q_P$

Where:

E_F = as defined in section 10.4.2 of this appendix
8,760 = as defined in section 10.4.1.1 of this appendix
Q_P = as defined in Section 11.2.11 of ASHRAE 103–1993
HLH = heating load hours for a specific geographic region determined from the heating load hour map in Figure 1 of this appendix
2,080 = as defined in section 10.4.1 of this appendix

10.7.2 *Average annual auxiliary electrical energy consumption for gas or oil-fueled furnaces located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil-fueled furnaces, the average annual auxiliary electrical energy consumption for a specific geographic region and a specific typical design heating requirement (E_{AER}) is expressed in kilowatt-hours and defined as:

$E_{AER} = (E_{AE} - E_{SO}) (HLH/2080) + E_{SOR}$

Where:

E_{AE} = as defined in section 10.4.3 of this appendix
E_{SO} = as defined in section 10.11 of this appendix
HLH = as defined in section 10.7.1 of this appendix
2,080 = as defined in section 10.4.1 of this appendix
E_{SOR} = as defined in section 10.7.3 of this appendix.

10.7.3 *Average annual electric energy consumption for electric furnaces located in a different geographic region of the United States and in buildings with different design heating requirements.* For electric furnaces, the average annual electric energy consumption for a specific geographic region and a specific typical design heating requirement (E_{ER}) is expressed in kilowatt-hours and defined as:

$E_{ER} = 100 (0.77) DHR HLH/(3.412 AFUE) + E_{SOR}$

Where:

100 = as defined in section 10.4.3 of this appendix
0.77 = as defined in section 10.4.1 of this appendix
DHR = as defined in section 10.4.1 of this appendix
HLH = as defined in section 10.7.1 of this appendix
3.412 = as defined in section 10.4.3 of this appendix

AFUE = as defined in section 10.4.3 of this appendix

E_{SOR} = E_{SO} as defined in section 10.11 of this appendix, except that in the equation for E_{SO}, the term BOH is multiplied by the expression (HLH/2080) to get the appropriate regional accounting of standby mode and off mode loss.

10.8 *Annual energy consumption for mobile home furnaces.*

10.8.1 *National average number of burner operating hours for mobile home furnaces (BOH_{SS}).* BOH_{SS} is the same as in section 10.4.1 of this appendix, except that the value of $Effy_{HS}$ in the calculation of the burner operating hours, BOH_{SS}, is calculated on the basis of a direct vent unit with system number 9 or 10.

10.8.2 *Average annual fuel energy for mobile home furnaces (E_F).* E_F is same as in section 10.4.2 of this appendix except that the burner operating hours, BOH_{SS}, is calculated as specified in section 10.8.1 of this appendix.

10.8.3 *Average annual auxiliary electrical energy consumption for mobile home furnaces (E_{AE}).* E_{AE} is the same as in section 10.4.3 of this appendix, except that the burner operating hours, BOH_{SS}, is calculated as specified in section 10.8.1 of this appendix.

10.9 *Calculation of sales weighted average annual energy consumption for mobile home furnaces.* To reflect the distribution of mobile homes to geographical regions with average HLH_{MHF} values different from 2,080, adjust the annual fossil fuel and auxiliary electrical energy consumption values for mobile home furnaces using the following adjustment calculations.

10.9.1 For mobile home furnaces, the sales weighted average annual fossil fuel energy consumption is expressed in Btu per year and defined as:

$E_{F,MHF} = (E_F - 8{,}760\ Q_P)\ HLH_{MHF}/2{,}080 + 8{,}760\ Q_P$

Where:

E_F = as defined in section 10.8.2 of this appendix

8,760 = as defined in section 10.4.1.1 of this appendix

Q_P = as defined in section 10.2 of this appendix

HLH_{MHF} = 1880, sales weighted average heating load hours for mobile home furnaces

2,080 = as defined in section 10.4.1 of this appendix

10.9.2 For mobile home furnaces, the sales-weighted-average annual auxiliary electrical energy consumption is expressed in kilowatt-hours and defined as:

$E_{AE,MHF} = E_{AE}\ HLH_{MHF}/2{,}080$

Where:

E_{AE} = as defined in section 10.8.3 of this appendix

HLH_{MHF} = as defined in section 10.9.1 of this appendix

2,080 = as defined in section 10.4.1 of this appendix

10.10 *Direct determination of off-cycle losses for furnaces equipped with thermal stack dampers.* [Reserved]

10.11 *Average annual electrical standby mode and off mode energy consumption.* Calculate the annual electrical standby mode and off mode energy consumption (E_{SO}) in kilowatt-hours, defined as:

$E_{SO} = (P_{W,SB}\ (4160 - BOH) + 4600\ P_{W,OFF})\ K$

Where:

$P_{W,SB}$ = furnace standby mode power, in watts, as measured in section 8.10.1 of this appendix

4,160 = average heating season hours per year

BOH = total burner operating hours as calculated in section 10.4 of this appendix for gas or oil-fueled furnaces. Where for gas or oil-fueled furnaces equipped with single-stage controls, $BOH = BOH_{SS}$; for gas or oil-fueled furnaces equipped with two-stage controls, $BOH = (BOH_R + BOH_H)$; and for gas or oil-fueled furnaces equipped with step-modulating controls, $BOH = (BOH_R + BOH_M)$. For electric furnaces, $BOH = 100(2080)(0.77)DHR/(E_{in}\ 3.412(AFUE))$

4,600 = as defined in Section 11.4.12 of ASHRAE 103–1993

$P_{W,OFF}$ = furnace off mode power, in watts, as measured in section 8.10.2 of this appendix

K = 0.001 kWh/Wh, conversion factor from watt-hours to kilowatt-hours

Where:

100 = to express a percent as a decimal

2,080 = as defined in section 10.4.1 of this appendix

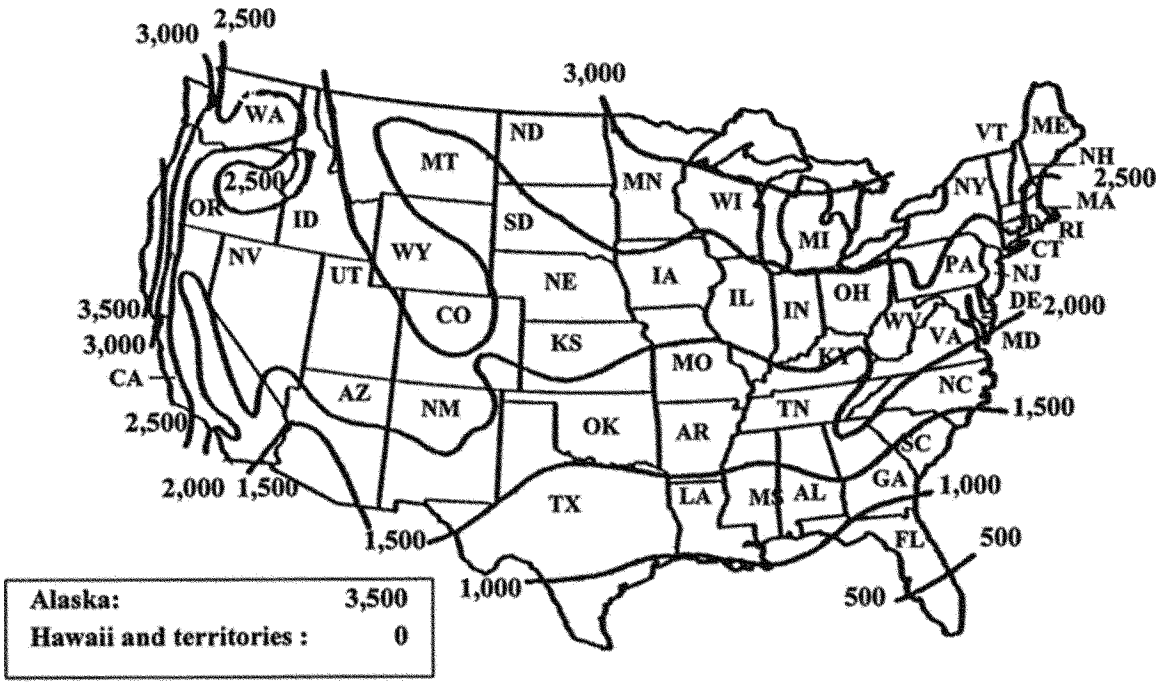
0.77 = as defined in section 10.4.1 of this appendix

DHR = as defined in section 10.4.1 of this appendix

E_{in} = steady-state electric rated power, in kilowatts, from Section 9.3 of ASHRAE 103–1993

3.412 = as defined in section 10.4.3 of this appendix

AFUE = as defined in Section 11.1 of ASHRAE 103–1993 in percent



This map is reasonably accurate for most parts of the United States but is necessarily generalized, and consequently not too accurate in mountainous regions, particularly in the rockies.

FIGURE 1- HEATING LOAD HOURS (HLH) FOR THE UNITED STATES

■ 8. Appendix EE to subpart B of part 430 is added to read as follows:

Appendix EE to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Consumer Boilers

0. Incorporation by reference

DOE incorporated by reference in § 430.3, the entire standard for ANSI/ASHRAE 103–2017, ANSI/ASHRAE 41.6–2014, ASTM D2156–09 (R2018), and IEC 62301. However, only enumerated provisions of ANSI/ASHRAE 103–2017 are applicable to this appendix, as follows:

(1) ANSI/ASHRAE 103–2017

(i) section 2 ''Scope'' as referenced in section 1.0 of this appendix;

(ii) section 3 ''Definitions'' as referenced in section 2.0 of this appendix;

(iii) section 4 ''Classifications'' as referenced in section 3.0 of this appendix;

(iv) section 5 ''Requirements'' as referenced in section 4.0 of this appendix;

(v) section 6 ''Instruments'' as referenced in section 5.0 of this appendix;

(vi) section 7 ''Apparatus'' (except for sections 7.1 and 7.8) as referenced in section 6.0 of this appendix;

(vii) section 8 ''Methods of Testing'' (except for sections 8.3.1.3, 8.3.3.1, 8.4.1.1, 8.4.1.1.1, 8.4.1.2, 8.6.1.1, 8.7.2, and 8.8.3) as referenced in section 7.0 of this appendix;

(viii) section 9 ''Test Procedure'' (except for 9.1.2.2.1, 9.1.2.2.2, 9.5.2.1, 9.7.4, and 9.10) as referenced in section 8.0 of this appendix;

(ix) section 10 ''Nomenclature'' as referenced in section 9.0 of this appendix; and

(x) section 11 ''Calculations'' as referenced in section 10.0 of this appendix.

In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over the incorporated standards.

1.0 *Scope.* The scope of this appendix is as specified in Section 2 of ANSI/ASHRAE 103–2017 as it pertains to low pressure steam or hot water boiler and electric boilers.

2.0 *Definitions.* Definitions include those specified in Section 3 of ANSI/ASHRAE 103–2017 and the following additional and modified definitions.

Active mode means the condition in which the boiler is connected to the power source, and at least one of the burner, electric resistance elements, or any electrical auxiliaries such as blowers or pumps, are activated.

Boiler pump means a pump installed on a boiler and that is separate from the circulating water pump.

Draft inducer means a fan incorporated in the boiler that either draws or forces air into the combustion chamber.

Gas valve means an automatic or semi-automatic device consisting essentially of a valve and operator that controls the gas supply to the burner(s) during normal operation of an appliance. The operator may be actuated by application of gas pressure on a flexible diaphragm, by electrical means, by mechanical means or by other means.

Installation and operation (I&O) manual means instructions for installing, commissioning, and operating the boiler, which are supplied with the product when shipped by the manufacturer.

Off mode means a mode in which the boiler is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. The existence of an off switch in off position (a disconnected circuit) is included within the classification of off mode.

Off switch means the switch on the boiler that, when activated, results in a measurable change in energy consumption between the standby and off modes.

Oil control valve means an automatically or manually operated device consisting of an oil valve for controlling the fuel supply to a burner to regulate burner input.

Standby mode means any mode in which the boiler is connected to a mains power source and offers one or more of the following space heating functions that may persist:

a. To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including thermostat or remote control), internal or external sensors, or timer;

b. Continuous functions, including information or status displays or sensor-based functions.

Thermal stack damper means a type of stack damper that relies exclusively upon the changes in temperature in the stack gases to open or close the damper.

3.0 *Classifications.* Classifications are as specified in Section 4 of ANSI/ASHRAE 103–2017.

4.0 *Requirements.* Requirements are as specified in Section 5 of ANSI/ASHRAE 103–2017.

5.0 *Instruments.* Instruments must be as specified in Section 6 of ANSI/ASHRAE 103–2017.

6.0 *Apparatus.* The apparatus used in conjunction with the boiler during the testing must be as specified in Section 7 of ANSI/ASHRAE 103–2017 except for sections 7.1 and 7.8; and as specified in sections 6.1 and 6.2 of this appendix.

6.1 *General.*

a. Install the boiler in the test room in accordance with the I&O manual, as defined in section 2.5 of this appendix, except that if provisions within this appendix are specified, then the provisions herein drafted and prescribed by DOE govern. If the I&O manual and any additional provisions of this appendix are not sufficient for testing a boiler, the manufacturer must request a waiver from the test procedure pursuant to 10 CFR 430.27.

b. The apparatuses described in section 6 of this appendix are used in conjunction with the boiler during testing. Each piece of apparatus shall conform to material and construction specifications listed in this appendix and in ANSI/ASHRAE 103–2017, and the reference standards cited in this appendix and in ANSI/ASHRAE 103–2017.

c. Test rooms containing equipment must have suitable facilities for providing the utilities (including but not limited to environmental controls, sufficient fluid source(s), applicable measurement equipment, and any other technology or tools) necessary for performance of the test and must be able to maintain conditions within the limits specified in section 6 of this appendix.

6.2 *Condensate collection.* Attach condensate drain lines to the unit as specified in the I&O manual. Maintain a continuous downward slope of drain lines from the unit. Additional precautions (such as eliminating any line configuration or position that would otherwise restrict or block the flow of condensate or checking to ensure a proper connection with condensate drain spout that allows for unobstructed flow) must be taken to facilitate uninterrupted flow of condensate during the test. Collection containers must be glass or polished stainless steel to facilitate removal of interior deposits. The collection container must have a vent opening to the atmosphere.

7.0 *Testing conditions.* The testing conditions must be as specified in Section 8 of ANSI/ASHRAE 103–2017, except for Sections 8.3.1.3, 8.3.3.1, 8.4.1.1, 8.4.1.1.1, 8.4.1.2, 8.6.1.1, 8.7.2, and 8.8.3; and as specified in sections 7.1 to 7.8 of this appendix, respectively. For condensing furnaces and boilers, the relative humidity of the room air shall be measured in accordance with one of the methods described in ANSI/ASHRAE Standard 41.6–2014 (see Section 8.5 of ANSI/ASHRAE 103–2017).

7.1 *Fuel supply, gas.* In conducting the tests specified herein, gases with characteristics as shown in Table 1 of ANSI/ASHRAE 103–2017 shall be used. Maintain the gas supply, ahead of all controls for a boiler, at a test pressure between the normal and increased values shown in Table 1 of ANSI/ASHRAE 103–2017. Maintain the regulator outlet pressure at a level approximating that recommended in the I&O manual, as defined in section 2.5 of this appendix, or, in the absence of such recommendation, to the regulator settings used when the product is shipped by the manufacturer. Use a gas having a specific gravity as shown in Table 1 of ANSI/ASHRAE 103–2017 and with a higher heating value within ±5% of the higher heating value shown in Table 1 of ANSI/ASHRAE 103–2017. Determine the actual higher heating value in Btu per standard cubic foot for the gas to be used in the test within an error no greater than 1%.

7.2 *Installation of piping.* Install piping equipment in accordance with the I&O manual. In the absence of such specification, install piping in accordance with Section 8.3.1.1 of ANSI/ASHRAE 103–2017.

7.3 *Gas burner.* Adjust the burners of gas-fired boilers to their maximum Btu input ratings at the normal test pressure specified by section 7.1 of this appendix. Correct the burner input rate to reflect gas characteristics at a temperature of 60 °F and atmospheric pressure of 30 in of Hg and adjust to within ±2 percent of the hourly Btu nameplate input rating specified by the manufacturer as measured at the maximum input rate during the steady-state performance test in section 8 of this appendix. Set the primary air shutters in accordance with the I&O manual to give a good flame at this condition. If, however, the setting results in the deposit of carbon on the burners during any test specified herein, the tester shall adjust the shutters and burners until no more carbon is deposited and shall perform the tests again with the new settings (*see* Figure 9 of ANSI/ASHRAE 103–2017). After the steady-state performance test has been started, do not make additional adjustments to the burners during the required series of performance tests specified in Section 9 of ANSI/ASHRAE 103–2017. If a vent-limiting means is provided on a gas pressure regulator, keep it in place during all tests.

7.4 *Modulating gas burner adjustment at reduced input rate.* For gas-fired boilers equipped with modulating-type controls, adjust the controls to operate the unit at the nameplate minimum input rate. If the modulating control is of a non-automatic type, adjust the control to the setting recommended in the I&O manual. In the absence of such recommendation, the midpoint setting of the non-automatic control shall be used as the setting for determining the reduced fuel input rate. Start the boiler by turning the safety control valve to the ''ON'' position. Use a supply water temperature that will allow for continuous operation without shutoff by the control. If necessary to achieve such continuous operation, supply water may be increased above 120 °F; in such cases, gradually increase the supply water temperature to determine what minimum supply water temperature, with a 20 °F temperature rise across the boiler, will be needed to adjust for the minimum input rate at the reduced input rate control setting. Monitor regulated gas pressure out of the modulating control valve (or entering the burner) to determine when no further reduction of gas pressure results. The flow rate of water through the boiler shall be adjusted to achieve a 20 °F temperature rise.

7.5 *Oil burner.* Adjust the burners of oil-fired boilers to give a CO_2 reading specified in the I&O manual and an hourly Btu input within ±2% of the hourly Btu nameplate input rating as specified in the I&O manual and as measured at maximum input rate during steady-state performance test as described in section 8 of this appendix. Smoke in the flue may not exceed a No. 1 smoke during the steady-state performance test as measured by the procedure in ASTM D2156–09 (R2018). Maintain the average draft over the fire and in the flue during the steady-state performance test at the value specified in the I&O manual. Do not allow draft fluctuations exceeding 0.005 in. water. Do not make additional adjustments to the burner during the required series of performance tests. The instruments and measuring apparatus for this test are described in section 6 of this appendix and shown in Figure 8 of ANSI/ASHRAE 103–2017.

7.6 *Measurement of jacket surface temperature.* Divide the jacket of the boiler into 6-inch squares when practical, and otherwise into 36-square-inch regions comprising 4 inch by 9 inch or 3 inch by 12 inch sections, and determine the surface temperature at the center of each square or section with a surface thermocouple. Record the surface temperature of the 36-square-inch areas in groups where the temperature differential of the 36-square-inch areas is less than 10 °F for temperature up to 100 °F above room temperature, and less than 20 °F for temperatures more than 100 °F above room temperature.

7.7 *Installation of vent system.* Keep the vent or air intake system supplied by the manufacturer in place during all tests. Test units intended for installation with a variety of vent pipe lengths with the minimum vent length as specified in the I&O manual, or a 5-ft. flue pipe if there are no recommendations in the I&O manual. Do not connect a boiler employing a direct vent system to a chimney or induced-draft source. Vent combustion products solely by using the venting incorporated in the boiler and the vent or air intake system supplied by the manufacturer. For units that are not designed to significantly preheat the incoming air, see section 7.5 of this appendix and Figure 4a or 4b of ANSI/ASHRAE 103–2017. For units that do significantly preheat the incoming air, *see* Figure 4c or 4d of ANSI/ASHRAE 103–2017.

7.8 *Additional optional method of testing for determining D_P and D_F.* On units whose design is such that there is no measurable

airflow through the combustion chamber and heat exchanger when the burner(s) is (are) off as determined by the optional test procedure in section 7.8.1 of this appendix, D_F and D_P may be set equal to 0.05.

7.8.1 *Optional test method for indicating the absence of flow through the heat exchanger.* Manufacturers may use the following test protocol to determine whether air flows through the combustion chamber and heat exchanger when the burner(s) is (are) off. The minimum default draft factor (as allowed per Sections 8.8.3 and 9.10 of ANSI/ASHRAE 103–2017) may be used only for units determined pursuant to this protocol to have no airflow through the combustion chamber and heat exchanger.

7.8.1.1 *Test apparatus.* Use a smoke stick that produces smoke that is easily visible and has a density less than or approximately equal to air. Use a smoke stick that produces smoke that is non-toxic to the test personnel and produces gas that is unreactive with the environment in the test chamber.

7.8.1.2 *Test conditions.* Minimize all air currents and drafts in the test chamber, including turning off ventilation if the test chamber is mechanically ventilated. Wait at least two minutes following the termination of the boiler on-cycle before beginning the optional test method for indicating the absence of flow through the heat exchanger.

7.8.1.3 *Location of the test apparatus.* After all air currents and drafts in the test chamber have been eliminated or minimized, position the smoke stick based on the following equipment configuration:

(a) For horizontal combustion air intakes, approximately 4 inches from the vertical plane at the termination of the intake vent and 4 inches below the bottom edge of the combustion air intake; or

(b) for vertical combustion air intakes, approximately 4 inches horizontal from vent perimeter at the termination of the intake vent and 4 inches down (parallel to the vertical axis of the vent). In the instance where the boiler combustion air intake is closer than 4 inches to the floor, place the smoke device directly on the floor without impeding the flow of smoke.

7.8.1.4 *Duration of test.* Establish the presence of smoke from the smoke stick and then monitor the direction of the smoke flow for no less than 30 seconds.

7.8.1.5 *Test results.* During visual assessment, determine whether there is any draw of smoke into the combustion air intake vent.

If absolutely no smoke is drawn into the combustion air intake, the boiler meets the requirements to allow use of the minimum default draft factor pursuant to Section 8.8.3 and/or Section 9.10 of ANSI/ASHRAE 103–2017.

If there is any smoke drawn into the intake, proceed with the methods of testing as prescribed in Section 8.8 of ANSI/ASHRAE 103–2017.

8.0 *Test procedure.* Conduct testing and measurements as specified in Section 9 of ANSI/ASHRAE 103–2017) except for Sections 9.1.2.2.1, 9.1.2.2.2, 9.5.2.1, 9.7.4, and 9.10; and as specified in sections 8.1 through 8.9 of this appendix. Section 8.4 of this appendix may be used in lieu of Section 9.2 of ANSI/ASHRAE 103–2017.

8.1 *Fuel input.* For gas units, measure and record the steady-state gas input rate in Btu/h, including pilot gas, corrected to standard conditions of 60 °F and 30 in. Hg. Use measured values of gas temperature and pressure at the meter and barometric pressure to correct the metered gas flow rate to the above standard conditions. For oil units, measure and record the steady-state fuel input rate. For maximum input rate, the measured burner input rate shall be within ±2% of the hourly Btu nameplate input rating (Q_{IN}) specified by the manufacturer. For modulating furnaces and boilers operating at reduced input rate, the measured reduced heat input rate ($Q_{IN,R}$) shall be recorded. At the discretion of the one testing, the hourly Btu nameplate minimum input rating specified by the manufacturer may be used in the calculations in place of $Q_{IN,R}$ if the measured rate is within ±2% of the nameplate rating.

8.2 *Electrical input.* During the steady-state test, perform a single measurement of all of the electrical power involved in burner operation (PE), including energizing the ignition system, controls, gas valve or oil control valve, and draft inducer, if applicable. For boilers, the measurement of PE must include the boiler pump if so equipped. If the boiler pump does not operate during the measurement of PE, add the boiler pump nameplate power to the measurement of PE. If the boiler pump nameplate power is not available, use 0.13 kW. For hot water boilers, use the circulating water pump nameplate power for BE, or if the pump nameplate power is not available, use 0.13 kW.

8.3 *Input to interrupted ignition device.* For burners equipped with an interrupted ignition device, record the nameplate electric power used by the ignition device, PE_{IG}, or record that PE_{IG} = 0.4 kW if no nameplate power input is provided. Record the nameplate ignition device on-time interval, t_{IG}, or, if the nameplate does not provide the ignition device on-time interval, measure the on-time interval with a stopwatch at the beginning of the test, starting when the burner is turned on. Set t_{IG} = 0 and PE_{IG} = 0 if the device on-time interval is less than or equal to 5 seconds after the burner is on.

8.4 *Optional test procedures for condensing boilers, measurement of condensate during the establishment of steady-state conditions.* For units with step-modulating or two-stage controls, conduct the test at both the maximum and reduced inputs. In lieu of collecting the condensate immediately after the steady state conditions have been reached as required by Section 9.2 of ANSI/ASHRAE 103–2017, condensate may be collected during the establishment of steady state conditions as defined by Section 9.1.2.1 of ANSI/ASHRAE 103–2017. Perform condensate collection for at least 30 minutes. Measure condensate mass immediately at the end of the collection period to prevent evaporation loss from the sample. Record fuel input for the 30-minute condensate collection test period. Observe and record fuel higher heating value (HHV), temperature, and pressures necessary for determining fuel energy input ($Q_{C,ss}$). Measure the fuel quantity and HHV with errors no greater than 1%. The humidity for the room air shall at no time exceed 80%. Determine the mass of condensate for the establishment of steady state conditions ($M_{C,ss}$) in pounds by subtracting the tare container weight from the total container and condensate weight measured at the end of the 30-minute condensate collection test period.

8.5 *Cool-down test for gas- and oil-fueled boilers without stack dampers.* After steady-state testing has been completed, turn the main burner(s) ''OFF'' and measure the flue gas temperature at 3.75 minutes (temperature designated as $T_{F,OFF}(t_3)$) and 22.5 minutes (temperature designated as $T_{F,OFF}(t_4)$) after the burner shut-off using the thermocouple grid described in Section 7.6 of ANSI/ASHRAE 103–2017.

a. During this off-period, for units that do not have pump delay after shut-off, do not allow any water to circulate through the hot water boilers.

b. For units that have pump delay on shut-off, except those having pump controls sensing water temperature, the unit control must stop the pump. Measure and record the time between burner shut-off and pump shut-off (t^+) to the nearest second.

c. For units having pump delay controls that sense water temperature, operate the pump for 15 minutes and record t^+ as 15 minutes. While the pump is operating, maintain the inlet water temperature and flow rate at the same values as used during the steady-state test, as specified in Sections 9.1 and 8.4.2.3 of ANSI/ASHRAE 103–2017.

d. For boilers that employ post-purge, measure the length of the post-purge period with a stopwatch. Record the time from burner ''OFF'' to combustion blower ''OFF'' (electrically de-energized) as t_P. Measure the flue gas temperature by means of the thermocouple grid described in Section 7.6 of ANSI/ASHRAE 103–2017 at the end of the post-purge period t_P ($T_{F,OFF}(t_P)$) and at (3.75 + t_P) minutes ($T_{F,OFF}(t_3)$) and (22.5 + t_P) minutes ($T_{F,OFF}(t_4)$) after the main burner shuts off. If t_P is prescribed by the I&O manual or measured to be greater than 3 minutes, also measure the flue gas temperature at the midpoint of the post-purge period $t_P/2$ ($T_{F,OFF}(t_P/2)$). If the measured t_P is less than or equal to 30 seconds, record t_P as 0 and conduct the cool-down test as if there is no post-purge.

8.6 *Direct measurement of off-cycle losses testing method.* [Reserved.]

8.7 *Calculation options.* The rate of the flue gas mass flow through the boiler and the factors D_P, D_F, and D_S are calculated by the equations in Sections 11.6.1, 11.6.2, 11.6.3, 11.6.4, 11.7.1, and 11.7.2 of ANSI/ASHRAE 103–2017. On units whose design is such that there is no measurable airflow through the combustion chamber and heat exchanger when the burner(s) is (are) off (as determined by the optional test procedure in section 7.8 of this appendix), D_F and D_P may be set equal to 0.05.

8.8 *Optional test procedures for condensing boilers that have no off-period flue losses.* For units that have applied the test method in section 7.8 of this appendix to determine that no measurable airflow exists through the combustion chamber and heat exchanger during the burner off-period

and having post-purge periods of less than 30 seconds, the cool-down and heat-up tests specified in Sections 9.5 and 9.6 of ANSI/ASHRAE 103–2017 may be omitted. In lieu of conducting the cool-down and heat-up tests, the tester may use the losses determined during the steady-state test described in Section 9.1 of ANSI/ASHRAE 103–2017 when calculating heating seasonal efficiency, $Effy_{HS}$.

8.9 *Measurement of electrical standby and off mode power.*

8.9.1 *Standby power measurement.* With all electrical auxiliaries of the boiler not activated, measure the standby power ($P_{W,SB}$) in accordance with the procedures in IEC 62301, except that Section 8.5, *Room Ambient Temperature,* of ANSI/ASHRAE 103–2017 and the voltage provision of Section 8.2.1.4, *Electrical Supply,* of ANSI/ASHRAE 103–2017 shall apply in lieu of the corresponding provisions of IEC 62301 at Section 4.2, *Test room,* and the voltage specification of Section 4.3, *Power supply.* Frequency shall be 60Hz. Clarifying further, IEC 62301 Section 4.4, *Power measurement instruments,* and Section 5, *Measurements,* apply in lieu of ANSI/ASHRAE 103–2017 Section 6.10, *Energy Flow Rate.* Measure the wattage so that all possible standby mode wattage for the entire appliance is recorded, not just the standby mode wattage of a single auxiliary. Round the recorded standby power ($P_{W,SB}$) to the second decimal place, except for loads greater than or equal to 10W, which must be recorded to at least three significant figures.

8.9.2 *Off mode power measurement.* If the unit is equipped with an off switch or there is an expected difference between off mode power and standby mode power, measure off mode power ($P_{W,OFF}$) in accordance with the standby power procedures in IEC 62301, except that Section 8.5, *Room Ambient Temperature,* of ANSI/ASHRAE 103–2017 and the voltage provision of Section 8.2.1.4, *Electrical Supply,* of ANSI/ASHRAE 103–2017 shall apply in lieu of the corresponding provisions of IEC 62301 at Section 4.2, *Test room,* and the voltage specification of Section 4.3, *Power supply.* Frequency shall be 60Hz. Clarifying further, IEC 62301 Section 4.4, *Power measurement instruments,* and Section 5, *Measurements,* apply for this measurement in lieu of ANSI/ASHRAE 103–2017 Section 6.10, *Energy Flow Rate.* Measure the wattage so that all possible off mode wattage for the entire appliance is recorded, not just the off mode wattage of a single auxiliary. If there is no expected difference in off mode power and standby mode power, let $P_{W,OFF} = P_{W,SB}$, in which case no separate measurement of off mode power is necessary. Round the recorded off mode power ($P_{W,OFF}$) to the second decimal place, except for loads greater than or equal to 10W, in which case round the recorded value to at least three significant figures.

9.0 *Nomenclature.* Nomenclature includes the nomenclature specified in Section 10 of ANSI/ASHRAE 103–2017 and the following additional variables:

Eff_{motor} = Efficiency of power burner motor

PE_{IG} = Electrical power to the interrupted ignition device, kW

$R_{T,a} = R_{T,F}$ if flue gas is measured

$= R_{T,S}$ if stack gas is measured

$R_{T,F}$ = Ratio of combustion air mass flow rate to stoichiometric air mass flow rate

$R_{T,S}$ = Ratio of the sum of combustion air and relief air mass flow rate to stoichiometric air mass flow rate

t_{IG} = Electrical interrupted ignition device on-time, min.

$T_{a,SS,X} = T_{F,SS,X}$ if flue gas temperature is measured, °F

$= T_{S,SS,X}$ if stack gas temperature is measured, °F

y_{IG} = Ratio of electrical interrupted ignition device on-time to average burner on-time

y_P = Ratio of power burner combustion blower on-time to average burner on-time

E_{SO} = Average annual electric standby mode and off mode energy consumption, in kilowatt-hours

$P_{W,OFF}$ = Boiler off mode power, in watts

$P_{W,SB}$ = Boiler standby mode power, in watts

10.0 *Calculation of derived results from test measurements.* Perform calculations as specified in Section 11 of ANSI/ASHRAE 103–2017, except for appendices B and C; and as specified in sections 10.1 through 10.7 and Figure 1 of this appendix.

10.1 *Annual fuel utilization efficiency.* The annual fuel utilization efficiency (AFUE) is as defined in Sections 11.2.12 (non-condensing systems), 11.3.12 (condensing systems), 11.4.12 (non-condensing modulating systems) and 11.5.12 (condensing modulating systems) of ANSI/ASHRAE 103–2017, except for the following:

10.1.1 The definition for the term $Effy_{HS}$ in the defining equation for AFUE. $Effy_{HS}$ is defined as:

$Effy_{HS}$ = heating seasonal efficiency as defined in Sections 11.2.11 (non-condensing systems), 11.3.11 (condensing systems), 11.4.11 (non-condensing modulating systems) and 11.5.11 (condensing modulating systems) of ANSI/ASHRAE 103–2017, and is based on the assumptions that weatherized boilers are located outdoors and that non-weatherized boilers are installed indoors.

10.1.2 In Section 11.5.7.3 for the purpose of calculating the steady-state efficiency of a condensing, modulating boiler at the maximum and reduced input rates the following applies:

10.1.2.1 Calculate steady state efficiencies at the maximum and reduced input rates, $Effy_{SS}$ and $Effy_{SS,R}$, using the equations for non-condensing, non-modulating systems in Section 11.2.7 of ANSI/ASHRAE 103–2017.

10.1.2.2 Use the values for $Effy_{SS}$ and $Effy_{SS,R}$ calculated in the previous step to determine the heating capacity at the maximum and reduced input rates, Q_{OUT} and $Q_{OUT,R}$, according to Sections 11.4.8.1.1 and 11.4.8.1.2 of ANSI/ASHRAE 103–2017.

10.1.2.3 Use the values for Q_{OUT} and $Q_{OUT,R}$ calculated in the previous step to determine the balance point temperature, T_C, according to Section 11.4.8.4 of ANSI/ASHRAE 103–2017.

10.1.2.4 Use the value for T_C determined in the previous step to calculate the average outdoor air temperature for the maximum and reduced input rates, $T_{OA,H}$ and $T_{OA,R}$, according to Section 11.4.8.3 of ANSI/ASHRAE 103–2017.

10.1.2.5 Use the values for $T_{OA,H}$ and $T_{OA,R}$ calculated in the previous step to calculate the steady-state heat loss due to condensate going down the drain, $L_{C,SS}$, at the maximum and reduced input rates according to Section 11.3.7.2 of ANSI/ASHRAE 103–2017.

10.1.2.6 Use the values of $L_{C,SS}$ at the maximum and reduced input rates calculated in the previous step to determine the steady-state efficiency for modulating, condensing boilers at the maximum and reduced input rates, $Effy_{SS}$ and $Effy_{SS,R}$, according to Section 11.3.7.3 of ANSI/ASHRAE 103–2017.

10.2 *National average burner operating hours, average annual fuel energy consumption, and average annual auxiliary electrical energy consumption for gas or oil boilers.*

10.2.1 *National average number of burner operating hours.*

10.2.1.1 For boilers equipped with single-stage controls, the national average number of burner operating hours is defined as:

$$BOH_{SS} = 2{,}080\ (0.77)\ (A)\ [(Q_{OUT}/1000)/(1+\alpha)] - 2{,}080\ (B)$$

Where:

2,080 = national average heating load hours

0.77 = adjustment factor to adjust the calculated design heating requirement and heating load hours to the actual heating load experienced by the heating system

$A = 100{,}000/[341{,}200\ (y_P\ PE + y_{IG}\ PE_{IG} + y\ BE) + (Q_{IN} - Q_P)\ Effy_{HS}]$, for forced draft unit, indoors

$= 100{,}000/[341{,}200\ (y_P\ PE\ (1 - Eff_{motor}) + y_{IG}\ PE_{IG} + y\ BE) + (Q_{IN} - Q_P)\ Effy_{HS}]$, for induced draft unit, indoors, and

Q_{OUT} = value as defined in Section 11.2.8.1 of ANSI/ASHRAE 103–2017.

α = value as defined in Section 11.2.8.2 of ANSI/ASHRAE 103–2017

$B = 2\ Q_P\ (Effy_{HS})\ (A)/100{,}000$

Where:

Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer,

= 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

100,000 = factor that accounts for percent and kBtu

y_P = ratio of induced or forced draft blower on-time to average burner on-time, as follows:

1 for units without post-purge;

$1 + (t_P/t_{ON})$ for single stage boilers with post purge; or

PE = all electrical power related to burner operation at full load steady-state operation, including electrical ignition device if energized, controls, gas valve or oil control valve, draft inducer, and boiler pump, as determined in section 8.2 of this appendix.

y_{IG} = ratio of burner interrupted ignition device on-time to average burner on-time, as follows:

0 for burners not equipped with interrupted ignition device;

(t_{IG}/t_{ON}) for single stage boilers

PE_{IG} = electrical input rate to the interrupted ignition device on burner (if employed), as defined in section 8.3 of this appendix

y = ratio of pump on-time to average burner on-time, as follows:
1 for boilers without a pump delay;
1 + (t^+/t_{ON}) for single-stage boilers with pump delay;
BE = circulating water pump electrical energy input rate at full-load steady-state operation as defined in section 8.2 of this appendix.
t_P = post-purge time as defined in section 8.5 of this appendix
= 0 if t_P is equal to or less than 30 seconds
t_{IG} = on-time of the burner interrupted ignition device, as defined in section 8.3 of this appendix
Q_{IN} = as defined in Section 11.2.8.1 of ANSI/ASHRAE 103–2017
Q_P = as defined in Section 11.2.11 of ANSI/ASHRAE 103–2017
$Effy_{HS}$ = as defined in Section 11.2.11 (non-condensing systems) or Section 11.3.11.3 (condensing systems) of ANSI/ASHRAE 103–2017, percent, and calculated on the basis of:
Indoor installation, for non-weatherized boilers; or outdoor installation, for boilers that are weatherized.
2 = ratio of the average length of the heating season in hours to the average heating load hours
t^+ = delay time between burner shutoff and the pump shutoff measured as defined in section 8.5 of this appendix.
t_{ON} = value as defined in Table 7 of ANSI/ASHRAE 103–2017.

10.2.1.2 For boilers equipped with two-stage or step-modulating controls, the national average number of burner operating hours at the reduced operating mode (BOH_R) is defined as:

$BOH_R = X_R\ (2080)(0.77)[(Q_{OUT}/1{,}000)/(1 + \alpha)](A_R) - 2080(B_R)$

Where:

X_R = as defined in Section 11.4.8.6 of ANSI/ASHRAE 103–2017
2080 = as defined in section 10.2.1.1 of this appendix
0.77 = as defined in section 10.2.1.1 of this appendix
Q_{OUT} = as defined in Section 11.4.8.1.1 or 11.5.8.1.1 of ANSI/ASHRAE 103–2017
α = as defined in Section 11.4.8.2 of ANSI/ASHRAE 103–2017
$A_R = 100{,}000/[341{,}200(y_{P,R}PE_R + y_{IG,R}PE_{IG} + y_RBE_R) + (Q_{IN,R}—Q_P)\ Effy_{U,R}]$ for forced draft unit, indoors; and
$= 100{,}000/[341{,}200(y_{P,R}PE_R\ (1 - Eff_{motor}) + y_{IG,R}PE_{IG} + y_RBE_R) + (Q_{IN,R} - Q_P)\ Effy_{U,R}]$ for induced draft unit, indoors
$B_R = 2Q_P\ (Effy_{U,R})\ (A_R)/100{,}000$
100,000 = conversion factor accounting for percent and 1,000 Btu/kBtu
341,200 = conversion factor accounting for percent and 3,412 Btu/h/kW
$y_{P,R} = 1 + (t_p/t_{ON,R})$ for two-stage and step modulating boilers with post purge
PE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
$y_{IG,R} = t_{IG}/t_{ON,R}$
PE_{IG} = as defined in section 8.3 of this appendix
$y_R = 1 + (t^+)/t_{ON,R}$ for two-stage and step modulating boilers with fan delay
BE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
$Q_{IN,R}$ = as defined in Section 11.4.8.1.2 of ANSI/ASHRAE 103–2017
Q_P = as defined in Section 11.4.12 of ANSI/ASHRAE 103–2017
$Effy_{U,R}$ = as defined in Section 11.4.11.1 or 11.5.11.1 of ANSI/ASHRAE 103–2017, and calculated on the basis of:
Indoor installation, for non-weatherized boilers; or
outdoor installation, for boilers that are weatherized.
Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer,
= 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

10.2.1.3 For boilers equipped with two-stage controls, the national average number of burner operating hours at the maximum operating mode (BOH_H) is defined as:

$BOH_H = X_H\ (2080)(0.77)[(Q_{OUT}/1{,}000)/(1 + \alpha)](A_H) - 2080(B_H)$

Where:

X_H = as defined in Section 11.4.8.5 of ANSI/ASHRAE 103–2017
2080 = as defined in section 10.2.1.1 of this appendix
0.77 = as defined in section 10.2.1.1 of this appendix
Q_{OUT} = as defined in Section 11.4.8.1.1 or 11.5.8.1.1 of ANSI/ASHRAE 103–2017
α = as defined in Section 11.4.8.2 of ANSI/ASHRAE 103–2017
$A_H = 100{,}000/[341{,}200(y_{P,H}PE_H + y_{IG,H}PE_{IG} + y_HBE_H) + (Q_{IN,H} - Q_P)\ Effy_{U,H}]$ for forced draft unit, indoors; and
$= 100{,}000/[341{,}200(y_{P,H}PE_H\ (1 - Eff_{motor}) + y_{IG,H}PE_{IG} + y_HBE_H) + (Q_{IN,H} - Q_P)\ Effy_{U,H}]$ for induced draft unit, indoors
$B_H = 2Q_P\ (Effy_{U,H})\ (A_H)/100{,}000$
100,000 = conversion factor accounting for percent and 1,000 Btu/kBtu
341,200 = conversion factor accounting for percent and 3412 Btu/h/kW
$y_{P,H} = 1 + (t_p/t_{ON,H})$ for two-stage and step modulating boilers with post purge
PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
$y_{IG,H} = t_{IG}/t_{ON,H}$
PE_{IG} = as defined in section 8.3 of this appendix
$y_H = 1 + (t^+)/t_{ON,H}$ for two-stage and step modulating boilers with fan delay
BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
$Q_{IN,H}$ = as defined in Section 11.4.8.1.1 of ANSI/ASHRAE 103–2017
Q_P = as defined in Section 11.4.12 of ANSI/ASHRAE 103–2017
$Effy_{U,H}$ = as defined in Section 11.4.11.2 or 11.5.11.2 of ANSI/ASHRAE 103–2017, and calculated on the basis of:
indoor installation, for non-weatherized boilers; or
outdoor installation, for boilers that are weatherized.
Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer,
= 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

10.2.1.4 For boilers equipped with step-modulating controls, the national average number of burner operating hours at the modulating operating mode (BOH_M) is defined as:

$BOH_M = X_H\ (2080)(0.77)[(Q_{OUT}/1{,}000)/(1+\alpha)](A_M) - 2080(B_M)$

Where:

X_H = as defined in Section 11.4.8.5 of ANSI/ASHRAE 103–2017
2080 = as defined in section 10.2.1.1 of this appendix
0.77 = as defined in section 10.2.1.1 of this appendix
Q_{OUT} = as defined in Section 11.4.8.1.1 or 11.5.8.1.1 of ANSI/ASHRAE 103–2017
α = as defined in Section 11.4.8.2 of ANSI/ASHRAE 103–2017
$A_M = 100{,}000/[341{,}200(y_{P,H}PE_H + y_{IG,H}PE_{IG} + y_HBE_H) + (Q_{IN,M} - Q_P)\ Effy_{U,M}]$ for forced draft unit, indoors; and
$= 100{,}000/[341{,}200(y_{P,H}PE_H\ (1 - Eff_{motor}) + y_{IG,H}PE_{IG} + y_HBE_H) + (Q_{IN,M} - Q_P)\ Effy_{U,M}]$ for induced draft unit, indoors
$B_M = 2Q_P\ (Effy_{U,M})\ (A_M)/100{,}000$
100,000 = conversion factor accounting for percent and 1,000 Btu/kBtu
341,200 = conversion factor accounting for percent and 3412 Btu/h/kW
$y_{P,H} = 1 + (t_p/t_{ON,H})$ for two-stage and step modulating boilers with post purge
PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
$y_{IG,H} = t_{IG}/t_{ON,H}$
PE_{IG} = as defined in section 8.3 of this appendix
$y_H = 1 + (t^+)/t_{ON,H}$ for two-stage and step modulating boilers with fan delay
BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
$Q_{IN,M} = (100)(Q_{OUT,M}/Effy_{SS,M})$
$Q_{OUT,M}$ = as defined in Section 11.4.8.9 or 11.5.8.9 of ANSI/ASHRAE 103–2017
$Effy_{SS,M}$ = value as defined in Section 11.4.8.7 or 11.5.8.7 of ANSI/ASHRAE 103–2017
Q_P = as defined in Section 11.4.12 of ANSI/ASHRAE 103–2017
$Effy_{U,M}$ = as defined in Section 11.4.9.2.3 or 11.5.9.2.3 of ANSI/ASHRAE 103–2017, and calculated on the basis of:
indoor installation, for non-weatherized boilers; or
outdoor installation, for boilers that are weatherized.
Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer,
= 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

10.2.2 *Average annual fuel energy consumption for gas or oil fueled boilers.*

10.2.2.1 For boilers equipped with single-stage controls, the average annual fuel energy consumption (E_F) is expressed in Btu per year and defined as:

$E_F = BOH_{SS}\ (Q_{IN} - Q_P) + 8{,}760\ Q_P$

Where:

BOH_{SS} = as defined in section 10.2.1.1 of this appendix
Q_{IN} = as defined in Section 11.2.8.1 of ANSI/ASHRAE 103–2017

Q_P = as defined in Section 11.2.11 of ANSI/ASHRAE 103–2017
8,760 = total number of hours per year.

10.2.2.2 For boilers equipped with either two-stage or step modulating controls, E_F is defined as follows. For two-stage control:

$E_F = (BOH_H)(Q_{IN})+(BOH_R)(Q_{IN,R})+[8760-(BOH_H+BOH_R)]Q_P$

For step-modulating control:

$E_F = (BOH_M)(Q_{IN,M})+(BOH_R)(Q_{IN,R})+[8760-(BOH_H+BOH_R)]Q_P$

Where:

BOH_H = as defined in section 10.2.1.3 of this appendix
BOH_R = as defined in section 10.2.1.2 of this appendix
BOH_M = as defined in section 10.2.1.4 of this appendix
Q_{IN} = as defined in Section 11.2.8.1 of ANSI/ASHRAE 103–2017
$Q_{IN,R}$ = as defined in Section 11.4.8.1.2 of ANSI/ASHRAE 103–2017
$Q_{IN,M}$ = as defined in Section 10.2.1.4 of this appendix
8,760 = total number of hours per year
Q_P = as defined in Section 11.2.11 of ANSI/ASHRAE 103–2017.

10.2.3 *Average annual auxiliary electrical energy consumption for gas or oil-fueled boilers.*

10.2.3.1 For boilers equipped with single-stage controls, the average annual auxiliary electrical consumption (E_{AE}) is expressed in kilowatt-hours and defined as:

$E_{AE} = BOH_{SS}\ (y_P\ PE + y_{IG}\ PE_{IG} + yBE) + E_{SO}$

Where:

BOH_{SS} = as defined in section 10.2.1.1 of this appendix
y_P = as defined in section 10.2.1.1 of this appendix
PE = as defined in section 10.2.1.1 of this appendix
y_{IG} = as defined in section 10.2.1.1 of this appendix
PE_{IG} = as defined in section 10.2.1.1 of this appendix
y = as defined in section 10.2.1.1 of this appendix
BE = as defined in section 10.2.1.1 of this appendix
E_{SO} = as defined in section 10.7 of this appendix.

10.2.3.2 For boilers equipped with two-stage controls, E_{AE} is defined as:

$E_{AE} = BOH_R\ (y_{P,R}\ PE_R + y_{IG,R}\ PE_{IG} + y_R BE_R) + BOH_H\ (y_{P,H}\ PE_H + y_{IG,H}\ PE_{IG} + y_H BE_H) + E_{SO}$

Where:

BOH_R = as defined in section 10.2.1.2 of this appendix
$y_{P,R}$ = as defined in section 10.2.1.2 of this appendix
PE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
$y_{IG,R}$ = as defined in section 10.2.1.2 of this appendix
PE_{IG} = as defined in section 10.2.1.1 of this appendix
y_R = as defined in section 10.2.1.2 of this appendix
BE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
BOH_H = as defined in section 10.2.1.3 of this appendix
PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
$y_{P,H}$ = as defined in section 10.2.1.3 of this appendix
$y_{IG,H}$ = as defined in section 10.2.1.3 of this appendix
BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
y_H = as defined in section 10.2.1.3 of this appendix
E_{SO} = as defined in section 10.7 of this appendix.

10.2.3.3 For boilers equipped with step-modulating controls, E_{AE} is defined as:

$E_{AE} = BOH_R\ (y_{P,R}\ PE_R + y_{IG,R}\ PE_{IG} + y_R\ BE_R) + BOH_M\ (y_{P,H}\ PE_H + y_{IG,H}\ PE_{IG} + y_H BE_H) + E_{SO}$

Where:

BOH_R = as defined in section 10.2.1.2 of this appendix
$y_{P,R}$ = as defined in section 10.2.1.2 of this appendix
PE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
$y_{IG,R}$ = as defined in section 10.2.1.2 of this appendix
PE_{IG} = as defined in section 10.2.1 of this appendix
y_R = as defined in section 10.2.1.2 of this appendix
BE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
BOH_M = as defined in 10.2.1.4 of this appendix
$y_{P,H}$ = as defined in section 10.2.1.3 of this appendix
PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
$y_{IG,H}$ = as defined in section 10.2.1.3 of this appendix
y_H = as defined in section 10.2.1.3 of this appendix
BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
E_{SO} = as defined in section 10.7 of this appendix.

10.3 *Average annual electric energy consumption for electric boilers.* For electric boilers, the average annual electrical energy consumption (E_E) is expressed in kilowatt-hours and defined as:

$E_E = 100\ (2{,}080)\ (0.77)\ [Q_{OUT}/(1+\alpha)]/(3412\ AFUE) + E_{SO}$

Where:

100 = to express a percent as a decimal
2,080 = as defined in section 10.2.1.1 of this appendix
0.77 = as defined in section 10.2.1.1 of this appendix
Q_{OUT} = as defined in Section 11.2.8 of ANSI/ASHRAE 103–2017
α = as defined in Section 11.2.8.2 of ANSI/ASHRAE 103–2017
3412 = conversion factor from kilowatt-hours to Btu
AFUE = as defined in Section 11.1 of ANSI/ASHRAE 103–2017, in percent, and calculated on the basis of:
indoor installation, for non-weatherized boilers; or
outdoor installation, for boilers that are weatherized.
E_{SO} = as defined in section 10.7 of this appendix.

10.4 *Energy factor.*

10.4.1 *Energy factor for gas or oil boilers.* Calculate the energy factor, EF, for gas or oil boilers defined as, in percent:

$EF = (E_F - 4{,}600\ (Q_P))(Effy_{HS})/(E_F + 3{,}412\ (E_{AE}))$

Where:

E_F = average annual fuel consumption as defined in section 10.2.2 of this appendix
4,600 = as defined in Section 11.4.12 of ANSI/ASHRAE 103–2017
Q_P = pilot fuel input rate determined in accordance with Section 9.2 of ANSI/ASHRAE 103–2017 in Btu/h
$Effy_{HS}$ = annual fuel utilization efficiency as defined in Sections 11.2.11, 11.3.11, 11.4.11 or 11.5.11 of ANSI/ASHRAE 103–2017, in percent, and calculated on the basis of:
indoor installation, for non-weatherized boilers; or
outdoor installation, for boilers that are weatherized.
3,412 = conversion factor from kW to Btu/h
E_{AE} = as defined in section 10.2.3 of this appendix.

10.4.2 *Energy factor for electric boilers.* The energy factor, EF, for electric boilers is defined as:

EF = AFUE

Where:

AFUE = annual fuel utilization efficiency as defined in section 10.3 of this appendix, in percent.

10.5 *Average annual energy consumption for boilers located in a different geographic region of the United States and in buildings with different design heating requirements.*

10.5.1 *Average annual fuel energy consumption for gas or oil-fueled boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil-fueled boilers, the average annual fuel energy consumption for a specific geographic region and a specific typical design heating requirement (E_{FR}) is expressed in Btu per year and defined as:

$E_{FR} = (E_F - 8{,}760\ Q_P)\ (HLH/2{,}080) + 8{,}760\ Q_P$

Where:

E_F = as defined in section 10.2.2 of this appendix
8,760 = as defined in section 10.2.2 of this appendix
Q_P = as defined in Section 11.2.11 of ANSI/ASHRAE 103–2017
HLH = heating load hours for a specific geographic region determined from the heating load hour map in Figure 1 of this appendix
2,080 = as defined in section 10.2.1.1 of this appendix.

10.5.2 *Average annual auxiliary electrical energy consumption for gas or oil-fueled boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil-fueled boilers, the average annual auxiliary electrical energy consumption for a specific geographic region and a specific typical design heating requirement (E_{AER}) is expressed in kilowatt-hours and defined as:

$E_{AER} = (E_{AE} - E_{SO})\ (HLH/2080) + E_{SOR}$

Where:

E_{AE} = as defined in section 10.2.3 of this appendix

E_{SO} = as defined in section 10.7 of this appendix

HLH = as defined in section 10.5.1 of this appendix

2,080 = as defined in section 10.2.1.1 of this appendix

E_{SOR} = as defined in section 10.5.3 of this appendix.

10.5.3 *Average annual electric energy consumption for electric boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For electric boilers, the average annual electric energy consumption for a specific geographic region and a specific typical design heating requirement (E_{ER}) is expressed in kilowatt-hours and defined as:

$E_{ER} = 100\ (0.77)\ [Q_{OUT}/(1+\alpha)]\ HLH/(3.412\ AFUE) + E_{SOR}$

Where:

100 = as defined in section 10.2.3 of this appendix

0.77 = as defined in section 10.2.1.1 of this appendix

Q_{OUT} = as defined in Section 11.2.8.1 of ANSI/ASHRAE 103–2017

α = as defined in Section 11.2.8.2 of ANSI/ASHRAE 103–2017

HLH = as defined in section 10.5.1 of this appendix

3.412 = as defined in section 10.2.3 of this appendix

AFUE = as defined in section 10.2.3 of this appendix

$E_{SOR} = E_{SO}$ as defined in section 10.7 of this appendix, except that in the equation for E_{SO}, the term BOH is multiplied by the expression (HLH/2080) to get the appropriate regional accounting of standby mode and off mode loss.

10.6 *Direct determination of off-cycle losses for boilers equipped with thermal stack dampers.* [Reserved]

10.7 *Average annual electrical standby mode and off mode energy consumption.* Calculate the annual electrical standby mode and off mode energy consumption (E_{SO}) in kilowatt-hours, defined as:

$E_{SO} = (P_{W,SB}\ (4160 - BOH) + 4600\ P_{W,OFF})\ K$

Where:

$P_{W,SB}$ = boiler standby mode power, in watts, as measured in section 8.9.1 of this appendix

4,160 = average heating season hours per year

BOH = total burner operating hours as calculated in section 10.2 of this appendix for gas or oil-fueled boilers. Where for gas or oil-fueled boilers equipped with single-stage controls, $BOH = BOH_{SS}$; for gas or oil-fueled boilers equipped with two-stage controls, $BOH = (BOH_R + BOH_H)$; and for gas or oil-fueled boilers equipped with step-modulating controls, $BOH = (BOH_R + BOH_M)$. For electric boilers, $BOH = 100(2080)(0.77)[Q_{OUT}/(1+\alpha)]/(E_{in}\ 3412(AFUE))$

4,600 = as defined in Section 11.4.12 of ANSI/ASHRAE 103–2017

$P_{W,OFF}$ = boiler off mode power, in watts, as measured in section 8.9.2 of this appendix

K = 0.001 kWh/Wh, conversion factor from watt-hours to kilowatt-hours

Where:

100 = to express a percent as a decimal

2,080 = as defined in section 10.2.1.1 of this appendix

0.77 = as defined in section 10.2.1.1 of this appendix

Q_{OUT} = as defined in Section 11.2.8 of ANSI/ASHRAE 103–2017

α = as defined in Section 11.2.8.2 of ANSI/ASHRAE 103–2017

E_{in} = steady-state electric rated power, in kilowatts, from Section 9.3 of ANSI/ASHRAE 103–2017

3412 = as defined in section 10.3 of this appendix

AFUE = as defined in Section 11.1 of ANSI/ASHRAE 103–2017 in percent.

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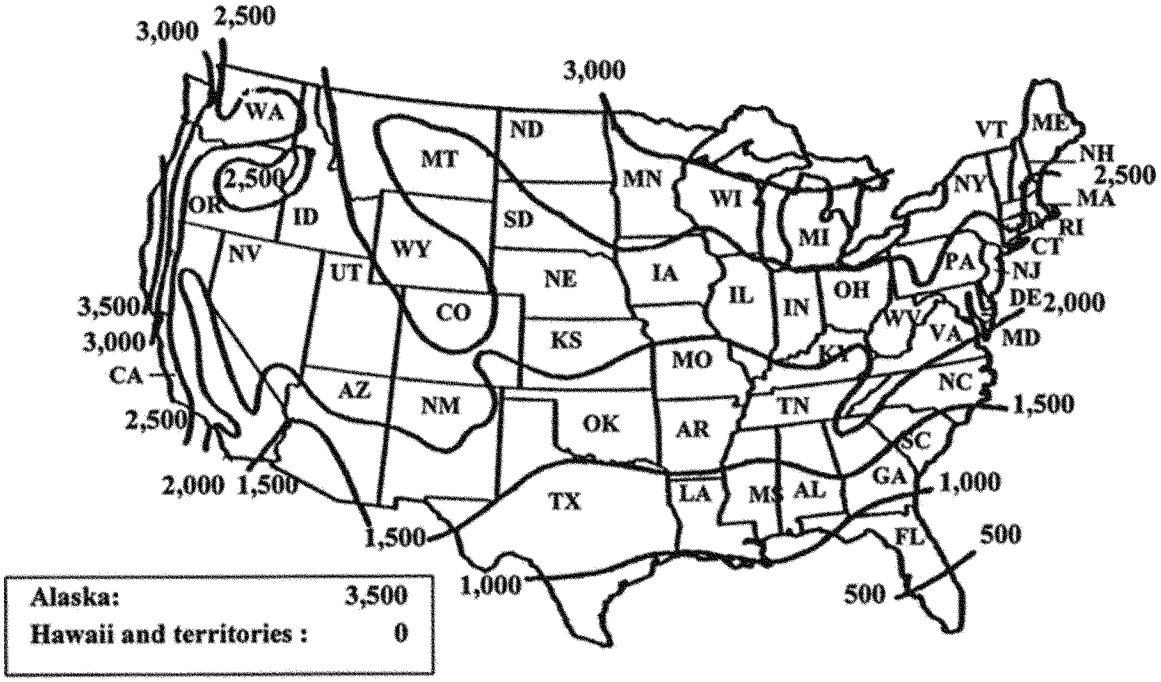

This map is reasonably accurate for most parts of the United States but is necessarily generalized, and consequently not too accurate in mountainous regions, particularly in the rockies.

FIGURE 1- HEATING LOAD HOURS (HLH) FOR THE UNITED STATES

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Big Sandy Crayfish and Guyandotte River Crayfish; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2019–0098; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BE19

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Big Sandy Crayfish and Guyandotte River Crayfish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Big Sandy crayfish (*Cambarus callainus*) and Guyandotte River crayfish (*C. veteranus*) under the Endangered Species Act (Act). In total, approximately 717 stream kilometers (446 stream miles) in Kentucky, Virginia, and West Virginia fall within the boundaries of the critical habitat designation. The effect of this final rule is to designate critical habitat for the Big Sandy crayfish, which is a threatened species under the Act, and Guyandotte River crayfish, which is an endangered species under the Act.

DATES: This rule is effective April 14, 2022.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov* in Docket No. FWS–R5–ES–2019–0098 or at *https://www.fws.gov/northeast/* and at the West Virginia Ecological Services Field Office. Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection in the docket at *https://www.regulations.gov*.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R5–ES–2019–0098, at *https://www.fws.gov/westvirginiafieldoffice/index.html*, and at the West Virginia Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the U.S. Fish and Wildlife Service website and field office set out above, and may also be included in the preamble and at *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Norris, Field Supervisor, U.S. Fish and Wildlife Service, West Virginia Ecological Services Field Office, 6263 Appalachian Highway, Davis, WV 26260; telephone 304–866–3858; email *FW5_WVFO@fws.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This document is a final rule to designate critical habitat for the Big Sandy crayfish and Guyandotte River crayfish. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can be completed only by issuing a rule.

We listed the Big Sandy crayfish as a threatened species and the Guyandotte River crayfish as an endangered species on April 7, 2016 (81 FR 20450). On January 28, 2020, we published in the **Federal Register** a proposed critical habitat designation for the Big Sandy and Guyandotte River crayfishes (85 FR 5072).

What this document does. This document is a final rule that designates critical habitat for the Big Sandy crayfish and the Guyandotte River crayfish. The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for Big Sandy and Guyandotte River crayfishes. We are designating a total of approximately 717 stream kilometers (skm) (446 stream miles (smi)) of rivers and streams in Kentucky, Virginia, and West Virginia for the Big Sandy and Guyandotte River crayfishes.

The basis for our action. Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Peer review and public comment. Our designation is based on the best scientific data available in the proposed and final listing rules (80 FR 18710, April 7, 2015, and 81 FR 20450, April 7, 2016, respectively) and proposed and final critical habitat designations (85 FR 5072, January 28, 2020, and this rule, respectively). The proposed listing rule was peer-reviewed by four scientists with expertise in crayfish and their habitats, and we also considered all comments and information received from State and Federal resource agencies and the public in developing the final listing rule (81 FR 20450, April 7, 2016). We solicited peer review for the proposed designation of critical habitat; however, none of the three species experts responded to our request. We considered all comments and information received from State and Federal resource agencies and the public during the comment period for the proposed designation of critical habitat. Information we received from public comment is incorporated in this final designation of critical habitat, as appropriate, or addressed below in Summary of Comments and Recommendations.

Previous Federal Actions

We proposed the Big Sandy and Guyandotte River crayfishes for listing on April 7, 2015 (80 FR 18710), and finalized the listing on April 7, 2016 (81 FR 20450). As such, the Big Sandy crayfish is included as a threatened species and the Guyandotte River crayfish is included as an endangered species on the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h). We also proposed to designate critical habitat for the Big Sandy and Guyandotte River crayfishes on January 28, 2020 (85 FR 5072). For information on any actions prior to these rules, refer to the proposed listing rule (80 FR 18710, April 7, 2015).

Summary of Changes From the Proposed Rule

We have considered all comments and information received during the open comment period for the proposed designation of critical habitat for the Big Sandy and Guyandotte River crayfishes. In the Critical Habitat section of this document, we provide new or revised information and references on crayfish movement (*e.g.,* upstream) and our revised screening analysis. Based on further review and an effort to clarify our descriptions of the physical and biological features (PBFs), we modified the PBF 1 by adding additional descriptive information about habitat quality. Critical habitat boundaries remain unchanged from the proposed critical habitat designation (85 FR 5072, January 28, 2020).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for Big Sandy and Guyandotte River crayfishes (85 FR 5072) during a 60-day comment period that opened on January 28, 2020, and closed on March 30, 2020. A newspaper notice inviting general public comment was published in *USA Today* on February 5, 2020. We did not receive any requests for a public hearing. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during the comment period.

We sought comments from three independent specialists to ensure that our designation was based on scientifically sound data, assumptions, and analyses. We received no comments from the peer reviewers. During the comment period, we received 45 comment submittals from organizations or individuals in response to the proposed critical habitat designation. Of these, 35 were nonsubstantive letters or form letters (submitted by 3 nongovernmental organizations [one organization packaged 3,401 subletters and another packaged 259 subletters]) in support of the proposed critical habitat designation. One of these letters, representing 23 nongovernmental organizations, summarized threats to the species and their habitats, consistent with the information provided in the proposed rule. Three letters provided detailed information regarding the species or its habitat in favor of additional critical habitat designation beyond what was proposed. One letter provided detailed water depth/elevation data for the proposed habitat. Five letters objected to the proposed designation of critical habitat for either or both of the species. All substantive information provided during the comment period has either been incorporated directly into this final determination or is addressed below.

In addition, several letters also contained suggestions applicable to general recovery issues for the Big Sandy and Guyandotte River crayfishes, but not directly related to the critical habitat designation (*i.e.,* meaning these comments are outside the scope of this critical habitat rule). These general comments included topics such as the role of crayfish in aquatic ecosystems and the importance of clean water, and the suggestion to seek information on crayfish restoration from commercial crayfish farmers. While these comments may not be directly incorporated into the critical habitat rule, we have noted the suggestions and look forward to working with our partners on these topics during recovery planning for the Big Sandy and Guyandotte River crayfishes.

Comments From Federal Agencies

(1) Comment: The U.S. Army Corps of Engineers (Corps) provided information on its operation of three multipurpose flood control dams and how those actions could potentially affect proposed critical habitat for the Big Sandy and Guyandotte River crayfishes. The Corps also provided a point of contact for more information on the operations of Corps reservoirs in the Guyandotte and Big Sandy basins.

Our response: We look forward to working with the Corps to coordinate dam maintenance and operation activities while also promoting the conservation of the Guyandotte and Big Sandy crayfishes in the identified subunits.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' The Service received supportive comments from the West Virginia Division of Natural Resources (WVDNR). WVDNR stated that there is no benefit to exclusion of any of the proposed critical habitat areas. Further, WVDNR noted that current occupied areas do not provide sufficient resiliency, redundancy, or representation necessary to ensure persistence of the Guyandotte River crayfish and it supported the inclusion of Huff Creek, Indian Creek, and Guyandotte River as unoccupied critical habitat. Also, WVDNR recognized the importance of special management actions for Indian Creek as this stream is often dewatered (possibly due to anthropogenic causes).

Public Comments

(1) Comment: Two commenters who have researched the Big Sandy and Guyandotte River crayfishes expressed support for the proposed critical habitat for both species, but they also recommended that we designate additional unoccupied critical habitat to support the conservation of the Guyandotte River crayfish. The commenters referred to two studies completed after we published the proposed critical habitat rule (85 FR 5072, January 28, 2020). One study reported that individual Guyandotte River crayfish may have a tendency to move in an upstream direction and one study determined there is a high probability of detecting the species in certain headwater areas of the Guyandotte River (Sadecky 2020, pp. 118–119 and Tidmore 2020, pp. 29–40). Both commenters hypothesized that crayfish in the occupied Pinnacle Creek subunit may move upstream in the Guyandotte River to occupy or reoccupy currently unoccupied streams, and one commenter recommended the addition of four specific tributary streams located upstream in the Guyandotte River be designated as unoccupied critical habitat: Barkers Creek, Devil's Fork, Winding Gulf, and Tommy Creek.

One commenter stated that unoccupied reaches are needed to allow redistribution of the species, because Guyandotte River crayfish are present in only two streams of the proposed critical habitat (without this protection, delisting/recovery is improbable). The commenter also noted they had witnessed several spills in Guyandotte River crayfish habitat while conducting field research on the species.

Our response: These researchers have provided additional information on the life history, behavior, habitat requirements, and potential stressors (*e.g.,* climate change) affecting the Guyandotte River crayfish. Species' expansion into unoccupied streams would benefit their conservation. The new information confirms that individual crayfish move within stream reaches and that 59 percent of crayfish movements were in an upstream direction (Sadecky 2020, p. 119). This study reported one male crayfish moved 620 m (2,034 ft) upstream during a 44-day study period (Sadecky 2020, pp. 118–119). As discussed in the proposed critical habitat rule, and affirmed by this

new information, we considered the potential for crayfish movement by designating entire stream reaches between known occurrence locations as critical habitat unless available data indicated that these areas lacked PBFs. Additionally, the upstream terminus of most critical habitat units (typically a stream confluence) is located beyond the most upstream occurrence record of the species.

For the unoccupied Guyandotte River critical habitat subunit (1c), which we determined was essential for providing connectivity between the occupied Pinnacle Creek and Clear Fork subunits (1a and 1b, respectively), the upstream limit is the Guyandotte River–Pinnacle Creek confluence (which marks the downstream terminus of subunit 1a). Therefore, a continuous reach of critical habitat extends from the upstream terminus of the Pinnacle Creek subunit (1a), through the Guyandotte River subunit (1c), to the upstream terminus of the Clear Fork–Laurel Fork subunit (1b), a distance of approximately 90 skm (56 smi). Spatially arranging the critical habitat units in this manner facilitates crayfish movements consistent with PBF 6, which provides for ''an interconnected network of streams and rivers . . . that allow(s) for the movement of individual crayfish in response to environmental, physiological, or behavioral drivers.''

We have reviewed information on the four specific streams recommended for additional unoccupied critical habitat. One of these streams, Barkers Creek, is located approximately 21 skm (13 smi) upstream of the Guyandotte River–Pinnacle Creek confluence, and the remaining three, Devil's Fork, Winding Gulf, and Tommy Creek (Stone Coal Creek), are located approximately 40 to 42 skm (25 to 26 smi) upstream of Pinnacle Creek. Of these, historical records of the Guyandotte River crayfish are available from only Barkers Creek (1947). In 2015, a total of 15 sites in these and other streams above Pinnacle Creek were surveyed, but the Guyandotte River crayfish was not detected (Loughman 2015b, pp. 4–5). Site assessment data from these surveys indicated the extent of suitable habitat in these headwater areas was limited and that habitat quality scores were generally lower than in streams where the species was present (Loughman 2015b, pp. 12–25). The commenter referenced a more recent habitat model (Tidmore 2020, pp. 29–40), which determined there was a high probability of suitable habitat in some portions of these streams; however, 31 validation surveys associated with this study failed to locate the species outside of the streams already proposed as occupied critical habitat (although the report does not indicate how many of these validation surveys occurred in the 4 streams recommended as unoccupied critical habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside of the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We acknowledge that some segments of these streams contain areas of suitable habitat as described in Tidmore (2020, pp. 29–40) and contain one or more of the PBFs required by the species, and we conclude that the best available information (*e.g.,* aforementioned validation surveys) does not indicate that these areas are essential for the conservation of the species. While the most downstream stream (Barkers Creek) has a historical record of the species, we have no data indicating the species was historically present in the more distant upstream reaches or tributaries. Areas included in this final designation provides sufficient resiliency, redundancy, and representation to conserve the species.

As discussed in the proposed rule, we determined that the two occupied critical habitat subunits (1a and 1b) are not sufficient to ensure the conservation of the Guyandotte River crayfish; therefore, we proposed three subunits (1c, 1d, and 1e) as unoccupied critical habitat. Four of the proposed critical habitat subunits (two occupied, two unoccupied; totaling approximately 106.6 skm (66.2 smi)) are connected to each other, while the fifth unit, Huff Creek (subunit 1e totaling 28.0 skm (17.4 smi)), provides for increased representation by increasing the species' ability to disperse and colonize new areas downstream of R.D. Bailey Dam, which fragments the range of the species. As discussed in the proposed rule, four of these subunits have records of the species, while the remaining subunit (Guyandotte River subunit 1c) provides important connectivity between the currently occupied subunits. As described in the proposed rule, successful conservation of the Guyandotte River crayfish will require the establishment of additional populations within the species' historical range; the three unoccupied subunits advance this goal. Each unoccupied subunit will contribute to the conservation of the species by furthering the preliminary recovery goals identified in the recovery outline of increasing the Guyandotte River crayfish's resiliency, redundancy, and representation and are essential for its conservation.

The unoccupied critical habitat will provide increased redundancy in case of spills or other stochastic events. We also recognize the threat that spills and other stochastic and catastrophic events pose to the species and note special management may be needed to address these threats.

After considering all of the above factors, we conclude areas included in this final designation provide sufficient resiliency, redundancy, and representation to conserve the species, and the four additional streams recommended by the commenters are not essential to the conservation of the Guyandotte River crayfish and therefore do not meet the definition of critical habitat.

We recognize that habitat is dynamic, and species may move from one area to another over time. Therefore, critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for the recovery of the species. Areas that are important for the conservation of the listed species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions found in section 9 of the Act. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts indicates a different outcome. Therefore, if the species is found in the referenced areas during future surveys, they would be subject to the conservation measures described above. In addition, we may consider these areas during future recovery planning and/or conservation assessments.

(2) Comment: One commenter who has researched the Guyandotte River crayfish stated that alterations to

headwater streams could make them unsuitable for the species and affect the water quality of downstream critical habitat units. Therefore, the commenter recommended that these upper reaches be considered for (unoccupied) critical habitat designation.

Our response: We acknowledge that degradation to upstream reaches may affect downstream aquatic habitat. We will consider effects to downstream habitats during recovery planning and in section 7 consultation processes. We refer the reader to our response to comment 1 above, which provides a thorough discussion of our rationale for designating critical habitat for the Guyandotte River crayfish and the regulatory protections afforded by section 7 of the Act.

(3) Comment: One commenter stated that our proposed critical habitat designations were flawed because current survey data were insufficient to determine that certain areas were currently occupied; however, no specific examples were provided. The commenter concluded that the Service should more precisely refine critical habitat units to include only ''occupied stream segments.''

Our response: The regulations for designating critical habitat (50 CFR 424.02) define the geographical area occupied by the species as ''An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).'' As we discussed in the final listing rule for the Big Sandy and Guyandotte River crayfishes (81 FR 20450, April 7, 2016) and the proposed critical habitat rule (85 FR 5072, January 28, 2020), occupied critical habitat units (and subunits) for these species are based on positive survey data collected between 2006 and 2016 (the time of listing), the best available information at that time. As we acknowledged then, continuous survey data do not exist, and many streams with known crayfish occurrences have not been surveyed completely. The best available information indicated both species occupy, transit through, or otherwise rely upon, stream reaches beyond that of any single occurrence location. This conclusion is supported by a study of Guyandotte River crayfish movements and habitat use, which was completed after we published the proposed critical habitat rule (see Sadecky 2020, entire). This study documented that individual crayfish routinely engage in substantial movements both upstream and downstream and that the species makes use of and moves through a variety of interconnected habitat types including riffles, runs, and pools (Sadecky 2020, pp. 150; 188–189). These data support our determination that stream segments between known capture locations are likely to be occupied by the crayfish and are essential to provide for the conservation of the species.

In the final listing rule (81 FR 20450, April 7, 2016), we identified habitat fragmentation as a stressor for both species, and in our proposed critical habitat rule we identified one of the PBFs essential to the conservation of the species as ''An interconnected network of streams and rivers . . . that allow(s) for the movement of individual crayfish in response to environmental, physiological, or behavioral drivers. The scale of the interconnected stream network should be sufficient to allow for gene flow within and among watersheds.'' Therefore, we determined that critical habitat units should be defined in a way that promotes connectivity between documented occurrences and between populations, where possible. To this end, the upstream limits of occupied critical habitat units occur upstream of a known occurrence location. Downstream limits generally terminate at stream confluences with the next larger receiving stream or river (or in some cases at a reservoir). We designated the entire reach between the upstream and downstream termini as critical habitat unless available data indicated these areas lacked all of the PBFs required by the species.

(4) Comment: One commenter stated that the draft economic analysis underestimates the economic effects of the proposed designation on coal mining. The commenter stated that critical habitat designation will apply restrictive or protective measures to the entire watershed, and the Service failed to correctly identify the scope and reach of the potential economic, national security, and social impacts.

Our response: Our regulations at 50 CFR 424.19 require the Service to compare the impacts with and without the critical habitat designation when describing the probable economic impact of a designation (Industrial Economics, Incorporated (IEc) 2019, pp. 1–2). Although the commenter provided some economic information, it lacked detail to correlate with the designation of critical habitat. Determining the economic impacts of a critical habitat designation involves evaluating the ''without critical habitat'' baseline versus the ''with critical habitat'' scenario, to identify those effects expected to occur solely due to the designation of critical habitat and not from the protections that are in place due to the species being listed under the Act. Economic effects solely due to the critical habitat designation include both: (1) The costs of increased administrative efforts that result from the designation; and (2) the economic effects of changes in the action to avoid destruction or adverse modification of critical habitat. These changes can be thought of as ''changes in behavior'' or the ''incremental effect'' that would most likely result from the designation if finalized.

A primary goal of the screening analysis is to provide information about the likely incremental costs and benefits of the proposed critical habitat designation to determine whether the rule meets the threshold for an economically significant rule. As demonstrated, in occupied units for both the Big Sandy and Guyandotte River crayfishes, the incremental economic costs of the rule are likely to be limited to additional administrative effort to consider adverse modification during section 7 consultations. In the unoccupied subunits for the Guyandotte River crayfish, incremental economic costs may also include project modifications to activities with a Federal nexus. For the coal mining industry in particular, we have identified that many of the project recommendations the industry may provide already are required under other rules and regulations (*e.g.,* Clean Water Act, Surface Mining Control and Reclamation Act, West Virginia Surface Mining Reclamation Rule) (IEc 2020). Our analysis accounted for potential Federal actions within the watershed, both inside and outside the proposed critical habitat, that may affect the proposed critical habitat. We identified two project modifications above and beyond these existing baseline requirements that may result in costs to the mining industry as well as Federal and State agencies. The final economic impact screening analysis presents information on these costs, which are substantially below the threshold for an economically significant rule (IEc 2020).

National security and social impacts are not within the scope of the economic impact screening analysis. However, section 4(b)(2) of the Act allows for particular areas of proposed critical habitat to be excluded from the final designation based on considerations of economic impact, the impact on national security, and any other relevant impact if the benefits of

such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless the Secretary determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. However, the commenters did not identify any particular areas that should be considered for exclusion, based on these factors, nor did the commenter provide any specific substantive information that would allow the Service to quantify or weigh the incremental effects of these factors in any particular area of proposed critical habitat to conduct an exclusion analysis. We did not receive any information from Federal agencies responsible for national security that the proposed designation would affect these interests, and therefore we have not identified any areas for exclusion analysis based on this factor.

(5) Comment: Two comments emphasized the historic importance of protection and enhancement plans (PEPs) and related adaptive management plans to protect the crayfish that the coal industry has developed with the West Virginia Department of Environmental Protection (WDEP). One commenter suggested maintaining and expanding the use of PEPs across the proposed unoccupied habitat and expressed fears that the PEPs and adaptative management plans may be undermined with the designation of critical habitat. The comment concludes by suggesting that the resources devoted to critical habitat regulations could have more benefit for the crayfish if they were used in a coordinated voluntary conservation and recovery effort instead.

Our response: We recognize the cooperative efforts of the WVDEP and the WV Coal Association in developing PEPs on projects that may affect these two crayfishes and looks forward to similar cooperative efforts in the future. We will continue to work with partners to address conservation and recovery of the species and its critical habitat through PEPs and other adaptive management measures, as appropriate and consistent with regulations. We note that current regulations and voluntary cooperative efforts have not resulted in the development of PEPs for any coal mining projects that would affect any streams that are designated for unoccupied critical habitat. Therefore, the designation of unoccupied critical habitat should not undermine any existing PEPs but rather should facilitate the development of additional PEPs and adaptive management efforts within these areas as recommended by the commenter.

(6) Comment: In regard to the draft economic analysis (DEA), one commenter stated the Service should not generalize potential economic impacts to only one coal mine but should look at effects to the watershed holistically, including associated development like railways that transport coal. For coal mines higher in the watershed, the commenter stated that site-specific conditions such as topography and property access might make some conservation measures infeasible.

Our response: We recognize that effects for these species should be considered on a watershed-level (see our response to comment 2 for information on how we consider effects to downstream resources), and also recognize that different conservation measures may be appropriate for different projects. For example, small-scale projects high in the watershed may not need the same scope or extent of conservation measures compared to a large-scale project occurring directly adjacent to a stream designated as critical habitat. In addition, construction techniques or conservation measures may not be feasible or applicable to all projects. As a result, when working with applicants, we consider issues such as topography and access when determining what conservation measures are appropriate. In addition, we have taken a watershed-level approach when evaluating effects from proposed projects including coal mines, as is reflected in the review of consultations and effects incorporated in our economics screening analysis. However, our analysis must be based on the best available information. For some project types, there may be a limited suite of previous project reviews available by which to estimate potential effects. We have updated our economic screening analysis to incorporate results from recent consultations.

Based on the public comments received on the proposed rule package, a final economic impact screening analysis updated the evaluation of potential costs associated with project modifications for consultations on mining activities that occur in watersheds with unoccupied critical habitat. In particular, the analysis relies on more detailed information from us regarding the likely project modifications recommended to avoid adverse modification of the critical habitat, and a more detailed assessment of the incremental costs of these modifications. Specifically, the final economic impact screening analysis quantifies costs associated with biological assessment stations and continuous turbidity loggers based on communication with State and Federal regulatory agencies. The analysis additionally provides information on the potential for additional costs to mine operators of recommendations for more stringent cleanout of sediment structures at the mines affecting unoccupied habitat. The final economic impact screening analysis describes that project modifications may not be requested of all mines given their unique characteristics; however, to provide a conservative estimate of costs that is more likely to overstate than understate costs, the analysis assumes all future mines in watersheds with unoccupied habitat would undertake these project modifications due to the critical habitat designation. We expect to work with individual mines to assess which project modifications are recommended for their site-specific conditions.

(7) Comment: One commenter believes that the proposed critical habitat for the two species is too large and that we included streams that ''do not contain these species and also do not contain the features and characteristics necessary to potentially support the species.''

Our response: Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available, which we discuss and reference in the final listing rule (81 FR 20450, April 7, 2016) and proposed critical habitat rule (85 FR 5072, January 28, 2020). All units contain the physical and biological features needed to support the species. Additionally, in our responses to comments 1 and 3 above, we provide a thorough discussion of our rationale for designating (or not designating) critical habitat.

(8) Comment: One commenter stated that, in our analysis of likely economic effects, we had incorrectly concluded that the Commonwealth of Kentucky ''owns'' the water and that this (presumed) error invalidated our entire economic analysis.

Our response: As we discussed in the proposed critical habitat rule, for the purposes of analyzing the potential economic effects of critical habitat designation, the critical habitat units/subunits were determined to be in either private, Federal, or State ownership based on the identification of the adjacent riparian landowner(s) (*i.e.,* private, Federal, State). This comports with our original citation (Energy & Mineral Law Institute 2011, pp. 414–415), which states that, in Kentucky, riparian landowners own the stream bed

''to the middle of the stream thread.'' It appears the commenter may have interpreted this to mean that adjacent landowners also own the water in the stream. However, this interpretation is contradicted by Kentucky Statute 151.120(1), which states, ''Water occurring in any stream, lake, ground water, subterranean water or other body of water in the Commonwealth which may be applied to any useful and beneficial purpose is hereby declared to be a natural resource and public water of the Commonwealth and subject to control or regulation for the public welfare. . . .'' Our economic analysis is based upon the best available information regarding critical habitat ownership.

(9) Comment: One coal company commented that costs associated with mining are underestimated and sample costs used were from small projects with minimal impacts. The commenter stated that costs of monitoring/testing could be over $100,000/year; plan modifications resulting in additional impacts to jurisdictional waters could increase costs by $1 million; and costs associated with relocating fills/co-locating valley fills could require new trucks at $2 million per truck or $300,000 per shift.

Our response: At the time of the proposed rule, there was a limited number of previous mining consultations that addressed these crayfish species that could be used to estimate potential costs. Additional consultations have been conducted since that time. We have updated the analysis based on a review of recommendations made on multiple mining consultations conducted throughout the range of these two species. The final economic impact screening analysis provides a more detailed assessment of the baseline requirements at mine sites within critical habitat due to State and Federal regulation of mining even absent critical habitat, as well as analysis of how the critical habitat rule may result in additional project modification recommendations above and beyond these baseline requirements. Specifically, Exhibit A–3 of appendix A of the final economic impact screening analysis provides information on our evaluation of the potential need for additional project modifications at mine sites in unoccupied critical habitat specifically to avoid adverse modification that would not already be recommended based on existing Federal and State rules and requirements in West Virginia. The identified incremental project modifications triggered by the critical habitat rule include (1) cleaning out sediment structures at 40-percent design capacity instead of the currently required 60-percent design capacity and (2) installing continuous turbidity loggers and biological assessment station sites to statistically monitor sediment and other water quality attributes of the streams that may affect the crayfish. The analysis also provides cost estimates associated with these project modifications in particular. The annualized cost of the turbidity loggers and biological assessment stations is expected to be approximately $120,000 at both 3- and 7-percent discount rates. These costs are expected to be incurred by both the coal mining industry as well as some State entities responsible for water quality monitoring. While data are not available to quantify the potential costs of the sediment structure cleaning recommendation, the screening analysis provides qualitative information on this unquantified cost for consideration.

(10) Comment: One commenter stated coal mining is the only consequential activity because high-quality coal is present and provides economic benefits to the coal and steel industry. The coal and steel industry support national security. Measures that would restrict coal production would affect the economy, and the DEA should be revised to include the costs of these lost economic resources.

Our response: No Federal agency responsible for national security has requested an exclusion from Big Sandy crayfish or Guyandotte River crayfish critical habitat designation.

We recognize that coal mining is prevalent in the range of these two species, and as a result have placed specific emphasis in review of coal mining projects in our screening analysis. The screening analysis does not identify any incremental impacts of the critical habitat designation that would likely restrict coal production in the region. In the occupied units for both crayfish, the economic impacts of the rule are expected to be limited to additional administrative effort to consider adverse modification during section 7 consultations. In the unoccupied subunits for the Guyandotte River crayfish, the economic costs additionally may include project modification recommendations. We have reviewed the best available information including existing rules and regulations and recent coal mining consultations. We then identified those project modifications that may be incremental and attributable to the critical habitat rule, and have updated the screening analysis to reflect these incremental effects to the coal industry. See our response to comment 9 for additional information.

(11) Comment: One commenter stated that silvicultural best management practices (BMPs) are implemented at high rates in the range of the Big Sandy and Guyandotte River crayfishes and that these BMPs are effective at protecting water quality, instream habitats, and aquatic biota. The commenter supported these assertions by briefly summarizing the results of 43 references that summarize the use and effectiveness of BMPs in protecting aquatic species. The commenter asked that the Service consider these references when making its final determination of critical habitat for the Big Sandy and Guyandotte River crayfishes. The commenter recommended the Service recognize BMPs as routine practices for protecting aquatic habitats and these practices should not be considered as ''special management.''

Our response: The best available information indicates BMP implementation rates are relatively high (80 to 90 percent) for commercial forestry operations across the ranges of the Big Sandy and Guyandotte River crayfishes, and properly implemented BMPs can be effective in protecting water quality and instream habitats (81 FR 20450, p. 20467, April 7, 2016). Commercial timber harvests occur throughout the ranges of both crayfishes, and often occur directly adjacent to, or on the steep slopes above, streams and rivers inhabited by these species. We estimate that across the ranges of both species, approximately 12,600 ha (30,745 ac) of forest are harvested annually, representing approximately 1.9 percent of the total cover within the region (Cooper et al. 2011a, p. 27; Cooper et al. 2011b, pp. 26–27; Piva and Cook 2011, p. 46).

As we discussed in Summary of Factors Affecting the Species in the final listing rule (81 FR 20450, April 7, 2016), the species and their habitats continue to be at risk due to sedimentation associated with improperly managed timber-harvesting activities. Even with high BMP implementation rates, which vary from State to State, a significant number of acres are logged each year with no BMP implementation (80 FR 18710, p. 18730, April 7, 2015). Monitoring and enforcement of BMPs in areas of timber harvests, as well as ensuring that BMPs are routinely updated to incorporate the best available information to reduce sedimentation and instream disturbance in crayfish watersheds are actions that are important to the conservation of

these species. Based on these factors, we conclude that features essential to the conservation of the Big Sandy and Guyandotte River crayfishes may require special management considerations or protections from threats associated with timber-harvesting activities. These threats may be ameliorated by implementation of BMPs that reduce erosion, sedimentation, and stream bank destruction.

(12) Comment: One coal company commented that the proposed designation overstates the stream miles and locations needed for species protection and recovery. More specifically, the commenter stated that conductivity is not a factor/relevant for designating critical habitat (citing the Service's Recovery Outline ''[m]ean values for conductivity and sulfates at sites supporting Big Sandy crayfish were similar to sites where the species was not detected, suggesting that these variables were not as influential in determining presence or absence of this species.'' (2018) (p. 3).

Our response: The best available information as cited in the final listing rule and the proposed critical habitat rule confirms that water quality is important to the conservation of these crayfishes, and that conductivity is one component of water quality that has been shown to be correlated with Guyandotte River crayfish absence, as well as negative effects to other benthic macroinvertebrates (see the summary of information provided in 81 FR 20450, p. 20471, April 7, 2016). Therefore, we have included reference to this water quality parameter in our PBFs. We acknowledge that additional information is needed to determine what thresholds or levels for each water quality parameter are sufficient for the normal behavior, growth, reproduction, and viability of all life stages of the species, and therefore have not cited a specific level within the PBFs for these species. We will continue to work with partners to evaluate the effects of various water quality parameters on these species.

(13) Comment: One coal company stated that connectedness is not a sufficient basis for ''over-designating'' a large part of the Tug Fork River as critical habitat.

Our response: We have reviewed data regarding the distribution of Big Sandy crayfish within the Tug Fork River. We proposed 65.9 smi of critical habitat within the Tug Fork extending from the confluence with Blackberry Creek upstream to the confluence with Dry Fork. The Big Sandy crayfish is documented to occur within both of these tributaries as well as throughout this reach of the Tug Fork River. Survey data collected after the listing of the species documented Big Sandy crayfish in the Tug Fork both upstream and downstream of the proposed critical habitat reach (confirming continued occupancy), including near the town of Hemphill, West Virginia, which is 28 smi upstream from the terminus of the unit (Mountain State Biosurveys, LLC, 2017, p. 8). The upper terminus of this unit has not been ''over-designated;'' instead, suitable habitat continues to occur farther upstream. Consistent with our previous listing determination and information received during the public comment period, the best available data indicate that interconnected stream segments are necessary to provide for movement of individuals and gene flow between populations. Telemetry studies conducted on Guyandotte River crayfish document that individuals engage in substantial movements, including 819.9 m by a female between July and August and 615.8 m by a male within the month of June. The species moves through a variety of interconnected habitat types, including riffles, runs, and pools (Sadecky 2020, pp. 150; 188–189). These data support our determination that stream segments between known capture locations are likely to be occupied by the crayfish and are essential to provide for the conservation of the species.

(14) Comment: One coal company stated that small headwater streams are not suitable habitat (cites 80 FR 18710, April 7, 2015).

Our response: We have reviewed the best available information including new information provided during the public comment period such as Tidmore (2020, pp. 36–37; 84), which found that stream accumulation (a measure of the size of the watershed draining into a stream reach) rather than stream order is a more accurate predictor of habitat quality for these species. Other public commenters (Sadecky; Loughman) noted that the Guyandotte River crayfish frequently moves upstream. This information confirms that the two species need moderate to large sized streams but that they are not restricted to occurring in only third-order or larger streams and may occur in smaller order streams when there is sufficient accumulation of water from upstream reaches. We have reviewed the areas proposed for critical habitat designation, and determined that no areas of proposed critical habitat should be deleted as a result of unsuitable stream size or elevation.

(15) Comment: One coal company stated that the Service significantly understates the economic impacts of its critical habitat rule on people living and operating in the affected watersheds.

Our response: The commenter did not provide information or specific examples of economic impacts on people living in the affected watershed. The screening analysis provides an assessment of the likely costs and benefits of the proposed critical habitat designation using the best available information.

(16) Comment: One commenter supports the designation of critical habitat for the two species but commented that the designation of unoccupied critical habitat for the Guyandotte River crayfish and reintroduction of the species would have adverse effects on the ecosystems present in those areas.

Our response: The commenter did not provide specific detail about these potential adverse effects. As we discussed in the proposed rule, all three of the unoccupied critical habitat units for the Guyandotte River crayfish are located within the species' historical range. Both Indian Creek and Huff Creek (subunits 1d and 1e, respectively) have historical records of the species, and the Guyandotte River (subunit 1c) connects (or connected) all known populations of the species. Therefore, the historical distribution of the species demonstrates that it is a naturally occurring component of the Upper Guyandotte River ecosystem, and reintroduction of the species should not cause ''adverse effects'' to the aquatic community in these areas.

(17) Comment: One commenter believes the proposed areas are too large, the proposal includes areas where the species do not occur, and the areas do not contain the features and characteristics necessary to support the species. The commenter felt that three unoccupied units (Indian Creek, Huff Creek, and Guyandotte River in Subunit 1c) should not be included because the analysis is insufficient to explain why these units were chosen and more information is needed to: (1) Evaluate feasibility of all historically occupied reaches, (2) evaluate the cost of restoring and maintaining stream health in these reaches, (3) evaluate the additive value of these reaches to the species' overall viability, and (4) determine the economic impact of designating each reach as potential critical habitat.

Our response: We refer the reader to our responses to comments 1 and 3, above, which provide a thorough discussion of our rationale for designating critical habitat for the Guyandotte River crayfish. The revised screening analysis provides more details

on the likely economic costs associated with designating unoccupied subunits for the Guyandotte River crayfish. In particular, it provides a more detailed assessment of the project modification recommendations that would be attributed to the proposed rule. In doing so, the final economic impact screening analysis provides more detail on the quantified costs associated with these incremental project modifications, which total approximately $350,000 on an annualized basis for the first 10 years. These costs are expected to be incurred by both the mining industry as well as State agencies that monitor water quality. Additionally, the final economic impact screening analysis identifies potential unquantified costs associated with recommendations for more stringent cleanout of sediment structures (*i.e.,* cleanout at 40 percent as opposed to 60 percent of design capacity) in the unoccupied critical habitat areas.

(18) Comment: One commenter commented that the economic analysis underestimates the economic costs of the proposed action because: (A) The Service underestimated costs by using one mining project as an example of conservation measures; (B) the baseline is incorrect, because all areas are not occupied; (C) full economic effects are missed (information is missing on compliance costs, construction costs, lost resource revenue, and socioeconomic benefits, including lost tax revenue, royalties to landowners, and wages/benefits to employees); (D) outdated data are used (relies on 2002 data); (E) there is an erroneous assumption that no project modification would be recommended; (F) there is no consideration of State/local requirements (surface water standards); (G) the analysis of property value impacts is flawed; and (H) the assumption that all proposed areas are occupied is incorrect.

Our response: The screening analysis provides information on the likely costs and benefits of the proposed critical habitat rule using the best available data. In general, the screening analysis provides conservative estimates where possible and is more likely to overstate costs than understate costs, to determine if the rule could meet the threshold for an economically significant rule. Following are responses to the specific points of this comment:

(A) The revised screening analysis provides updated cost estimates and more detail on the project modification recommendations likely to be requested of the surface coal mining industry in the unoccupied units for the Guyandotte River crayfish. In particular, it provides a more thorough assessment of the project modifications we may request that go above and beyond existing rules and requirements in West Virginia based on a review of recent consultations on the species. We identify two specific recommendations we may request that would be incremental to the proposed rule and provide an updated assessment of the costs associated with these recommendations.

(B) The screening analysis distinguishes between costs associated with occupied and unoccupied subunits for the crayfish. The costs of critical habitat designation for occupied habitat, as noted by the commenter, are generally lower because the listing status of the species provides baseline protection in these areas. That is, project modifications undertaken as part of section 7 consultations to avoid jeopardy to the species in these areas most likely also result in the projects avoiding adverse modification of critical habitat. Thus, we would not likely recommend more or different project modifications due to the designation of critical habitat in these areas. It is for this reason that the screening analysis separately considers the costs of the proposed critical habitat designation in occupied and unoccupied units. In particular, the incremental section 7 consultation costs (*i.e.,* above and beyond baseline costs) are separately assessed for occupied and unoccupied units (IEc 2020, pp. 13, 15, 16 (Exhibits 5, 6, and 7)). While the screening analysis identifies only limited administrative costs resulting from the designation of the occupied units, it estimates greater administrative costs, as well as the costs of project modifications from the designation of the unoccupied units. Specifically, the screening analysis identifies costs associated with the designation of three unoccupied habitat subunits for the Guyandotte River crayfish, where project modifications to future mining projects are likely and could range from $119,933 to $120,682 in a single year.

(C) The commenter did not provide specific cost detail (in United States dollars) on compliance costs, construction costs, lost resource revenue, socioeconomic benefits, lost tax revenue, royalties to landowners, or wages/benefits to employees. The screening analysis finds that the incremental costs of the rule are likely to include additional administrative costs to consider adverse modification during section 7 consultations in all units, as well as costs of project modification recommendations in the unoccupied subunits for the Guyandotte River crayfish. The revised screening analysis provides a more detailed assessment of costs that may arise from these project modification recommendations. Given the limited incremental costs associated with the proposed critical habitat designation, the screening analysis does not anticipate reductions in coal production, lost wages, or lost tax revenue resulting from the rule.

(D) The commenter is correct that the screening analysis relies on a range of incremental costs derived from an analysis effort performed in 2002. However, while the time required to complete the consultations remains fixed at the levels assumed in 2002, the screening analysis relies on updated salary and benefit information reflected in the 2019 Federal Government Schedule Rules. The administrative costs of consultation consider not only the level of effort required of us and other Federal agencies, but also of third parties to consultation, including private industry. Exhibit 6 of the screening analysis provides more details on the breakdown of costs by party.

(E) As described in (B) above, the screening analysis differentiates between occupied and unoccupied subunits. In occupied units, incremental costs due to project modifications are not anticipated. As described in section 3 of the screening analysis, this is because project modifications requested to avoid adverse modification of critical habitat are expected to be identical to project modifications requested to avoid jeopardy of the species where they currently reside. In other words, while project modifications may be requested in these occupied units, these same project modifications would be requested due to the listing of the species, and therefore critical habitat would not likely generate additional project modification recommendations. In unoccupied subunits, project modifications are not undertaken due to the presence of the crayfish and thus there is greater potential for incremental costs of project modifications. We identify that critical habitat designation may affect mine projects in unoccupied habitat in West Virginia due to two project modifications; the revised screening analysis provides more detail about these recommendations as well as the costs associated with implementing them.

(F) Section 4 of the screening analysis considers the potential for State or other local laws to be triggered by the critical habitat designation, resulting in an incremental impact of the rule. As described in the screening analysis as well as the Incremental Effects

Memorandum, a range of State and local laws have been triggered by the listing of the species under the Endangered Species Act (Act). However, we expect that no new State or local rules will apply as a result of the critical habitat. In other words, the cost of complying with State and local laws that were triggered by the listing of the species are baseline conditions and cannot be attributed to the critical habitat designation specifically.

(G) As a riverine species, the crayfish do not occur on land, and the literature has not evaluated effects of riverine critical habitat on property values. While the economics screening memorandum acknowledges the potential exists for the critical habitat designation to affect private property values, it does not conclude that these effects are ''likely,'' as implied in this comment. The economics literature evaluating the potential land value effects of critical habitat is limited and is specific to particular species and geographic areas. The memorandum therefore highlights this issue as an uncertainty associated with the screening analysis. Please also see comment and response 8, above, regarding land ownership in the Commonwealth of Kentucky.

(H) As described in (B) above, the screening analysis differentiates costs incurred in occupied and unoccupied subunits. The best available information supports our determination of which subunits are occupied and unoccupied.

(19) Comment: One commenter suggests that our economic analysis consider the economic benefits of critical habitat designation.

Our response: Section 6 of the screening analysis considers the potential benefits of the critical habitat designation. Incremental benefits of the critical habitat designation are most likely to occur in the unoccupied subunits for the Guyandotte River crayfish, where consultation to avoid adverse modification of critical habitat may alter the management of projects, resulting in incremental conservation efforts. Various economic benefits may result from these incremental conservation efforts, including improved water quality and improved ecosystem health for other coexisting species, which, in turn, may reduce the effort necessary for water treatment and ecosystem management.

Critical Habitat

Background

Refer to our January 28, 2020, proposed critical habitat rule (85 FR 5072) for a summary of species information available to the Service at the time that the proposed rule was published.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features: (1) Which are essential to the conservation of the species, and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside of the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the

species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species, the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to the recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the PBFs that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Summary of Essential Physical or Biological Features

We derived the specific PBFs required for the Big Sandy crayfish and the Guyandotte River crayfish from studies and observations of these species' habitat, ecology, and life history, which are discussed in full in the proposed critical habitat designation (85 FR 5072, January 28, 2020), the species' proposed and final listing rules (80 FR 18710, April 7, 2015; 81 FR 20450, April 7, 2016, respectively), and information summarized here. While data are sparse with which to quantitatively define the optimal or range of suitable conditions for a specific biological or physical feature needed by these species (*e.g.,* degree of sedimentation, water quality thresholds, extent of habitat connectedness), the available species-specific information, in combination with information from other similar crayfish species, provides sufficient information to qualitatively discuss the physical and biological features needed to support these species. As discussed in the proposed (80 FR 18710, April 7, 2015) and final (81 FR 20450, April 7, 2016) listing rules, these species are classified as ''tertiary'' (stream) burrowing crayfish, meaning that they do not exhibit complex burrowing behavior; instead of digging holes, they shelter in shallow excavations under loose cobbles and boulders on the stream bottom (Loughman 2013, p. 1). These species feed on plant and/or animal material, depending on the season (Thoma 2009, p. 13; Loughman 2014, p. 21). The general life cycle pattern of these species is 2 to 3 years

of growth, maturation in the third year, and first mating in midsummer of the third or fourth year (Thoma 2009, entire; Thoma 2010, entire). Following midsummer mating, the annual cycle involves egg laying in late summer or fall, spring release of young, and late spring/early summer molting (Thoma 2009, entire; Thoma 2010, entire). The Big Sandy and Guyandotte River crayfishes' likely lifespan is 5 to 7 years, with the possibility of some individuals reaching 10 years of age (Thoma 2009, entire; Thoma 2010, entire; Loughman 2014, p. 20).

Suitable habitat for both the Big Sandy crayfish and the Guyandotte River crayfishes appears to be limited to higher elevation, clean, medium-sized streams and rivers in the upper reaches of the Big Sandy and Guyandotte river basins, respectively (Jezerinac et al.1995, p. 171; Channell 2004, pp. 21–23; Taylor and Shuster 2004, p. 124; Thoma 2009, p. 7; Thoma 2010, pp. 3–4, 6; Loughman 2013, p. 1; Loughman 2014, pp. 22–23). These streams are generally third-order streams or larger; however, the species may also occur in smaller order streams, as stream accumulation rather than stream order has been found to be a better predicter of habitat quality for these species (Tidmore 2020, pp. 36–37; 84). Both species are associated with the faster moving water of riffles and runs or pools with current (Jezerinac et al. 1995, p. 170). An important habitat feature for both species is large, unembedded slab boulders on a sand, cobble, or bedrock stream bottom (Loughman 2013, p. 2; Loughman 2014, pp. 9–11). Excessive sedimentation leading to substrate embeddedness can smother these habitats, creating unsuitable habitat conditions for these species (Jezerinac et al. 1995, p. 171; Channell 2004, pp. 22–23; Thoma 2009, p. 7; Thoma 2010, pp. 3–4; Loughman 2013, p. 6). As such, we have determined that the following PBFs are essential for the conservation of the Big Sandy and Guyandotte River crayfishes:

(1) Fast-flowing stream reaches with unembedded slab boulders, cobbles, or isolated boulder clusters within an unobstructed stream continuum (*i.e.,* riffle, run, pool complexes) of permanent, moderate- to large-sized (generally third order and larger) streams and rivers (up to the ordinary high-water mark as defined at 33 CFR 329.11).

(2) Streams and rivers with natural variations in flow and seasonal flooding sufficient to effectively transport sediment and prevent substrate embeddedness.

(3) Water quality characterized by seasonally moderated temperatures and physical and chemical parameters (*e.g.,* pH, conductivity, dissolved oxygen) sufficient for the normal behavior, growth, reproduction, and viability of all life stages of the species.

(4) An adequate food base, indicated by a healthy aquatic community structure including native benthic macroinvertebrates, fishes, and plant matter (*e.g.,* leaf litter, algae, detritus).

(5) Aquatic habitats protected from riparian and instream activities that degrade the PBFs described in (1) through (4), above, or cause physical (*e.g.,* crushing) injury or death to individual Big Sandy or Guyandotte River crayfish.

(6) An interconnected network of streams and rivers that have the PBFs described in (1) through (4), above, that allow for the movement of individual crayfish in response to environmental, physiological, or behavioral drivers. The scale of the interconnected stream network should be sufficient to allow for gene flow within and among watersheds.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Big Sandy and Guyandotte River crayfishes may require special management considerations or protections to reduce the following threats: (1) Resource extraction (coal mining, timber harvesting, and oil and gas development); (2) road construction and maintenance (including unpaved roads and trails); (3) instream dredging or construction projects; (4) off-road vehicle (ORV) use; (5) activities that may modify water quantity or quality; and (6) other sources of point and non-point source pollution, including spills. These activities are discussed in more detail under Summary of Factors Affecting the Species in the final listing rule (81 FR 20450; April 7, 2016). These threats are in addition to potential adverse effects of drought, floods, or other natural phenomena.

Management activities that could ameliorate these threats include, but are not limited to: Use of best management practices (BMPs) designed to reduce erosion, sedimentation, and stream bank destruction; development of alternatives that avoid and minimize stream bed disturbances; regulation of ORV use in or near streams; reduction of other watershed and floodplain disturbances that contribute excess sediments or pollutants into the water; and development and implementation of spill prevention and response plans.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are designating critical habitat in areas within the geographical area occupied by the Big Sandy crayfish and Guyandotte River crayfish at the time of listing in 2016. For the Guyandotte River crayfish, we also are designating areas in three specific streams outside the geographical area occupied by the species at the time of listing because we have determined that a designation limited to occupied areas would be inadequate to ensure the conservation of the species. These currently unoccupied streams are within the larger occupied watershed of the Guyandotte River crayfish's range and adjacent to currently occupied streams. The critical habitat designation includes the water and stream channel up to the ordinary high water mark as defined at 33 CFR 329.11. Refer to the Big Sandy and Guyandotte River crayfish proposed critical habitat designation for a full description of criteria used to identify critical habitat (85 FR 5072, January 28, 2020).

On December 16, 2020, we published a final rule in the **Federal Register** (85 FR 81411) adding a definition of ''habitat'' to our regulations for purposes of critical habitat designations under the Endangered Species Act of 1973, as amended (Act). This rule became effective on January 15, 2021 and only applies to critical habitat rules for which a proposed rule was published after January 15, 2021. Consequently, this new regulation does not apply to this final rule.

The current distribution of both the Big Sandy and the Guyandotte River crayfishes is fragmented and much reduced from its historical distribution. As specified in the Service's recovery outline for these species (Service 2018,

entire), we anticipate that recovery will require protection of existing populations and habitat for both species, and in the case of the Guyandotte River crayfish, reestablishing populations in some historically occupied streams where the species is presumed extirpated. These additional populations will increase the species' resiliency, representation, and redundancy, thereby increasing the likelihood that it will sustain populations over time.

Sources of data for this critical habitat designation include crayfish survey and habitat assessment reports (Jezerinac et al. 1995, entire; Channell 2004, entire; Taylor and Schuster 2004, entire; Thoma 2009a, entire; Thoma 2009b, entire; Thoma 2010, entire; Loughman 2013, entire; Loughman 2014, entire; Loughman 2015a, entire; Loughman 2015b, entire) and project-specific reports submitted to the Service (Appalachian Technical Services, Inc. (ATS) 2009, entire; ATS 2010, entire; Vanasse Hangen Brustlin, Inc. (VHB) 2011, entire; ATS 2012a, entire; ATS 2012b, entire; Virginia Department of Transportation (VDOT) 2014a, entire; VDOT 2014b, entire; VDOT 2015, entire; ATS 2017, entire; Red Wing 2017, entire; Third Rock 2017, entire; Red Wing 2018, entire).

Areas Occupied at the Time of Listing

As described in the final listing rule for the Big Sandy and Guyandotte River crayfishes (81 FR 20450, April 7, 2016), the best available data (stream surveys conducted between 2006 and 2016) indicate that at the time of listing, the Big Sandy crayfish occupied 26 streams and rivers (generally third order and larger) in the Russell Fork, Upper Levisa Fork, Lower Levisa Fork, and Tug Fork watersheds in the upper Big Sandy River basin of Kentucky, Virginia, and West Virginia. The Guyandotte River crayfish occupied two similarly sized streams in the Upper Guyandotte River basin of West Virginia.

We are designating a total of 4 occupied units, including a total of 19 occupied subunits, as critical habitat for the Big Sandy crayfish in the aforementioned watersheds. In addition, we are designating one unit, including two occupied subunits, as critical habitat for the Guyandotte River crayfish in the Upper Guyandotte River watershed in West Virginia. For the Guyandotte River crayfish, we have determined that a designation limited to the two occupied subunits would be inadequate to ensure the conservation of the species. The Guyandotte River crayfish is historically known from six connected stream systems within the Upper Guyandotte River basin (its geographical range); however, at the time of listing, the species was limited to two isolated subunits in Pinnacle Creek and Clear Fork. In our review, we determined that these two subunits would not provide sufficient redundancy or resiliency necessary for the conservation of the species. The Pinnacle Creek population is known from a 5.2-skm (3.3-smi) stream reach, but survey data collected between 2009 and 2015 indicate that this reach has low crayfish numbers. This small, isolated population is at risk of extirpation from demographic and environmental stochasticity, or a catastrophic event. The Clear Fork population occurs along a 33-km (22-mi) stream reach, and surveys from 2015 indicate Guyandotte River crayfish was the most prevalent crayfish species collected at sites maintaining the species (Loughman 2015b, pp. 9–11). The primary risk to this population is extirpation from a catastrophic event; however, because it is an isolated population, demographic or stochastic declines present some risk.

Areas Outside of the Geographic Range at the Time of Listing

Because we have determined occupied areas alone are not adequate for the conservation of the Guyandotte River crayfish, we have evaluated whether any unoccupied areas are essential for the conservation of the species. We considered the life-history, status, and conservation needs of both species. Our decision was further informed by observations of species-habitat relationship, habitat suitability models derived from these observations, and the locations of historical records to identify which features and specific areas are essential for the conservation of the species and, as a result, the development of the critical habitat designation.

We are designating as critical habitat three currently unoccupied subunits within the Upper Guyandotte basin unit. We have determined that each is essential for the conservation of the species. Two of the currently unoccupied subunits, Guyandotte River and Indian Creek, provide for an increase in the species' redundancy and, by providing connectivity between the subunits, increase the resiliency of the extant populations in Pinnacle Creek and Clear Fork. One of the unoccupied subunits, Huff Creek, is isolated from the other subunits by the R.D. Bailey dam, which fragments the range of the species and limits the species' ability to disperse and colonize new areas. Therefore, this unit will increase the species' overall redundancy and add representation in this area of its historical range. As discussed in the recovery outline for the species (Service 2018, entire), successful conservation of the Guyandotte River crayfish will require the establishment of additional populations within the species' historical range; the three unoccupied subunits advance this goal. All three subunits have at least one of the PBFs essential to the conservation of the species, as described below.

To reduce threats to the species and its habitat, the Service is working cooperatively with the West Virginia Department of Environmental Protection and the coal industry to develop protection and enhancement plans for coal mining permits that may affect crayfish streams. The Service and WVDEP are also working with the Hatfield McCoy Trail system and the Federal Highway Administration to avoid and minimize effects from ORV use in and around Pinnacle Creek and other trail systems adjacent to crayfish streams. Local watershed groups along with State and Federal partners have been conducting stream restoration and enhancement projects in Huff Creek. In addition, the Service, West Virginia Department of Natural Resources, Virginia Department of Wildlife Resources, and West Liberty University are working together to conduct additional research on both the Guyandotte River and Big Sandy crayfishes, including research on habitat use, activity patterns, and captive holding and propagation. We are reasonably certain that each unoccupied subunit will contribute to the conservation of the species by furthering preliminary recovery goals identified in the recovery outline. Establishing populations in the three unoccupied subunits will increase the Guyandotte River crayfish's resiliency, redundancy, and representation, thereby bolstering the species' viability and reducing the species' risk of extinction.

General Information on the Maps of the Critical Habitat Designation

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the discussion of individual units and subunits, provided below. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* under Docket No.

FWS–R5–ES–2019–0098, and at the West Virginia Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, above). When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by pavement, buildings, and other structures because such lands lack PBFs necessary for the Big Sandy and Guyandotte River crayfishes. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation under the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PBFs in the adjacent critical habitat.

In making its determination on the appropriate scale for designating critical habitat, the Service may consider, among other things, the life history of the species, the scales at which data are available, and biological or geophysical boundaries (such as watersheds). For the Big Sandy and the Guyandotte River crayfishes, streams or stream segments (as opposed to individual occurrence locations) are the appropriate units for designating critical habitat. We base this on the following factors:

(1) The regional geology and stream morphology in the upper Big Sandy and Upper Guyandotte River basins lead to a general abundance of slab boulders and/or cobble in most streams, although in some areas this habitat is sparse or occurs as isolated boulder clusters. Furthermore, while continuous crayfish survey data do not exist (*i.e.,* not every reach of every stream has been surveyed), more intensive crayfish surveys in portions of the Russell Fork watershed and in Clear Fork and Pinnacle Creek in the Upper Guyandotte basin indicate that the Big Sandy and Guyandotte River crayfishes may occur throughout stream reaches where the required PBFs (*e.g.,* riffles and runs with unembedded slab boulders or unembedded boulder clusters, adequate water quality, and connectivity) are present.

(2) Streams are dynamic, linear systems, and local water quality parameters (*e.g.,* dissolved oxygen, temperature, pH) can vary temporally and are largely reliant on upstream conditions (barring known point or non-point source discharges or other factors that affect water quality more locally). Likewise, the various stream microhabitats (*e.g.,* riffles, runs, pools) with attendant fauna do not generally occur in isolation, but form a continuous gradient along the stream continuum. Because the known occupied Big Sandy and Guyandotte River crayfish sites possess the required PBFs, at least to some minimal degree, for these species to survive, and because these PBFs are likely representative of stream conditions beyond any single survey location, we conclude that Big Sandy and Guyandotte River crayfish likely occupy, or otherwise rely upon, stream areas beyond any single occurrence location.

(3) Studies of other crayfish species suggest that adult and larger juvenile Big Sandy and Guyandotte River crayfish move both upstream and downstream in response to changes in environmental conditions or local crayfish demographics, or for other behavioral or physiological reasons (Momot 1966, pp. 158–159; Kerby et al. 2005, p. 407; Sadecky 2020, entire). The evidence also indicates that some individuals, especially newly independent juveniles, may be passively dispersed to downstream locations by swiftly flowing water (Loughman 2019, pers. comm.).

Therefore, within the greater geographical ranges of the Big Sandy crayfish and Guyandotte River crayfish (*i.e.,* the upper Big Sandy River basin and the Upper Guyandotte River basin, respectively), the general morphology and connectedness of the streams and the life history of these species lead us to reasonably conclude that both species likely occupy, transit through, or otherwise rely upon stream reaches beyond any known occurrence location. We acknowledge that some areas along a stream segment designated as critical habitat may not contain all of the PBFs required by either species, either naturally or as a result of habitat modification, but based on the considerations discussed above, we conclude that streams or stream segments are appropriate units of scale for describing critical habitat for these species.

In summary, we designate as critical habitat streams and stream segments up to the ordinary high water mark that were occupied at the time of listing and contain one or more of the PBFs that are essential to support the life-history processes of the Big Sandy crayfish and the Guyandotte River crayfish. Additionally, for the Guyandotte River crayfish, we designate three subunits outside the geographical range of that species occupied at the time of listing; however, these subunits are within the larger occupied watershed. Two of these subunits have historical records of the species, and one subunit, while not having a record of the species, is within its historical range and provides connectivity between occupied and unoccupied subunits. These unoccupied subunits provide for increased redundancy, resiliency, and representation of the Guyandotte River crayfish. We designate specific critical habitat unit/subunit boundaries based on the following general criteria:

(1) We delineated areas within the historical range of each species that had positive survey data between 2006 and 2016 (Big Sandy and Guyandotte River crayfishes were listed in 2016). For the Guyandotte River crayfish, we also delineated three stream segments as unoccupied critical habitat.

(2) Upstream termini of critical habitat units/subunits are located at the confluence of the primary stream and a smaller named tributary stream (usually a second-order stream). These termini are generally within about 5 skm (3.1 smi) upstream of a known crayfish occurrence record. The downstream termini are usually located at the confluence of the primary stream and the next larger receiving stream or river. In some instances, dams or reservoirs are used to demark critical habitat units/subunits.

(3) We included intervening stream segments between occurrence locations unless available occurrence data suggested the PBFs required by the species were absent from the intervening segment.

(4) We describe the designated critical habitat units/subunits by their upstream and downstream coordinates (*i.e.,* latitude and longitude) and geographic landmarks (*e.g.,* confluence of named streams and/or a town or population center).

Within these stream segments, designated critical habitat includes the stream channel within the ordinary high water mark. As defined at 33 CFR 329.11, the ''ordinary high water mark'' on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving changes in the character of soil; destruction of terrestrial vegetation; the presence of the litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

For the purposes of analyzing the potential economic effects of critical habitat designation for the Big Sandy and Guyandotte River crayfishes, the critical habitat units/subunits are determined to be in either private, Federal, or State ownership. We describe ownership of designated critical habitat units/subunits based on the identification of the adjacent

riparian landowner(s) (*i.e.,* private, Federal, or State entity). In Kentucky, Virginia, and West Virginia, jurisdiction over the water itself is maintained by the State or Commonwealth; however, ownership of the stream bottom may vary depending on specific State law or legal interpretation (Energy & Mineral Law Institute 2011, pp. 409–427; Virginia Code at section 62.1–44.3; West Virginia Department of Environmental Protection 2013, section C). For example, the bed of a navigable stream in West Virginia may be owned by the state, whereas the bed of a non-navigable stream may be privately owned (Energy & Mineral Law Institute 2011, p. 427).

Final Critical Habitat Designation

For the Big Sandy crayfish, we designate approximately 582 skm (362 smi) in 4 units (including 19 subunits) in Kentucky, Virginia, and West Virginia as critical habitat (see table 1, below). These streams or stream segments were considered occupied at the time of listing and contain all known extant populations. Based on our review, we conclude that the units occupied by the Big Sandy crayfish at the time of listing (described below) are representative of the species' historical range and include core population areas in the Russell Fork watershed in Virginia and the upper Tug Fork watershed (*e.g.,* Dry Fork) in West Virginia, as well as other peripheral populations in Kentucky, Virginia, and West Virginia. We determined that there is sufficient area for the conservation of the Big Sandy crayfish within these occupied units, and we therefore do not designate any unoccupied critical habitat for the species. The designated units constitute our best assessment of areas that meet the definition of critical habitat for the Big Sandy crayfish.

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TABLE 1—DESIGNATED CRITICAL HABITAT UNITS AND SUBUNITS FOR THE BIG SANDY CRAYFISH

Unit/Watershed	Subunit	River/Stream	State	County(ies)	Occupied at Listing	Stream Length	
						skm	smi
Unit 1 Upper Levisa Fork		Dismal Creek	VA	Buchanan	Yes	29.2	18.1
Unit 2 Russell Fork	a	Russell Fork	KY/VA	Buchanan, Dickenson, Pike	Yes	83.8	52.1
	b	Hurricane Creek	VA	Buchanan	Yes	5.9	3.7
	c	Indian Creek	VA	Buchanan, Dickenson	Yes	7.4	4.6
	d	Fryingpan Creek	VA	Dickenson	Yes	4.6	2.9
	e	Lick Creek	VA	Dickenson	Yes	16.2	10.1
	f	Russell Prater Creek	VA	Dickenson	Yes	8.4	5.2
	g	McClure River, McClure Creek	VA	Dickenson	Yes	35.6	22.1
		Open Fork	VA	Dickenson	Yes	4.9	3.0
	h	Elkhorn Creek	KY	Pike	Yes	8.5	5.3
	i	Cranes Nest River	VA	Dickenson, Wise	Yes	24.6	15.3
		Birchfield Creek	VA	Wise	Yes	6.9	4.3
	j	Pound River	VA	Dickenson, Wise	Yes	28.5	17.7
Unit 3 Lower Levisa Fork	a	Levisa Fork (upstream)	KY	Pike	Yes	15.9	9.9
		Levisa Fork (downstream)	KY	Floyd, Johnson	Yes	17.5	10.9
	b	Shelby Creek	KY	Pike	Yes	32.2	20.0
		Long Fork	KY	Pike	Yes	12.9	8.0
Unit 4 Tug Fork	a	Tug Fork (upstream)	KY/VA/WV	Buchanan, McDowell, Mingo, Wayne, Pike	Yes	106.1	65.9
		Tug Fork (downstream)	KY/WV	Martin, Wayne	Yes	11.7	7.3
	b	Dry Fork	WV	McDowell	Yes	45.2	28.1
		Bradshaw Creek	WV	McDowell	Yes	4.6	2.9
	c	Panther Creek	WV	McDowell	Yes	10.7	6.6
	d	Knox Creek	KY/VA	Buchanan, Pike	Yes	16.6	10.3
	e	Peter Creek	KY	Pike	Yes	10.1	6.3
	f	Blackberry Creek	KY	Pike	Yes	9.1	5.7
	g	Pigeon Creek	WV	Mingo	Yes	14.0	8.7
		Laurel Fork	WV	Mingo	Yes	11.1	6.9
					Total:	582	362

Table 2 identifies the ownership of lands adjacent to the entirely aquatic Big Sandy crayfish designated critical habitat.

TABLE 2—LAND OWNERSHIP ADJACENT TO DESIGNATED CRITICAL HABITAT UNITS FOR THE BIG SANDY CRAYFISH (BSC)

Critical Habitat Unit		Federal		State/Local		Private		Total	
		skm	smi	skm	smi	skm	smi	skm	smi
Unit 1	Upper Levisa Fork	0	0	0	0	29	18	29	18
Unit 2	Russell Fork	23	14	11	7	201	125	235	146
Unit 3	Lower Levisa Fork	0	0	0	0	79	49	79	49
Unit 4	Tug Fork	0	0	11	7	228	142	239	149
Grand Total BSC		23	14	22	14	537	334	582	362

For the Guyandotte River crayfish, we designate approximately 135 skm (84 smi) in one unit, consisting of five subunits, in West Virginia as critical habitat. Approximately 67 skm (42 smi) in two subunits are considered occupied by the species at the time of listing and represent all known extant populations (see table 3, below). However, we determined that these two subunits do not provide sufficient resiliency, representation, or redundancy to ensure the conservation of the species. Therefore, we are designating approximately 68 skm (42 smi) in three subunits as unoccupied critical habitat (see table 3, below). The designated subunits constitute our best assessment of areas that meet the definition of critical habitat for the Guyandotte River crayfish.

TABLE 3—DESIGNATED CRITICAL HABITAT UNIT FOR THE GUYANDOTTE RIVER CRAYFISH

Unit/Watershed	Subunit	River/Stream	State	County(ies)	Occupied at Listing	Stream Length	
						skm	smi
Unit 1 Upper Guyandotte	a	Pinnacle Creek	WV	Wyoming	Yes	28.6	17.8
	b	Clear Fork	WV	Wyoming	Yes	24.9	15.5
		Laurel Fork	WV	Wyoming	Yes	13.1	8.1
	c	Guyandotte River	WV	Wyoming	No	35.8	22.2
	d	Indian Creek	WV	Wyoming	No	4.2	2.6
	e	Huff Creek	WV	Wyoming, Logan	No	28.0	17.4
					Total:	135	84

Table 4 identifies the ownership of lands adjacent to the entirely aquatic Guyandotte River crayfish designated critical habitat.

TABLE 4—LAND OWNERSHIP ADJACENT TO DESIGNATED CRITICAL HABITAT UNITS FOR THE GUYANDOTTE RIVER CRAYFISH

Critical Habitat Unit		Federal		State		Private		Total	
		skm	smi	skm	smi	skm	smi	skm	smi
Unit 1	Occupied	0	0	6	4	60	38	67	42
	Unoccupied	0	0	16	10	52	32	68	42
Grand Total GRC		0	0	23	14	112	70	135	84

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Below, we present brief descriptions of all units/subunits and reasons why they meet the definition of critical habitat for the Big Sandy and Guyandotte River crayfishes. Each unit/subunit of Big Sandy crayfish critical habitat contains all six PBFs identified above (see *Summary of Essential Physical or Biological Features)* that are essential to the conservation of the species. Each unit/subunit of Guyandotte River crayfish critical habitat contains one or more of the six PBFs.

Big Sandy Crayfish

Unit 1: Upper Levisa Fork—Dismal Creek, Buchanan County, Virginia

This occupied unit includes a single subunit of approximately 29.2 stream kilometers (skm) (18.1 smi) of Dismal Creek in the Upper Levisa Fork

watershed. The upstream boundary of this unit is the confluence of Dismal Creek and Laurel Fork, and the downstream limit is the confluence of Dismal Creek and Levisa Fork. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements.

Recent surveys of Dismal Creek indicated an abundance of unembedded slab boulders and boulder clusters, and live Big Sandy crayfish have been collected in relatively high numbers from several locations within this unit (Thoma 2009b, p. 10; Loughman 2015a, p. 26). The Dismal Creek watershed is mostly forested; however, U.S. Geological Survey (USGS) topographic maps and aerial imagery (ESRI) provide evidence of legacy and ongoing surface coal mining throughout the watershed. This unit may need special management considerations due to resource extraction (coal mining, timber harvesting, and oil and gas development), road construction and maintenance (including unpaved roads and trails), instream dredging or construction projects, and other sources of non-point source pollution. The narrow stream valley contains scattered residences and small communities, commercial facilities, occasional gas wells, and transportation infrastructure (*i.e.,* roads and rail lines). There is a large coal coke plant straddling Dismal Creek at the confluence of Dismal Creek and Levisa Fork. The Dismal Creek population of Big Sandy crayfish represents the species' only representation in the upper Levisa Fork watershed, which is physically isolated from the rest of the Big Sandy basin by Fishtrap Dam and Reservoir. The Dismal Creek population appears to be relatively robust and contributes to the representation and redundancy of the species.

Unit 2: Russell Fork

Unit 2 consists of the 10 subunits described below. The PBFs within this entire unit may need special management considerations from resource extraction (coal mining, timber harvesting, and oil and gas development), road construction and maintenance (including unpaved roads and trails), instream dredging or construction projects, and other sources of non-point source pollution.

Subunit 2a: Russell Fork, Buchanan and Dickenson Counties, Virginia, and Pike County, Kentucky

Subunit 2a includes approximately 83.8 skm (52.1 smi) of the Russell Fork mainstem from the confluence of Russell Fork and Ball Creek at Council, Virginia, downstream to the confluence of Russell Fork and Levisa Fork at Levisa Junction, Kentucky. Recent surveys of the Russell Fork indicated an abundance of unembedded slab boulders, boulder clusters, isolated boulders, and large cobbles, and live Big Sandy crayfish have been captured at numerous locations within this subunit (Thoma 2009b, p. 10; Loughman 2015a, p. 23). The Russell Fork watershed is mostly forested; however, USGS topographic maps and aerial imagery (ESRI) provide evidence of legacy and ongoing coal mining throughout the watershed. In the upper portion of the watershed, the narrow stream valley contains scattered residences and roads, but human development increases farther downstream in the form of small communities and towns, commercial facilities, and transportation infrastructure (*i.e.,* roads and rail lines). Approximately 12 skm (7.4 smi) of Subunit 2a is within the Jefferson National Forest and Breaks Interstate Park. The remainder of the subunit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. The Big Sandy crayfish population in Subunit 2a appears to be relatively robust and provides important connectivity between crayfish populations in several tributary streams and rivers, contributing to their resiliency. Additionally, some Big Sandy crayfish from Subunit 2a likely disperse to areas downstream in the Levisa Fork watershed, contributing to the species' representation and redundancy.

Subunit 2b: Hurricane Creek, Buchanan County, Virginia

Subunit 2b includes approximately 5.9 skm (3.7 smi) of Hurricane Creek, a tributary to Russell Fork. This occupied subunit extends from the confluence of Hurricane Creek and Gilbert Fork downstream to the confluence of Hurricane Creek and Russell Fork at Davenport, Virginia. Recent surveys of Hurricane Creek indicate an abundance of unembedded slab boulders, boulders, and cobbles, and live Big Sandy crayfish have been collected from two locations in lower Hurricane Creek (ATS 2009, entire; VDOT 2014, entire). Based on our review of USGS topographic maps and aerial imagery (ESRI) the Hurricane Creek watershed is composed of relatively intact forest, with the exception of ongoing oil or gas development on the ridges to the north and south of the creek and scattered residences, small agricultural fields, and roads in the narrow valley. This subunit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. This subunit contributes to the redundancy of the species.

Subunit 2c: Indian Creek, Buchanan and Dickenson Counties, Virginia

This occupied subunit includes approximately 7.4 skm (4.6 smi) of Indian Creek, a tributary to Russell Fork. Subunit 2c extends from the confluence of Indian Creek and Three Forks upstream of Duty, Virginia, to the confluence of Indian Creek and Russell Fork below Davenport, Virginia. Recent surveys of Indian Creek indicate an abundance of slab boulders and boulders with low to moderate embeddedness, and live Big Sandy crayfish have been collected from several locations (ATS 2009, entire; ATS 2010, entire; Loughman 2015a, pp. 24–25). The USGS topographic maps and aerial imagery (ESRI) indicate the lower portion of the Indian Creek watershed is mostly forested, with the exception of oil or gas development on a ridgeline to the west of the creek. The upper portion of the watershed is dominated by a large surface coal mine. The narrow creek valley contains scattered residences, small agricultural fields, and roads. This subunit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. This subunit contributes to the redundancy of the species.

Subunit 2d: Fryingpan Creek, Dickenson County, Virginia

Subunit 2d includes approximately 4.6 skm (2.9 smi) of Fryingpan Creek, a tributary to Russell Fork. This occupied subunit extends from the confluence of Fryingpan Creek and Priest Fork downstream to the confluence of Fryingpan Creek and Russell Fork. Recent surveys of Fryingpan Creek indicate an abundance of isolated slab boulders and boulder clusters with low embeddedness, and live Big Sandy crayfish have been collected from the lower reach of Fryingpan Creek (Loughman 2015a, pp. 24–25). The USGS topographic maps and aerial imagery (ESRI) indicate the watershed is mostly intact forest, with the exception of oil or gas development on some adjacent ridgelines and legacy coal mining in the upper portion of the watershed. The narrow creek valley contains scattered residences, small agricultural fields, and roads. This subunit is located almost entirely on private land, except for any small amount that is publicly owned in the

form of bridge crossings or road easements. This subunit contributes to the redundancy of the species.

Subunit 2e: Lick Creek, Dickenson County, Virginia

Subunit 2e includes approximately 16.2 skm (10.1 smi) of Lick Creek, a tributary of Russell Fork. This occupied subunit extends from the confluence of Lick Creek and Cabin Fork near Aily, Virginia, downstream to the confluence of Lick Creek and Russell Fork at Birchfield, Virginia. Recent surveys of Lick Creek indicate an abundance of unembedded slab boulders and cobbles, with live Big Sandy crayfish collected at several locations (ATS 2012a, entire; ATS 2012b, entire). The USGS topographic maps and aerial imagery (ESRI) indicate the watershed is mostly forested, with the exception of oil or gas development on some adjacent ridgelines and legacy coal mining and timber harvesting sites at various locations within the watershed. The narrow creek valley contains scattered residences, small agricultural fields, and roads. This subunit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. This subunit contributes to the redundancy of the species.

Subunit 2f: Russell Prater Creek, Dickenson County, Virginia

This occupied subunit includes approximately 8.4 skm (5.2 smi) of Russell Prater Creek, a tributary to Russell Fork. This subunit extends from the confluence of Russell Prater Creek and Greenbrier Creek downstream to the confluence of Russell Prater Creek and Russell Fork at Haysi, Virginia. Recent surveys of Russell Prater Creek indicate abundant unembedded slab boulders, boulders, and cobbles, with live Big Sandy crayfish collected from two sites in the lower portion of the creek (Thoma 2009b, p. 10; Loughman 2015a, pp. 22–23). The USGS topographic maps and aerial imagery (ESRI) indicate the Russell Prater watershed is mostly forested; however, legacy coal mines and valley fills occur throughout the watershed. The narrow creek valley contains scattered residences, commercial facilities, small agricultural fields, and roads. This subunit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. This subunit contributes to the redundancy of the species.

Subunit 2g: McClure River and McClure Creek and Open Fork, Dickenson County, Virginia

Subunit 2g includes approximately 35.6 skm (22.1 smi) of the McClure River and Creek, a major tributary to Russell Fork, and its tributary stream, Open Fork (4.9 skm (3.0 smi)); this subunit is occupied. The McClure River and McClure Creek section extends from the confluence of McClure Creek and Honey Branch downstream to the confluence of McClure River and Russell Fork. Recent surveys of the McClure River indicated a generally sandy bottom with unembedded, isolated slab boulders and boulder clusters, with live Big Sandy crayfish collected at several locations (Thoma 2009b, p. 18; Loughman 2015a, p. 22). The McClure River valley contains scattered residences, small communities, commercial mining-related facilities, small agricultural fields, roads, railroads, and other infrastructure. The riparian zone along much of the river is relatively intact.

The Open Fork section of Subunit 2g extends from the confluence of Middle Fork Open Fork and Coon Branch downstream to the confluence of Open Fork and McClure Creek at Nora, Virginia. Recent surveys of Open Fork indicated unembedded, isolated slab boulders and boulder clusters, with live Big Sandy crayfish collected at one location (Loughman 2015a, p. 22). The narrow valley contains scattered residences, some small agricultural fields, roads, and railroads.

The USGS topographic maps and aerial imagery (ESRI) indicate the McClure River watershed is mostly forested; however, legacy and active coal mining occurs in the middle and upper portions of the watershed. Natural gas development is also apparent on many of the adjacent ridges, and recent or ongoing logging operations continue at several locations in the watershed. This subunit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. This subunit contributes to the redundancy of the species.

Subunit 2h: Elkhorn Creek, Pike County, Kentucky

Subunit 2h includes approximately 8.5 skm (5.3 smi) of Elkhorn Creek, a tributary to Russell Fork. This occupied subunit extends from the confluence of Elkhorn Creek and Mountain Branch downstream to the confluence of Elkhorn Creek and Russell Fork at Elkhorn City, Kentucky. Recent surveys indicated unembedded slab boulders and boulders in Elkhorn Creek with ''extensive bedrock glides'' in the lower reaches of the creek. Live Big Sandy crayfish have been collected from under slab boulders in lower Elkhorn Creek (Loughman 2015a, pp. 18–19). The USGS topographic maps and aerial imagery (ESRI) indicate the watershed is mostly forested; however, significant legacy and active coal mining and other mining and quarrying occurs in the watershed. Human development, in the form of small communities, residences, small agricultural fields, and commercial and industrial facilities, as well as roads, railroads, and other infrastructure, occurs almost continually in the riparian zone along Elkhorn Creek. The watershed to the south of Elkhorn Creek is a unit of the Jefferson National Forest; however, Subunit 2h is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. This subunit contributes to the redundancy of the species.

Subunit 2i: Cranes Nest River and Birchfield Creek, Dickenson and Wise Counties, Virginia

This occupied subunit includes approximately 24.6 skm (15.3 smi) of Cranes Nest River, a major tributary to Russell Fork, and approximately 6.9 skm (4.3 smi) of Birchfield Creek, a tributary to Cranes Nest River. The Cranes Nest River section of Subunit 2i extends from the confluence of Cranes Nest River and Birchfield Creek downstream to the confluence of Cranes Nest River and Lick Branch. Recent surveys of the Cranes Nest River indicated abundant, unembedded slab boulders, boulder clusters, isolated boulders, and coarse woody debris, and live Big Sandy crayfish have been collected at multiple sites (Thoma 2009b, p. 10; VDOT 2014b, entire; VDOT 2015, entire; Loughman 2015a, pp. 21–22). The riparian zone of this section is largely intact; however, human development, in the form of residences, small communities, small agricultural fields, roads, railroads, and other infrastructure, occurs along some segments of Cranes Nest River.

The Birchfield Creek section of this subunit extends from the confluence of Birchfield Creek and Dotson Creek downstream to the confluence of Birchfield Creek and Cranes Nest River. Recent surveys resulted in observations of live Big Sandy crayfish from a site in the lower portion of Birchfield Creek. Human development, in the form of residences, roads, and other

infrastructure, occurs in the riparian zone along Birchfield Creek.

The USGS topographic maps and aerial imagery (ESRI) indicate the Cranes Nest River watershed is mostly forested; however, significant legacy and active coal mining is evident throughout the watershed. Natural gas development is ongoing on some of the ridges adjacent to the Cranes Nest River. Approximately 10.3 skm (6.4 smi) of Subunit 2i is within the John W. Flannagan Recreation Area. The remainder of the subunit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. Since 1964, this subunit has been physically isolated from the Russell Fork by the John W. Flannagan Dam and Reservoir. The Big Sandy crayfish population in Subunit 2i appears to be relatively robust and contributes to the redundancy of the species.

Subunit 2j: Pound River, Dickenson and Wise Counties, Virginia

Subunit 2j includes approximately 28.5 skm (17.7 smi) of the Pound River, a major tributary to Russell Fork that has been physically isolated from that river since 1964 by the John W. Flannagan Dam and Reservoir. This occupied subunit extends from the confluence of Pound River and Bad Creek downstream to the confluence of Pound River and Jerry Branch. Recent surveys indicate abundant, unembedded slab boulders, boulders, and boulder clusters in the riffle and run sections, and live Big Sandy crayfish have been collected from multiple locations (Thoma 2009b, entire; VHB, Inc. 2011, entire; Loughman 2015a, p. 21). The USGS topographic maps and aerial imagery (ESRI) indicate the Pound River watershed is mostly forested; however, significant legacy and recent coal mining is evident, especially to the south of the river. Aerial imagery also indicates recent or ongoing logging operations at several locations in the watershed. Much of the immediate riparian zone is intact forest, with occasional human development in the form of small communities, residences, small agricultural fields, commercial development, and roads and other infrastructure adjacent to the river. Approximately 11.4 skm (7.1 smi) of Subunit 2j is within the John W. Flannagan Recreation Area. The remainder of the subunit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. The Big Sandy crayfish population in Subunit 2j appears to be relatively robust and contributes to the redundancy of the species.

Unit 3: Lower Levisa Fork

Unit 3 consists of the two subunits described below. The unit may need special management consideration due to resource extraction (coal mining, timber harvesting, and oil and gas development); road construction and maintenance (including unpaved roads and trails); instream dredging or construction projects; and other sources of non-point source pollution.

Subunit 3a: Levisa Fork, Pike, Floyd, and Johnson Counties, Kentucky

Subunit 3a includes approximately 33.4 skm (20.8 smi) of the mainstem Levisa Fork in two disjunct segments. The occupied upstream segment includes approximately 15.9 skm (9.9 smi) of the Levisa Fork from its confluence with the Russell Fork at Levisa Junction, Kentucky, downstream to the confluence of Levisa Fork and Island Creek at Pikeville, Kentucky. Surveys indicate that suitable, unembedded, boulder habitat is present in the Levisa Fork, and live Big Sandy crayfish have been recently collected both upstream of Subunit 3a in the Russell Fork and at one location near Pikeville, Kentucky (Thoma 2010, pp. 5–6; Loughman 2015a, pp. 5–10).

The occupied downstream segment of Subunit 3a includes approximately 17.5 skm (10.9 smi) of the Levisa Fork near Auxier, Kentucky, from the confluence of Levisa Fork and Abbott Creek downstream to the confluence of Levisa Fork and Miller Creek. Recent surveys indicate isolated boulder clusters in this segment, with live Big Sandy crayfish collected from two locations (Thoma 2009b, entire; Loughman 2014, pp. 12–13).

The USGS topographic maps and aerial imagery (ESRI) indicate the Subunit 3a watershed is mostly forested; however, legacy and ongoing coal mining is evident in several locations. Human development, in the form of towns, small communities, residences, small agricultural fields, commercial and industrial development, roads, railroads, and other infrastructure, occurs nearly continuously in the riparian zone of these segments of the Levisa Fork. Subunit 3a is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. The upper segment of the subunit provides connectivity between the Russell Fork and Shelby Creek populations (discussed below), and the lower segment supports the most downstream population of Big Sandy crayfish in the Levisa Fork watershed. Because the natural habitat characteristics (*e.g.,* size, gradient, bottom substrate) in the Levisa Fork differ from those in the upper tributaries, this subunit increases Big Sandy crayfish representation as well as the species' redundancy.

Subunit 3b: Shelby Creek and Long Fork, Pike County, Kentucky

This occupied subunit includes approximately 32.2 skm (20.0 smi) of Shelby Creek, a tributary to Levisa Fork, and approximately 12.9 skm (8.0 smi) of Long Fork, a tributary to Shelby Creek. The Shelby Creek portion of this subunit extends from the confluence of Shelby Creek and Burk Branch downstream to the confluence of Shelby Creek and Levisa Fork at Shelbiana, Kentucky. The Long Fork portion of Subunit 3b extends from the confluence of Right Fork Long Fork and Left Fork Long Fork downstream to the confluence of Long Fork and Shelby Creek at Virgie, Kentucky. Recent surveys of this subunit indicated an abundance of unembedded slab boulders, boulder clusters, and anthropogenic structures such as concrete slabs and blocks in Shelby Creek and Long Fork. Live Big Sandy crayfish have been collected at multiple locations within this subunit (Thoma 2010, pp. 5–6; Loughman 2015a, p. 18). The USGS topographic maps and aerial imagery (ESRI) indicate the Shelby Creek watershed is mostly forested; however, several large surface coal mines are evident west of the stream. The Long Fork watershed is also mostly forested; however, legacy and active coal mining is evident in the upper portion of this watershed. Human development, in the form of towns, small communities, residences, small agricultural fields, commercial and industrial development, roads, railroads, and other infrastructure, occurs nearly continuously in the riparian zone of Shelby Creek. In the riparian zone of Long Fork, residences, small agricultural fields, roads, and other infrastructure occur nearly continuously. Subunit 3b is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. This subunit maintains the most robust population of Big Sandy crayfish in the lower Levisa Fork (as indicated by recent survey capture rates) and increases the representation and redundancy of the species.

Unit 4: Tug Fork

Unit 4 consists of the seven subunits described below. The threats within this

entire unit that may need special management consideration include resource extraction (coal mining, timber harvesting, and oil and gas development); road construction and maintenance (including unpaved roads and trails); instream dredging or construction projects; and other sources of nonpoint source pollution.

Subunit 4a: Tug Fork, McDowell, Mingo, and Wayne Counties, West Virginia; Buchanan County, Virginia; and Pike and Martin Counties, Kentucky

Subunit 4a includes approximately 117.8 skm (73.2 smi) of the Tug Fork mainstem in two disjunct, occupied segments. The upstream segment includes approximately 106.1 skm (65.9 smi) of the Tug Fork from the confluence of Tug Fork and Elkhorn Creek at Welch, West Virginia, downstream to the confluence of Tug Fork and Blackberry Creek in Pike County, Kentucky. Surveys indicate that suitable unembedded boulder habitat is sparse and discontinuous in this segment of the Tug Fork; however, live Big Sandy crayfish have been collected at four locations within this subunit (Loughman 2015a, p. 16). The downstream segment includes approximately 11.7 skm (7.3 smi) of the Tug Fork near Crum, West Virginia, from the confluence of Tug Fork and Little Elk Creek downstream to the confluence of Tug Fork and Bull Creek.

The USGS topographic maps and aerial imagery (ESRI) indicate the Subunit 4a watershed is mostly forested; however, there is evidence of legacy and ongoing coal mining throughout the subunit. The riparian zone in the upper segment of Subunit 4a is relatively intact, with human development consisting primarily of road and railroad corridors. In the lower segment of the subunit, towns, small communities, residences, small agricultural fields, commercial and industrial development, roads, railroads, and other infrastructure become prevalent. Subunit 4a is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. Because of the diversity of natural habitat characteristics (*e.g.,* size, gradient, bottom substrate) in this subunit, it contributes to Big Sandy crayfish representation and redundancy. This subunit provides habitat for the Big Sandy crayfish, as well as providing potential connectivity between the Dry Fork, Panther Creek, Knox Creek, Peter Creek, Blackberry Creek, and Pigeon Creek populations (discussed below).

Subunit 4b: Dry Fork and Bradshaw Creek, McDowell County, West Virginia

This occupied subunit includes approximately 45.2 skm (28.1 smi) of Dry Fork, a large tributary to the Tug Fork, and approximately 4.6 skm (2.9 smi) of Bradshaw Creek, a tributary to Dry Fork. The Dry Fork portion of Subunit 4b extends from the confluence of Dry Fork and Jacobs Fork downstream to the confluence of Dry Fork and Tug Fork at Iaeger, West Virginia. The Bradshaw Creek portion extends from the confluence of Bradshaw Creek and Hite Fork at Jolo, West Virginia, downstream to the confluence of Bradshaw Creek and Dry Fork at Bradshaw, West Virginia. Recent surveys indicate abundant unembedded slab boulders, boulders, boulder clusters, and large cobbles, with live Big Sandy crayfish collected at numerous locations within this subunit (Loughman 2013, pp. 7–8; Loughman 2014, pp. 10–11; Loughman 2015a, pp. 14–15). The USGS topographic maps and aerial imagery (ESRI) indicate the Subunit 4b watershed is mostly forested; however, legacy coal mining is evident throughout, and natural gas development is apparent in the upper portions of the watershed. The riparian zone in the upper portion of Dry Fork is relatively intact, with human development consisting primarily of road and railroad corridors. In the middle and lower portions of Dry Fork, small communities, residences, small agricultural fields, commercial and industrial development, roads, railroads, and other infrastructure become prevalent. The Bradshaw Creek riparian zone is dominated by residences, small agricultural fields, roads, and other infrastructure. The middle portion of Dry Fork passes through the Berwind Lake State Wildlife Management Area; otherwise, Subunit 4b is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. This subunit appears to maintain a relatively robust population of the Big Sandy crayfish and likely serves as a source population for areas downstream in the Tug Fork basin. This subunit contributes to the redundancy of the species.

Subunit 4c: Panther Creek, McDowell County, West Virginia

This occupied subunit includes approximately 10.7 skm (6.6 smi) of Panther Creek, a tributary to Tug Fork. Subunit 4c extends from the confluence of Panther Creek and George Branch downstream to the confluence of Panther Creek and Tug Fork at Panther, West Virginia. Big Sandy crayfish have been collected at one site in the lower portion of this subunit. The USGS topographic maps and aerial imagery (ESRI) indicate the majority of the Panther Creek watershed is intact forest with evidence of only limited legacy coal mining. The riparian zone of this narrow valley is largely intact, containing a road and occasional residences (mostly in the lower portion of the subunit). Approximately 6.1 skm (3.8 smi) of Subunit 4c is located within the Panther State Forest, and the remainder is located on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. This subunit contributes to the redundancy of the species.

Subunit 4d: Knox Creek, Buchanan County, Virginia, and Pike County, Kentucky

Subunit 4d includes approximately 16.6 skm (10.3 smi) of Knox Creek, a tributary to Tug Fork. This occupied subunit extends from the confluence of Knox Creek and Cedar Branch downstream to the confluence of Knox Creek and Tug Fork in Pike County, Kentucky. Recent surveys indicated abundant unembedded slab boulders, boulders, and boulder clusters, with live Big Sandy crayfish collected at four sites in the Kentucky portion of the creek (Thoma 2010, p. 5; Loughman 2015a, p. 12). The USGS topographic maps and aerial imagery (ESRI) indicate the Knox Creek watershed is mostly forested, with evidence of significant legacy, recent, and ongoing coal mining in the watershed. In the upper portion of this subunit, human development in the form of small communities, residences, roads, railroads, and other infrastructure is common. In the middle and lower sections, the riparian zone is relatively intact, except for scattered residences and a road and railroad line. Subunit 4d is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. This subunit contributes to the redundancy of the species.

Subunit 4e: Peter Creek, Pike County, Kentucky

Subunit 4e includes approximately 10.1 skm (6.3 smi) of Peter Creek, a tributary to Tug Fork. This occupied subunit extends from the confluence of Left Fork Peter Creek and Right Fork Peter Creek at Phelps, Kentucky, downstream to the confluence of Peter Creek and Tug Fork at Freeburn, Kentucky. Recent surveys indicate

moderate sedimentation in Peter Creek, but some unembedded bottom substrates continue to be present (Loughman 2015a, p. 12). Big Sandy crayfish have been collected at two sites in the lower portion of this subunit. The USGS topographic maps and aerial imagery (ESRI) indicate the Peter Creek watershed is mostly forested, with evidence of significant legacy, recent, and ongoing coal mining throughout the watershed. The riparian zone in Subunit 4e is dominated by human development in the form of small communities, residences, roads, railroads, and other infrastructure. This subunit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. Subunit 4e contributes to the redundancy of the species.

Subunit 4f: Blackberry Creek, Pike County, Kentucky

Subunit 4f includes approximately 9.1 skm (5.7 smi) of Blackberry Creek, a tributary to Tug Fork. This occupied subunit extends from the confluence of Blackberry Creek and Bluespring Branch downstream to the confluence of Blackberry Creek and Tug Fork. Recent surveys indicate moderate sedimentation in Blackberry Creek, but some unembedded bottom substrates continue to be present (Loughman 2015a, p. 12). Big Sandy crayfish have been collected at two sites in the lower portion of this subunit. The USGS topographic maps and aerial imagery (ESRI) indicate the Blackberry Creek watershed is mostly forested, with evidence of significant legacy, recent, and ongoing coal mining throughout the watershed. The narrow riparian zone in Subunit 4f is dominated by human development in the form of small communities, residences, roads, and other infrastructure. This subunit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. Subunit 4f contributes to the redundancy of the species.

Subunit 4g: Pigeon Creek and Laurel Creek, Mingo County, West Virginia

Subunit 4g includes approximately 14.0 skm (8.7 smi) of Pigeon Creek, a tributary to Tug Fork, and approximately 11.1 skm (6.9 smi) of Laurel Fork, a tributary to Pigeon Creek; this subunit is occupied. The Pigeon Creek portion of this subunit extends from the confluence of Pigeon Creek and Trace Fork downstream to the confluence of Pigeon Creek and Tug Fork. The Laurel Creek portion extends from the confluence of Laurel Fork and Lick Branch 0.6 skm (0.4 smi) downstream of the Laurel Lake dam to the confluence of Laurel Fork and Pigeon Creek at Lenore, West Virginia.

Recent surveys indicate the bottom substrates in Pigeon Creek consist of fine sediments, sand, and occasional boulders, with Big Sandy crayfish collected at a single site (Loughman 2015a, p. 11). Laurel Fork maintains a bottom substrate of sand, gravel, cobble, and occasional slab boulders, with Big Sandy crayfish collected at two sites (Loughman 2015a, pp. 10–11). The USGS topographic maps and aerial imagery (ESRI) indicate the Pigeon Creek watershed is mostly forested, with evidence of significant legacy, recent, and ongoing coal mining and valley fills in the upper portion of the watershed. The Pigeon Creek riparian zone is dominated by human development in the form of small communities, residences, roads, railroads, and other infrastructure. The majority of the Laurel Creek watershed is located within the Laurel Creek State Wildlife Management Area and is mostly intact forest; however, the narrow riparian zone is dominated by human development in the form of residences, roads, and other infrastructure. Subunit 4g is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements. With the exception of the Big Sandy crayfish occurrence in the Tug Fork mainstem near Crum, West Virginia, Subunit 4g supports the most downstream Big Sandy crayfish population in the Tug Fork watershed. Therefore, this subunit contributes to the representation and redundancy of the species.

Guyandotte River Crayfish

Below we present brief descriptions of all units/subunits and reasons why they meet the definition of critical habitat for the Guyandotte River crayfish. Each unit/subunit contains one or more of the PBFs identified above (see *Summary of Essential Physical or Biological Features)* that are essential to the conservation of the species.

Unit 1: Upper Guyandotte

We propose to designate a single critical habitat unit (Unit 1), consisting of five subunits, for the Guyandotte River crayfish. This unit may require special management considerations or protection to address threats from resource extraction (coal mining, timber harvesting, and oil and gas development), road construction and maintenance (including unpaved roads and trails), instream dredging or construction projects, and other sources of point and non-point source pollution including spills. In addition, subunits 1a and 1e may need special management considerations to address threats from ORV use. The subunits are described below.

Subunit 1a: Pinnacle Creek, Wyoming County, West Virginia

This occupied subunit includes approximately 28.6 skm (17.8 smi) of Pinnacle Creek, a tributary to the Guyandotte River. Subunit 1a extends from the confluence of Pinnacle Creek and Beartown Fork downstream to the confluence of Pinnacle Creek and the Guyandotte River at Pineville, West Virginia. The USGS topographic maps and aerial imagery (ESRI) indicate the Pinnacle Creek watershed is mostly forested; however, legacy, recent, and ongoing coal mining is evident in the watershed. The riparian zone in this subunit is mostly intact, with human development consisting of unimproved roads or trails. In the lower portion of the subunit, some commercial and coal-related facilities are adjacent to the stream. This subunit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements.

Recent surveys of Pinnacle Creek confirmed the presence of the Guyandotte River crayfish in at least five sites in the upper portion of the stream. The subunit contains bottom substrate consisting of gravel with unembedded cobbles, small boulders, and isolated slab boulders (PBF 1). Substrate embeddedness was reported to increase markedly in downstream reaches (Loughman 2015b, p. 11). As one of only two known Guyandotte River crayfish populations, this subunit provides critical representation and redundancy for the species.

Subunit 1b: Clear Fork and Laurel Fork, Wyoming County, West Virginia

Subunit 1b includes approximately 38.0 skm (23.6 smi) of Clear Fork and its primary tributary Laurel Fork. This occupied subunit extends from the confluence of Laurel Creek and Acord Branch downstream to the confluence of Clear Fork and the Guyandotte River. The USGS topographic maps and aerial imagery (ESRI) indicate the Subunit 1b watershed is mostly forested; however, coal mining activity occurs throughout the subunit. Human development is prevalent in the riparian zone in this subunit and consists of communities, residences, commercial facilities, agricultural fields, roads, railroads, and other infrastructure. Approximately 6.2 skm (3.9 smi) of Subunit 1b is within

the R.D. Bailey Lake State Wildlife Management Area, and the remainder is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements.

Surveys confirmed the Guyandotte River crayfish at six sites within this subunit, with the stream bottom substrate generally characterized as sand with abundant unembedded slab boulders, boulders, or boulder clusters (Loughman 2015b, pp. 9–10). Of the two remaining Guyandotte River crayfish populations, Subunit 1b contains the most robust population and provides critical representation and redundancy for the species.

Subunit 1c: Guyandotte River, Wyoming County, West Virginia

Subunit 1c includes approximately 35.8 skm (22.2 smi) of the Guyandotte River from its confluence with Pinnacle Creek at Pineville, West Virginia, downstream to its confluence with Clear Fork. The USGS topographic maps and aerial imagery (ESRI) indicate the Subunit 1c watershed is mostly forested; however, some legacy and ongoing coal mining is evident along with natural gas development on adjacent ridges. In the lower portion of the subunit, the riparian zone is largely intact, with the exception of road and railroad rights-of-way. In the middle and upper portions of this subunit, human development in the riparian zone increases and consists of communities, residences, commercial facilities, agricultural fields, roads, railroads, and other infrastructure. Approximately 15.0 skm (9.3 smi) of Subunit 1c is located within the R.D. Bailey Lake State Wildlife Management Area, and the remainder is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements.

Although it is considered unoccupied, this subunit contains at least two of the PBFs essential to the conservation of the Guyandotte River crayfish, and we are reasonably certain that it will contribute to the conservation of the species. This subunit maintains ''optimal'' Guyandotte River crayfish habitat, including abundant unembedded slab boulders, boulders, boulder clusters, and cobble (PBF 1) (Loughman 2015b, pp. 22–24). Along with providing suitable habitat for the Guyandotte River crayfish and thereby providing the potential to increase its redundancy, this subunit provides connectivity (PBF 6) between the extant Pinnacle Creek and Clear Fork populations and provides connectivity between these two populations and the unoccupied critical habitat subunit at Indian Creek (Subunit 1d, described below).

Subunit 1d: Indian Creek, Wyoming County, West Virginia

Subunit 1d includes approximately 4.2 skm (2.6 smi) of Indian Creek, a tributary to the Guyandotte River. This subunit extends from the confluence of Indian Creek and Brier Creek at Fanrock, West Virginia, downstream to the confluence of Indian Creek and the Guyandotte River. The USGS topographic maps and aerial imagery (ESRI) indicate the Subunit 1d watershed is mostly intact forest, with evidence of legacy coal mining and natural gas drilling on the adjacent slopes. Residences, roads, and other infrastructure occur in the narrow riparian zone. Approximately 1.3 skm (0.8 smi) of Subunit 1d is located within the R.D. Bailey Lake State Wildlife Management Area, and the remainder is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements.

Although it is considered unoccupied, this subunit contains at least two of the PBFs essential to the conservation of the Guyandotte River crayfish, and we are reasonably certain that it will contribute to the conservation of the species. This subunit represents the type location for the Guyandotte River crayfish, with specimens last collected in 1947. The best available survey data (Loughman 2015b, p. 14) indicate this subunit maintains unembedded slab boulders and boulders in the faster moving stream sections, with some sedimentation observed in slow or slack water sections (PBF 1). This subunit is located approximately midway between the extant Pinnacle Creek and Clear Fork populations and, if recolonized, would increase the redundancy of the Guyandotte River crayfish and contribute to population connectedness within the species' range (PBF 6).

Subunit 1e: Huff Creek, Wyoming and Logan Counties, West Virginia

Subunit 1e includes approximately 28.0 skm (17.4 smi) of Huff Creek, a tributary of the Guyandotte River. This subunit extends from the confluence of Huff Creek and Straight Fork downstream to the confluence of Huff Creek and the Guyandotte River at Huff, West Virginia. The USGS topographic maps and aerial imagery (ESRI) indicate the Subunit 1e watershed is mostly intact forest, with evidence of legacy and ongoing coal mining and legacy natural gas drilling on the adjacent slopes. Human development, in the form of residences, roads, and other infrastructure, occurs in the narrow riparian zone throughout this subunit. Subunit 1e is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings or road easements.

Although it is considered unoccupied, this subunit contains at least one of the PBFs essential to the conservation of the Guyandotte River crayfish, and we are reasonably certain that it will contribute to the conservation of the species. The best available survey data (Loughman 2015b, pp. 14–15) indicate this subunit maintains unembedded slab boulders and boulder clusters with only minimal sedimentation (PBF 1). Guyandotte River crayfish were last collected from this subunit in 1989. The R.D. Bailey Dam, constructed in 1980, prevents connectivity between this subunit and the extant Guyandotte River crayfish populations upstream. Successful reintroduction of the species to this subunit would contribute to the species' redundancy and increase the ability of the species to disperse and colonize areas of its historical range that are isolated from existing populations by R.D. Bailey Dam.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33

U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded or authorized, or carried out by a Federal agency—do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law), and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical and biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive erosion and sedimentation from coal mining or abandoned mine lands, oil or natural gas development, timber harvests, unpaved forest roads, road construction, channel alteration, off-road vehicle use, and other land-disturbing activities in the watershed and floodplain. Sedimentation from these activities could lead to stream bottom embeddedness that eliminates or reduces the sheltering habitat necessary for the conservation of these crayfish species.

(2) Actions that would significantly alter channel morphology or geometry. Such activities could include, but are not limited to, channelization, dredging, impoundment, road and bridge construction, pipeline construction, and destruction of riparian vegetation. These activities may cause changes in water flows or channel stability and lead to increased sedimentation and stream bottom embeddedness that eliminates or reduces the sheltering habitat necessary for the conservation of these crayfish species.

(3) Actions that would significantly alter water chemistry or temperature. Such activities could include, but are not limited to, the release of chemicals, fill, biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of the Big Sandy or Guyandotte River crayfish and result in direct or cumulative adverse effects to individual crayfish.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the final critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. On December 18, 2020, we published a final rule in the **Federal Register** (85 FR 82376) revising portions of our regulations pertaining to exclusions of critical habitat. These final regulations

became effective on January 19, 2021, and apply to critical habitat rules for which a proposed rule was published after January 19, 2021. Consequently, these new regulations do not apply to this final rule.

We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socioeconomic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Big Sandy and Guyandotte River crayfishes (IEc 2019, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts.

The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. If there are any unoccupied units in the proposed critical habitat designation, the screening analysis assesses whether any additional management or conservation efforts may incur incremental economic impacts.

This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis (DEA) of the proposed critical habitat designation for the Big Sandy and Guyandotte River crayfishes and are summarized in the narrative below. The IEM dated August 14, 2019, and the draft screening analysis, dated October 7, 2019, was made available for public review from January 28, 2020, through March 30, 2020 (85 FR 5072). We received public comments on the DEA. A copy of the DEA may be obtained by contacting the West Virginia Field Office (see **ADDRESSES**) or by downloading from the internet at *https://www.regulations.gov*.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the designation of critical habitat for the Big Sandy and Guyandotte River crayfishes, first we identified, in the IEM dated August 14, 2019 (Service 2019, entire), probable incremental economic impacts associated with the following categories of activities: (1) Watershed and stream restoration activities; (2) construction of recreation improvements and management of recreation activities; (3) energy extraction (coal, oil, and gas) and maintenance/management of facilities (*e.g.,* abandoned mine lands, active mines, pipelines); (4) road and bridge maintenance; (5) pesticide use; (6) timber harvest; (7) agriculture; and (8) instream emergency response activities.

We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Big Sandy and Guyandotte River crayfishes are present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. When this final critical habitat designation rule becomes effective, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Big Sandy or Guyandotte River crayfishes' critical habitat. Because all of the units/subunits we are designating as critical habitat for the Big Sandy crayfish are occupied, we do not expect that the critical habitat designation will result in any additional consultations. The

conservation recommendations provided to address impacts to the occupied critical habitat will be the same as those recommended to address impacts to the species because the habitat tolerances of the Big Sandy crayfish are inextricably linked to the health, growth, and reproduction of the crayfish, which are present year-round in their occupied streams. Furthermore, because the critical habitat and the Big Sandy crayfish's known range are identical, the results of consultation under adverse modification are not likely to differ from the results of consultation under jeopardy. In the event of an adverse modification determination, we expect that reasonable and prudent alternatives to avoid jeopardy to the species would also avoid adverse modification of the critical habitat. The only incremental costs of critical habitat designation that we anticipate are the small administrative costs required during section 7 consultation to document effects on the physical and biological features of the critical habitat and whether the action appreciably diminishes the value of critical habitat as a whole for the conservation of the listed species.

The above conclusion is also accurate for the occupied Guyandotte River crayfish subunits (1a and 1b). For the unoccupied Guyandotte River crayfish subunits (1c, 1d, and 1e), we anticipate project modifications may result in the future from consultations on one planned surface mining project as well as one existing surface mining project. Examples of project modifications may include, but are not limited to, sediment monitoring, chemical testing, macroinvertebrate monitoring, installing box culverts at all stream crossings, collocating valley fills or constructing regarded backstacks, and maintaining a spill response plan (IEc 2019, p. 15). Informed by discussions with a mining company operating in Guyandotte River crayfish occupied habitat, the cost estimates associated with such project modifications were projected to be relatively minor, ranging from $30,000 to $60,000 in the year of implementation.

We received several comments during the public comment period stating that we underestimated the economic impact of the proposed designation, so we revised the screening analysis (IEc 2020, p. 2). We worked with IEc and Federal and State agencies to better understand the likely effects of critical habitat designation. The final screening analysis examines potential project modifications for consultations in unoccupied critical habitat in more detail (*i.e.,* cleaning out sediment structures [*e.g.,* ponds] at 40% of design capacity instead of the 60% of design capacity that is required under existing regulations and installing continuous turbidity loggers, isolating mine discharge with upstream and downstream Biological Assessment Station [BAS] sites, statistically monitoring sediment within crayfish streams and receiving streams, sediment transport modeling) (IEc 2020, p. 16). Insufficient information is available to quantify the costs of sediment cleanout; therefore, annualized project modification costs were qualitatively discussed and total costs were estimated to be on the order of $350,000 (IEc 2020, p. 21). The administrative costs are discussed below. The final screening analysis states that critical habitat designation for the Big Sandy and Guyandotte River crayfish is unlikely to generate costs exceeding $100 million in a single year and, therefore, would not be significant as defined by Executive Order 13211 (below).

The critical habitat designation for the Big Sandy crayfish totals approximately 582 skm (362 smi), all of which is currently occupied by the species. The critical habitat designation for the Guyandotte River crayfish totals approximately 135 skm (84 smi), of which approximately 49% is currently occupied by the species.

As stated in the final screening analysis (IEc 2020, p. 24), critical habitat designation for the Big Sandy and Guyandotte River crayfish would be unlikely to generate costs exceeding $100 million in a single year, and therefore would not be significant. The direct section 7 costs would most likely be limited to additional administrative effort to consider adverse modification, as well as the project modifications discussed above, in unoccupied habitat for the Guyandotte River crayfish. All of the critical habitat units/subunits for the Big Sandy crayfish and two subunits of critical habitat for the Guyandotte River crayfish are occupied year-round by these species. Within occupied habitat, regardless of whether critical habitat is designated, all projects with a Federal nexus are already subject to section 7 requirements due to the listing of the species. The administrative time required to address critical habitat in these consultations is minor. The results of consultation for adverse modification are not likely to differ from the results of consultation for jeopardy. Three subunits of critical habitat for the Guyandotte River crayfish are currently unoccupied by the species. Section 7 consultations for all projects with a Federal nexus in this unoccupied habitat would be fully attributable to the critical habitat designation. We anticipate incremental project modifications resulting from these consultations, including for existing and planned surface mines.

Based on the rate of historical consultations in occupied units/subunits, these two species are likely to generate a total of approximately 285 consultations and technical assistances in a given year; this includes multiple project types including roads and transportation projects, pipeline and utility crossings, and other project types as described in the IEM. The total additional administrative cost of addressing adverse modification in these new and existing consultations is not expected to exceed $870,000, depending on the range of cost estimates for unoccupied critical habitat (see below), in a given year. This value likely overestimates the cost because technical assistance consultations, which cost substantially less, cannot be separated from informal consultations in the consultation information provided to the economists. The cost of project modifications resulting from currently identified existing and future activities in unoccupied habitat for the Guyandotte River crayfish is expected to be about $350,000 in a given year.

Further, the designation of critical habitat is not expected to trigger additional requirements under State or local regulations. Additionally, because the critical habitat is located in stretches of river, rather than on land, impacts on property values resulting from the perception of additional regulation are unlikely. Project modifications in unoccupied habitat for the Guyandotte River crayfish have the potential to increase conservation in these areas, resulting in an incremental benefit. Data limitations preclude IEc's ability to monetize these benefits; however, these benefits are unlikely to exceed $100 million in a given year.

The units with the highest potential costs resulting from the designation of critical habitat are Unit 2 for the Big Sandy crayfish and the unoccupied subunits of Unit 1 for the Guyandotte River crayfish. Because Unit 1 for the Guyandotte River crayfish (in West Virginia) includes unoccupied stream miles, requests for project modifications would be likely for existing and planned projects in this area. Unit 2 for the Big Sandy crayfish (Russell Fork, spanning both Kentucky and Virginia) contains the most stream miles with adjacent Federal land ownership and, therefore, a higher probability of intersecting with projects or activities with a Federal nexus that require consultation.

We have considered additional economic impact information we received during the public comment period, and determined that no areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions

Exclusions Based on Economic Impacts

The first sentence of section 4(b)(2) of the Act requires the Service to consider the economic impacts (as well as the impacts on national security and any other relevant impacts) of designating critical habitat. In addition, economic impacts may, for some particular areas, play an important role in the discretionary section 4(b)(2) exclusion analysis under the second sentence of section 4(b)(2). In both contexts, the Service has considered the probable incremental economic impacts of the designation. When the Service undertakes a discretionary section 4(b)(2) exclusion analysis with respect to a particular area, we weigh the economic benefits of exclusion (and any other benefits of exclusion) against any benefits of inclusion (primarily the conservation value of designating the area). The conservation value may be influenced by the level of effort needed to manage degraded habitat to the point where it could support the listed species.

The Service uses its discretion in determining how to weigh probable incremental economic impacts against conservation value. The nature of the probable incremental economic impacts, and not necessarily a particular threshold level, triggers considerations of exclusions based on probable incremental economic impacts. For example, if an economic analysis indicates high probable incremental impacts of designating a particular critical habitat unit of lower conservation value (relative to the remainder of the designation), the Service may consider exclusion of that particular unit.

As discussed above, the Service considered the economic impacts of the critical habitat designation and the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Big Sandy and Guyandotte River crayfishes based on economic impacts.

Exclusions Based on Impacts on National Security and Homeland Security

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. We have determined that the lands within the final designation of critical habitat for the Big Sandy and Guyandotte River crayfishes are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. We did not receive any requests from Federal agencies responsible for national security or homeland security requesting exclusions from Big Sandy crayfish or Guyandotte River crayfish critical habitat designation. Consequently, the Secretary is not exercising her discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, the Service considers any other relevant impacts of the critical habitat designation, in addition to economic impacts and impacts on national security as discussed above. The Service considers a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are nonpermitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of Tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this designation, we have determined that there are currently no HCPs or other management plans for the Big Sandy or Guyandotte River crayfishes, and the designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or HCPs from this critical habitat designation.

As explained above, there are no Department of Defense or national security impacts or Tribal trust impacts associated with the designation. Therefore, the Secretary is not exercising her discretion to exclude any areas from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses

include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000 (13 CFR 121.201). To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Coal mining, pipeline and utility crossings, and oil and gas exploration activities regularly occur within the range of the Big Sandy and Guyandotte River crayfishes and their critical habitat units/subunits (Service 2019, pp. 7–8). These are routine activities that the Service consults on with the Office of Surface Mining, the Federal Energy Regulatory Commission, and the U.S. Army Corps of Engineers under section 7 of the Act. In our screening analysis, we do not find that the designation of this critical habitat would significantly affect energy supplies, distribution, or use. As discussed in the revised screening analysis, the costs associated with consultations related to occupied critical habitat would be largely administrative in nature and the costs associated with projects in unoccupied critical habitat are estimated not to exceed $350,000 per year (IEc 2020, p. 21). The full cost of the entire designation is not expected to exceed $1,000,000 per year, which does not reach the significant threshold of $100 million per year. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because the waters being designated for critical habitat are owned by the States of Kentucky, Virginia, and West Virginia. These government entities do not fit the definition of ''small government jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Big Sandy and Guyandotte River crayfishes in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the Big Sandy and Guyandotte River crayfishes does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Kentucky, Virginia, and West Virginia. We received comments from the West Virginia DNR and have addressed them in the Summary of Comments and Recommendations section of the preamble. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning because these local governments no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the Big Sandy and Guyandotte River crayfishes. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that there are no Tribal lands that were occupied by the Big Sandy or Guyandotte River crayfishes at the time of listing that contain the features essential for conservation of the species, and no Tribal lands unoccupied by the Big Sandy or Guyandotte River crayfishes that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the Big Sandy or Guyandotte River crayfishes on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the West Virginia Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the North Atlantic—Appalachian Regional Office, Kentucky Ecological Services Field Office, Southwestern Virginia Field Office, and the West Virginia Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entries for ''Crayfish, Big Sandy'' and ''Crayfish, Guyandotte River'' under ''Crustaceans'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
CRUSTACEANS				
*	*	*	*	*
Crayfish, Big Sandy	*Cambarus callainus*	Wherever found	T	81 FR 20450, 4/7/2016; 50 CFR 17.95(h).[CH]
*	*	*	*	*
Crayfish, Guyandotte River	*Cambarus veteranus*	Wherever found	E	81 FR 20450, 4/7/2016; 50 CFR 17.95(h).[CH]
*	*	*	*	*

■ 3. Amend § 17.95(h) by adding entries for ''Big Sandy Crayfish (*Cambarus callainus*)'' and '' Guyandotte River Crayfish (*Cambarus veteranus*)'' after the entry for '' Pecos amphipod (*Gammarus pecos*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) *Crustaceans.*

* * * * *

Big Sandy Crayfish (Cambarus callainus)

(1) Critical habitat units are depicted for Martin, Pike, Johnson, and Floyd Counties, Kentucky; Buchanan, Dickenson, and Wise Counties, Virginia; and McDowell, Mingo, and Wayne Counties, West Virginia, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Big Sandy crayfish consist of the following components:

(i) Fast-flowing stream reaches with unembedded slab boulders, cobbles, or isolated boulder clusters within an unobstructed stream continuum (*i.e.,* riffle, run, pool complexes) of permanent, moderate- to large-sized (generally third order and larger) streams and rivers (up to the ordinary high water mark as defined at 33 CFR 329.11).

(ii) Streams and rivers with natural variations in flow and seasonal flooding sufficient to effectively transport sediment and prevent substrate embeddedness.

(iii) Water quality characterized by seasonally moderated temperatures and physical and chemical parameters (*e.g.,* pH, conductivity, dissolved oxygen) sufficient for the normal behavior, growth, reproduction, and viability of all life stages of the species.

(iv) An adequate food base, indicated by a healthy aquatic community structure including native benthic macroinvertebrates and fishes, and plant matter (*e.g.,* leaf litter, algae, detritus).

(v) Aquatic habitats protected from riparian and instream activities that degrade the physical and biological features described in paragraphs (2)(i) through (iv) of this entry or cause physical (*e.g.,* crushing) injury or death to individual Big Sandy crayfish.

(vi) An interconnected network of streams and rivers that have the physical and biological features described in paragraphs (2)(i) through (iv) of this entry and that allow for the movement of individual crayfish in response to environmental, physiological, or behavioral drivers. The scale of the interconnected stream network should be sufficient to allow for gene flow within and among watersheds.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on April 14, 2022.

(4) Data layers defining map units were created on a base of U.S. Geological Survey digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 15N coordinates. ESRI's ArcGIS 10.0 software was used to determine latitude and longitude coordinates using decimal degrees. The USA Topo ESRI online basemap service was referenced to identify features (like roads and streams) used to delineate the upstream and downstream extents of critical habitat units. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/westvirginiafieldoffice/*, at *https://www.regulations.gov* at Docket No. FWS–R5–ES–2019–0098, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of critical habitat Units 1 and 2 for the Big Sandy crayfish follows:

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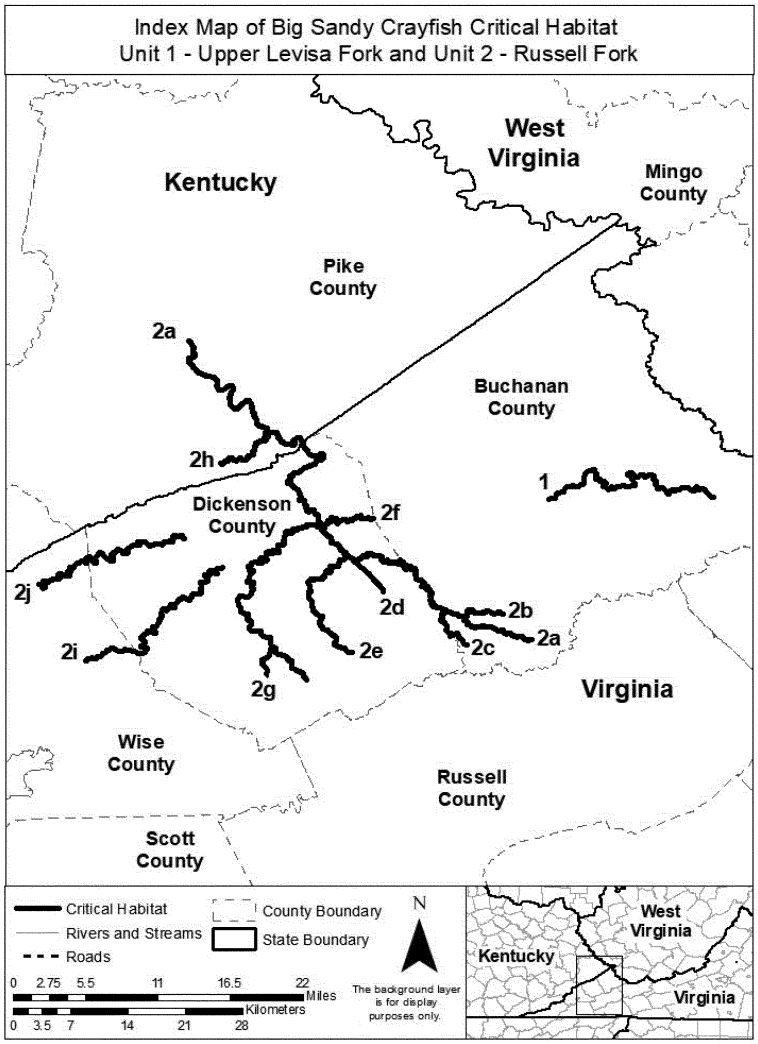
Figure 1 to Big Sandy Crayfish paragraph (5)

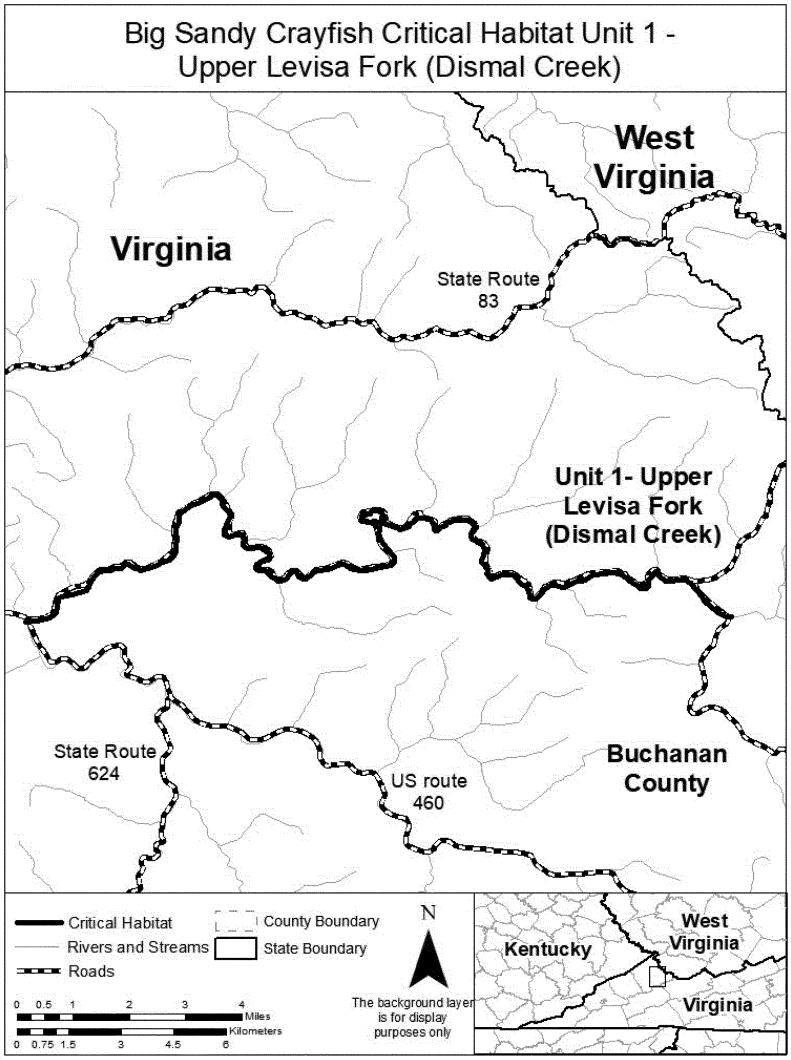


(6) Unit 1: Upper Levisa Fork—Dismal Creek, Buchanan County, Virginia.

(i) Unit 1 includes approximately 29.2 stream kilometers (skm) (18.1 smi) of Dismal Creek from its confluence with Laurel Fork downstream to its confluence with Levisa Fork in Buchanan County, Virginia.

(ii) Map of Unit 1 follows:

Figure 2 to Big Sandy Crayfish paragraph (6)(ii)



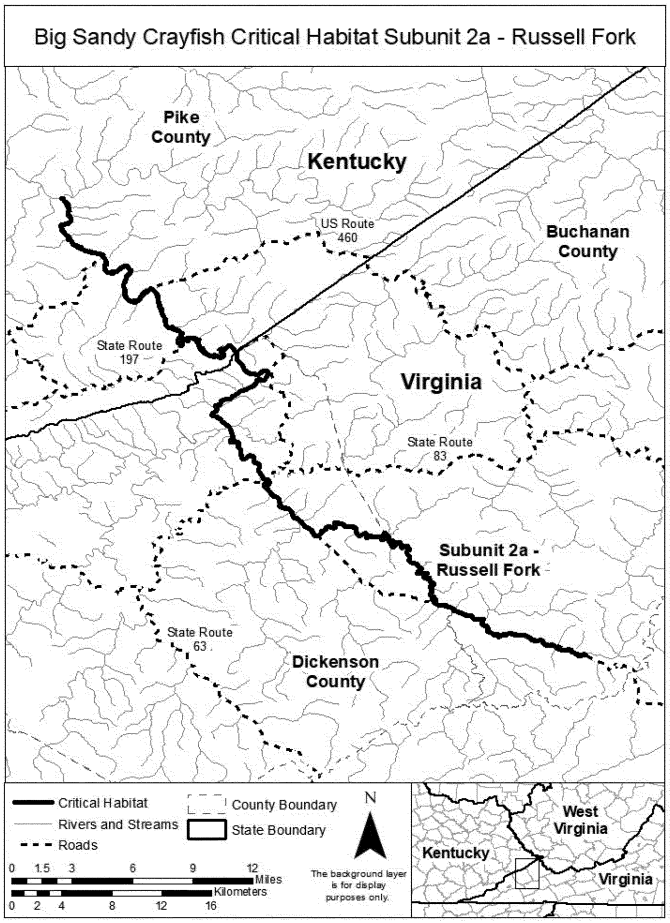
(7) Unit 2: Russell Fork—Buchanan, Dickenson, and Wise Counties, Virginia, and Pike County, Kentucky.

(i) Subunit 2a: Russell Fork, Buchanan and Dickenson Counties, Virginia, and Pike County, Kentucky.

(A) Subunit 2a consists of approximately 83.8 skm (52.1 smi) of Russell Fork from its confluence with Ball Creek at Council, Virginia, downstream to its confluence with Levisa Fork at Levisa Junction, Kentucky.

(B) Map of Subunit 2a follows:

Figure 3 to Big Sandy Crayfish paragraph (7)(i)(B)

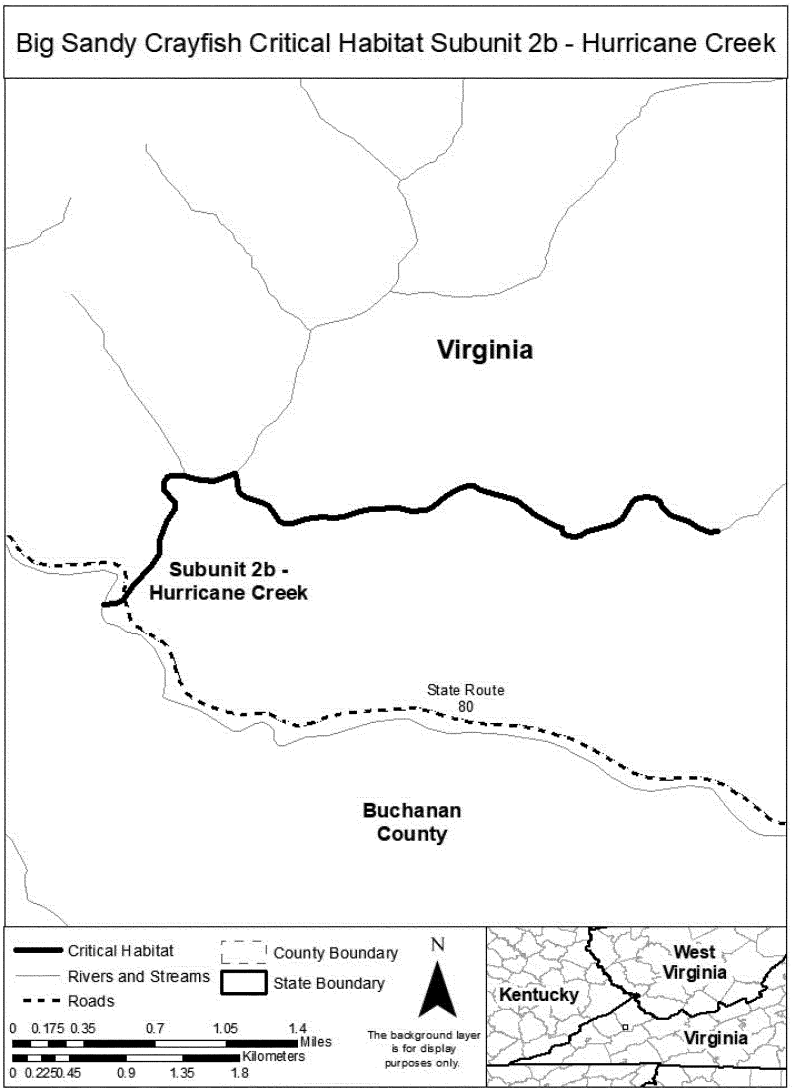


(ii) Subunit 2b: Hurricane Creek, Buchanan County, Virginia.

(A) Subunit 2b consists of approximately 5.9 skm (3.7 smi) of Hurricane Creek from its confluence with Gilbert Fork downstream to its confluence with Russell Fork at Davenport, Virginia.

(B) Map of Subunit 2b follows:

Figure 4 to Big Sandy Crayfish paragraph (7)(ii)(B)

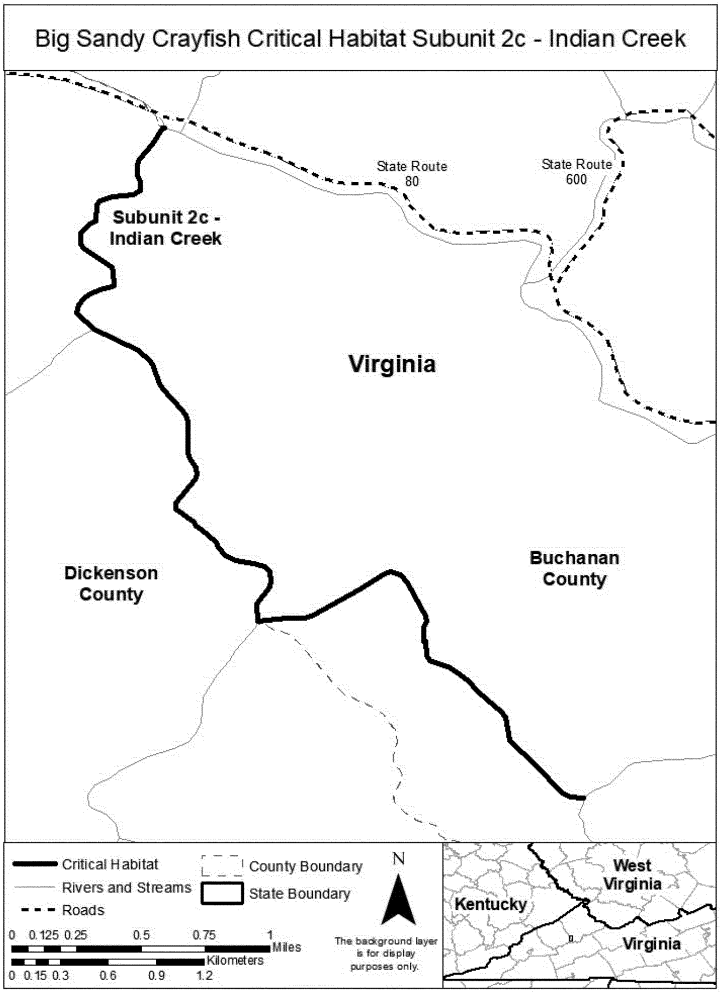


(iii) Subunit 2c: Indian Creek, Buchanan and Dickenson Counties, Virginia.

(A) Subunit 2c consists of approximately 7.4 skm (4.6 smi) of Indian Creek from its confluence with Three Forks in Buchanan County, Virginia, downstream to its confluence with Russell Fork in Buchanan and Dickenson Counties, Virginia.

(B) Map of Subunit 2c follows:

Figure 5 to Big Sandy Crayfish paragraph (7)(iii)(B)

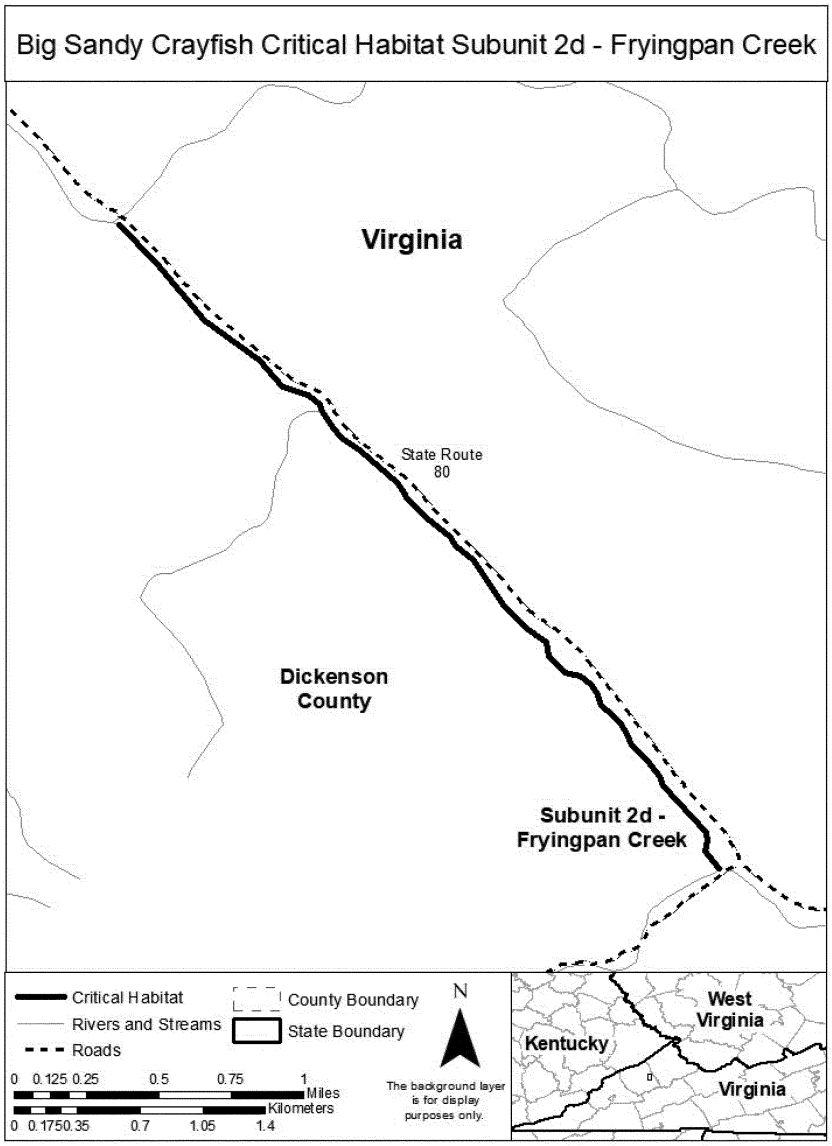


(iv) Subunit 2d: Fryingpan Creek, Dickenson County, Virginia.

(A) Subunit 2d consists of approximately 4.6 skm (2.9 smi) of Fryingpan Creek from its confluence with Priest Fork downstream to its confluence with Russell Fork.

(B) Map of Subunit 2d follows:

Figure 6 to Big Sandy Crayfish paragraph (7)(iv)(B)

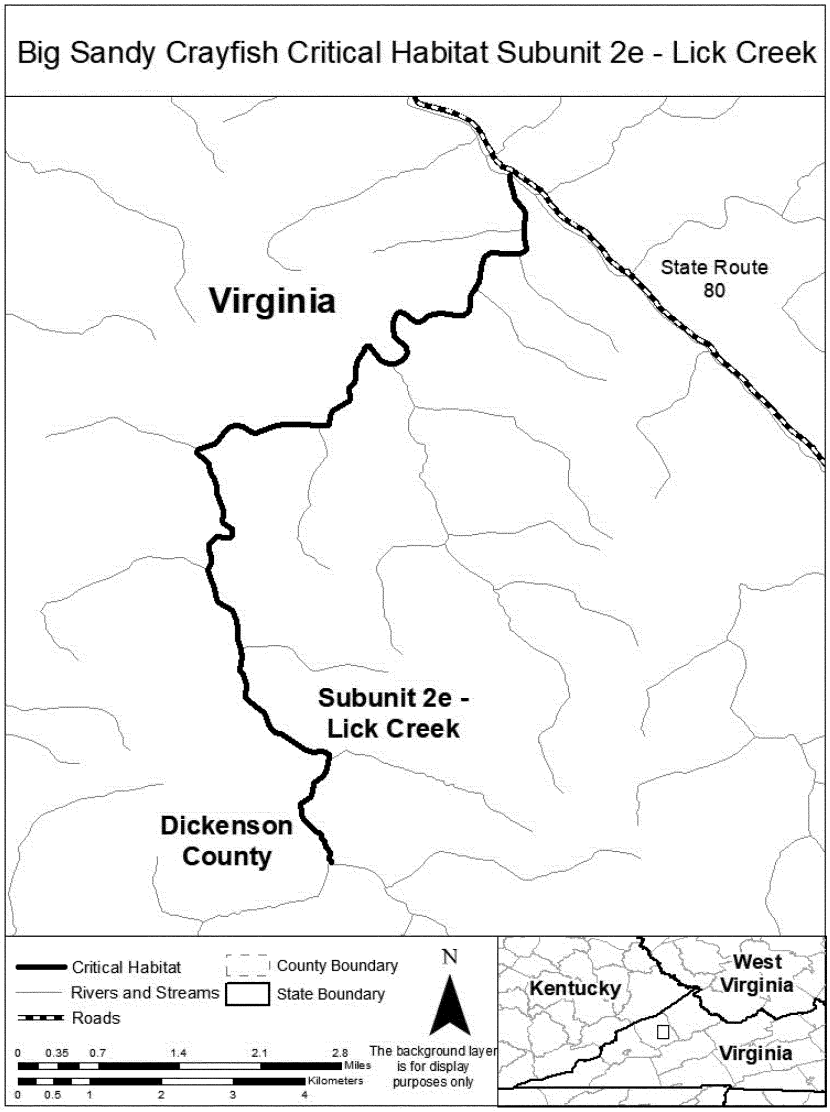


(v) Subunit 2e: Lick Creek, Dickenson County, Virginia.

(A) Subunit 2e consists of approximately 16.2 skm (10.1 smi) of Lick Creek from its confluence with Cabin Fork near Aily, Virginia, downstream to its confluence with Russell Fork at Birchfield, Virginia.

(B) Map of Subunit 2e follows:

Figure 7 to Big Sandy Crayfish paragraph (7)(v)(B)

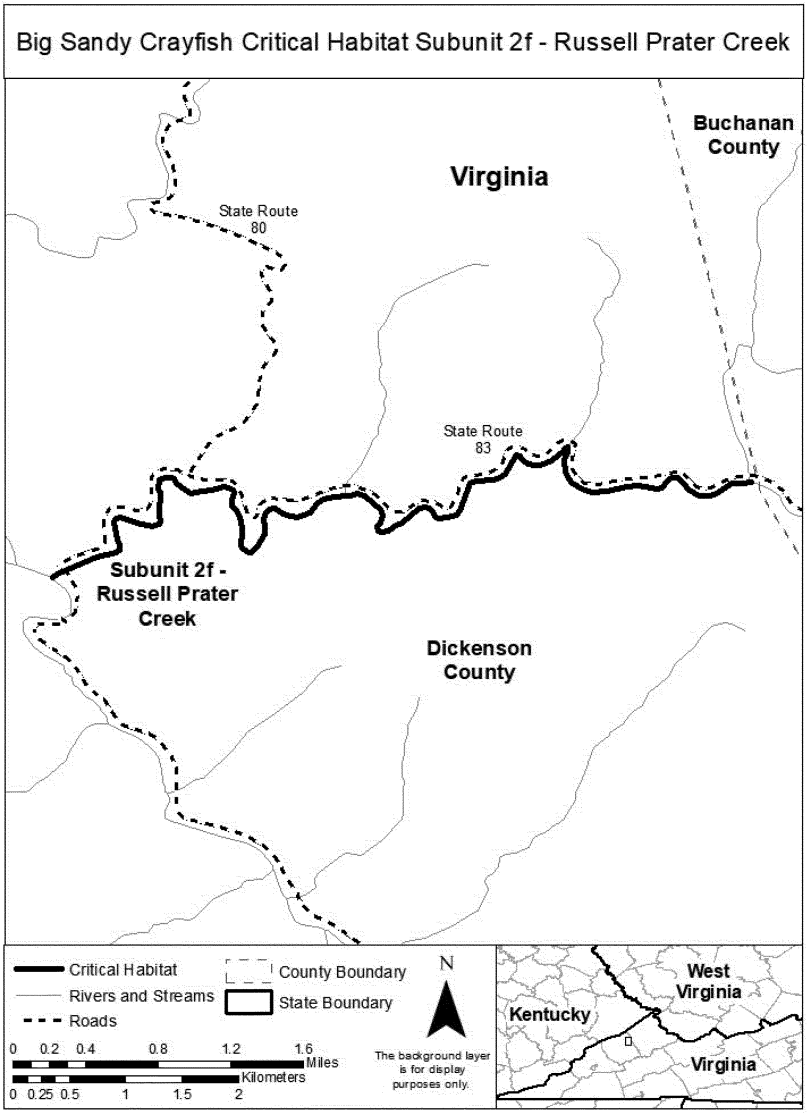


(vi) Subunit 2f: Russell Prater Creek, Dickenson County, Virginia.

(A) Subunit 2f consists of approximately 8.4 skm (5.2 smi) of Russell Prater Creek from its confluence with Greenbrier Creek downstream to its confluence with Russell Fork at Haysi, Virginia.

(B) Map of Subunit 2f follows:

Figure 8 to Big Sandy Crayfish paragraph (7)(vi)(B)

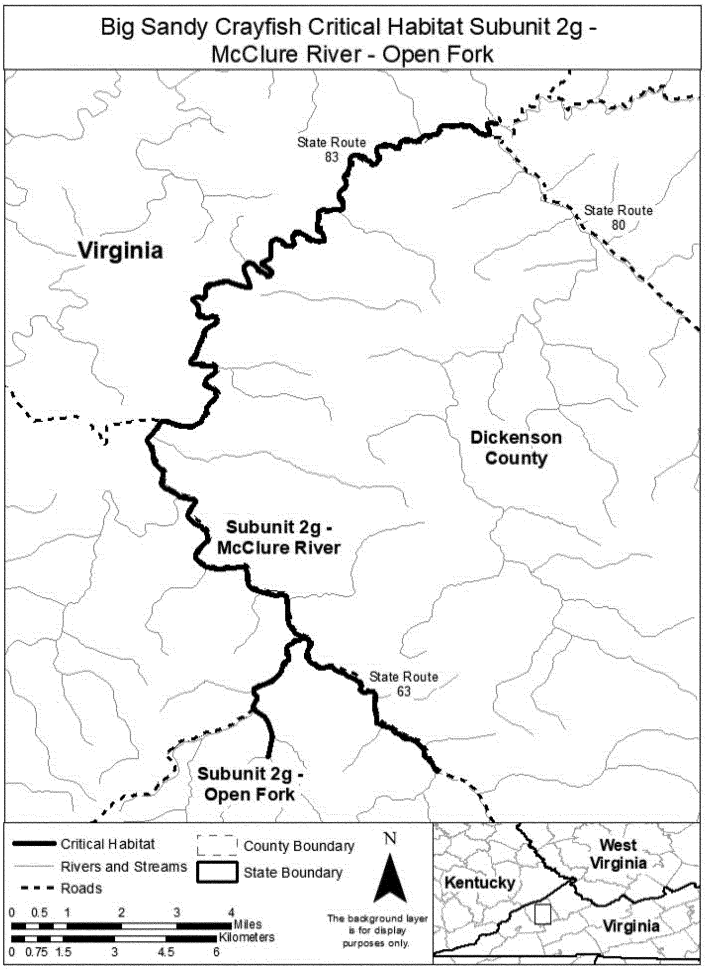


(vii) Subunit 2g: McClure River, Open Fork and McClure Creek, Dickenson County, Virginia.

(A) Subunit 2g consists of approximately 35.6 skm (22.1 smi) of the McClure River and McClure Creek from the confluence of McClure Creek and Honey Branch downstream to the confluence of McClure River and Russell Fork; and approximately 4.9 km (3.0 mi) of Open Fork from the confluence of Middle Fork Open Fork and Coon Branch downstream to the confluence of Open Fork and McClure Creek at Nora, Virginia.

(B) Map of Subunit 2g follows:

Figure 9 to Big Sandy Crayfish paragraph (7)(vii)(B)

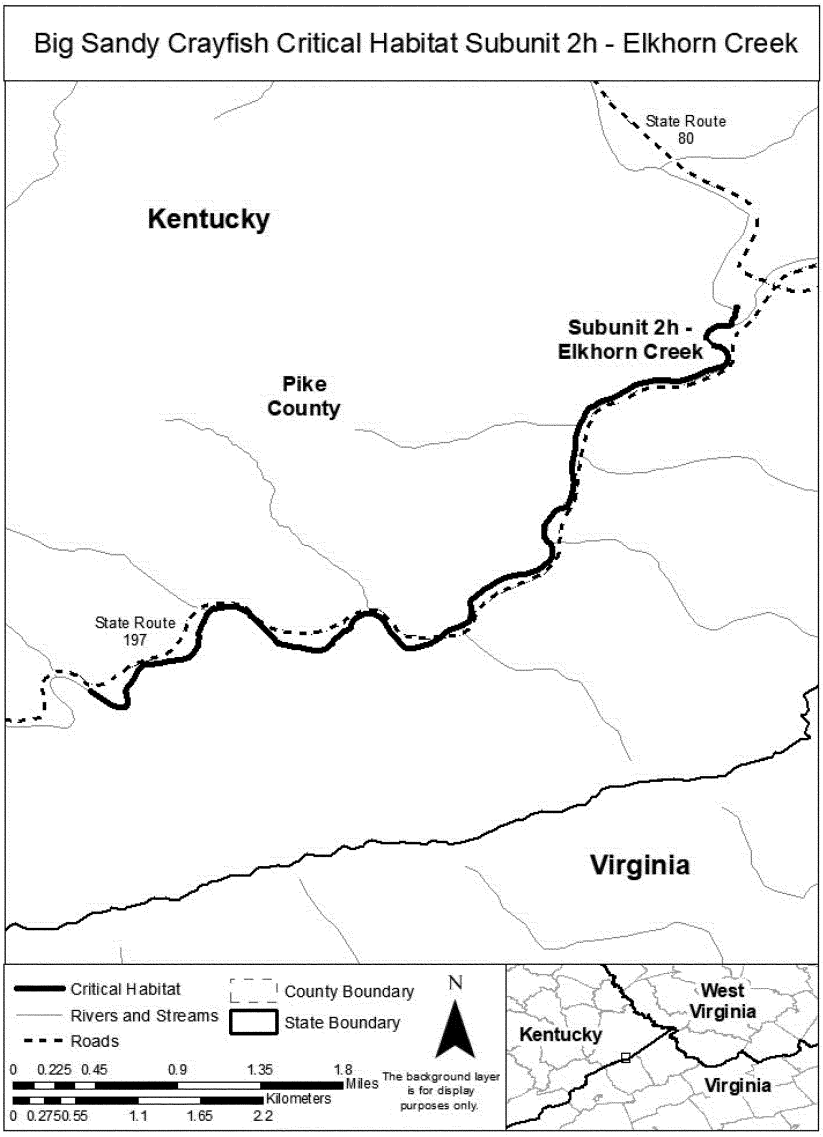


(viii) Subunit 2h: Elkhorn Creek, Pike County, Kentucky.

(A) Subunit 2h consists of approximately 8.5 skm (5.3 smi) of Elkhorn Creek from its confluence with Mountain Branch downstream to its confluence with Russell Fork at Elkhorn City, Kentucky.

(B) Map of Subunit 2h follows:

Figure 10 to Big Sandy Crayfish paragraph (7)(viii)(B)

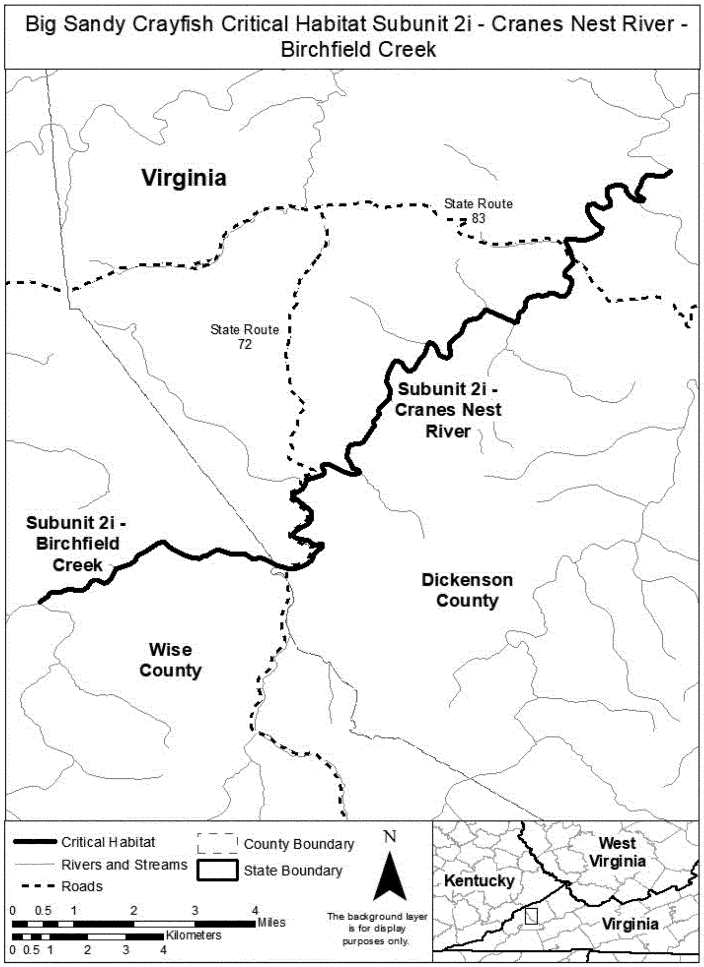


(ix) Subunit 2i: Cranes Nest River and Birchfield Creek, Dickenson and Wise Counties, Virginia.

(A) Subunit 2i consists of approximately 24.6 skm (19.0 smi) of the Cranes Nest River from its confluence with Birchfield Creek downstream to its confluence with Lick Branch and approximately 6.9 skm (4.3 smi) of Birchfield Creek from its confluence with Dotson Creek downstream to its confluence with Cranes Nest River.

(B) Map of Subunit 2i follows:

Figure 11 to Big Sandy Crayfish paragraph (7)(ix)(B)

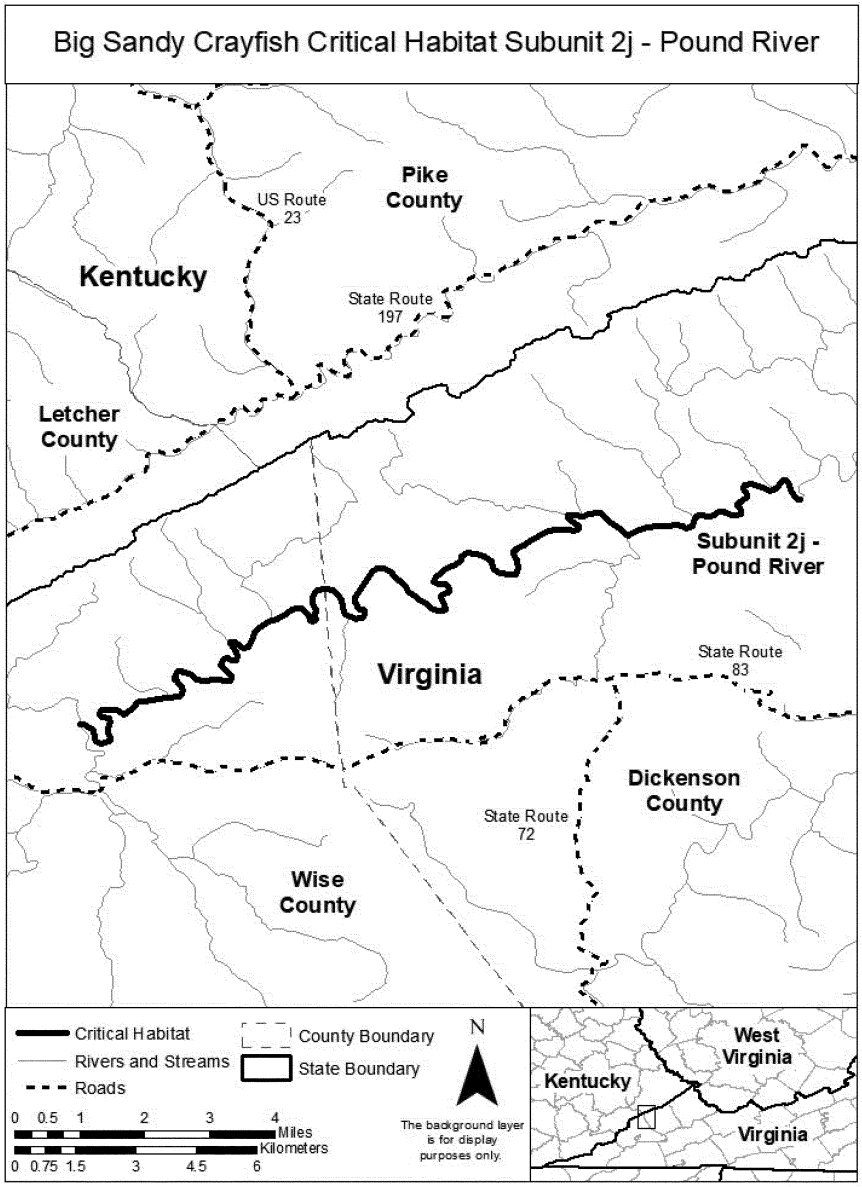


(x) Subunit 2j: Pound River, Dickenson and Wise Counties, Virginia.

(A) Subunit 2j consists of approximately 28.5 skm (17.7 smi) of the Pound River from its confluence with Bad Creek downstream to the confluence of the Pound River and Jerry Branch.

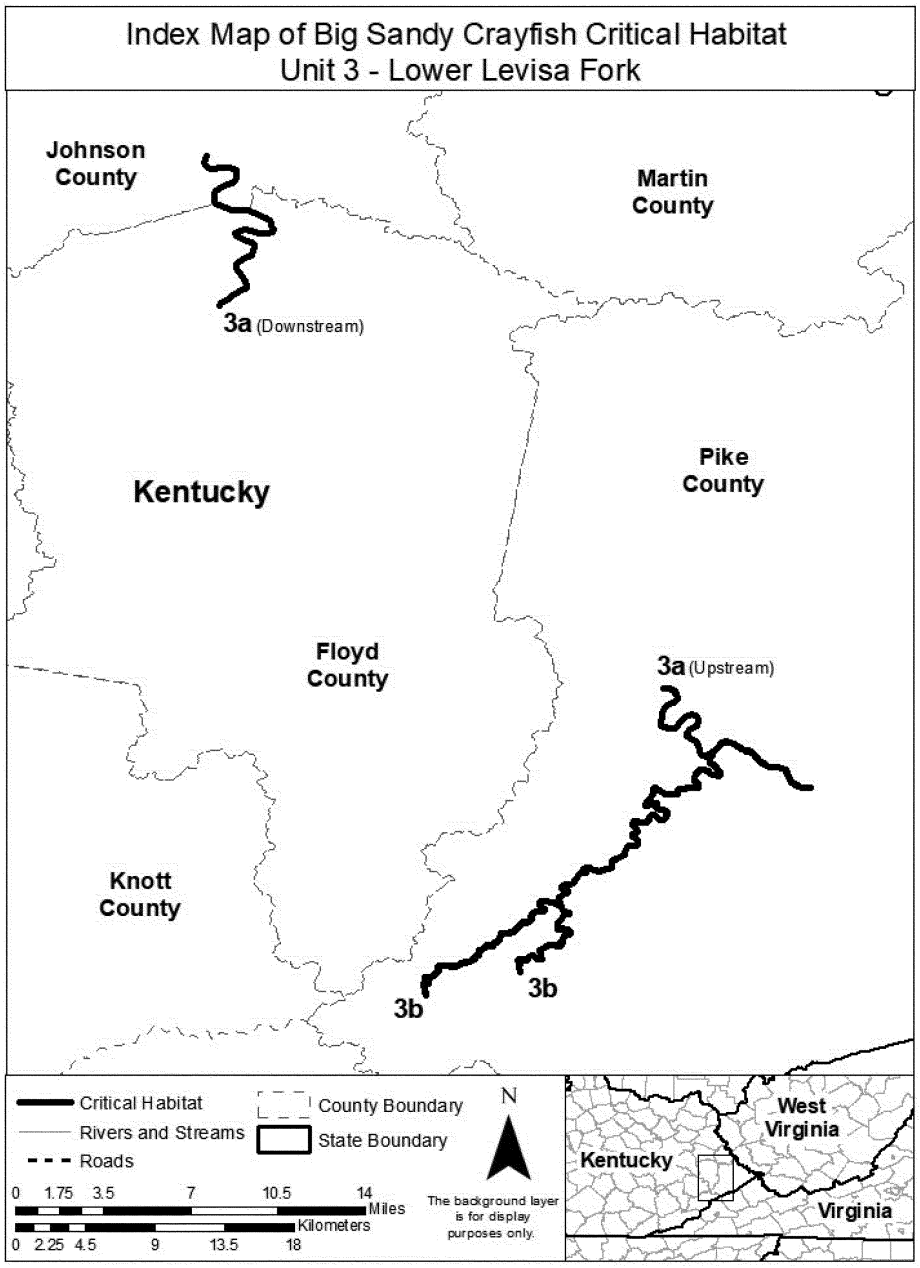
(B) Map of Subunit 2j follows:

Figure 12 to Big Sandy Crayfish paragraph (7)(x)(B)



(8) Index map of critical habitat Unit 3 for the Big Sandy crayfish follows:

Figure 13 to Big Sandy Crayfish paragraph (8)



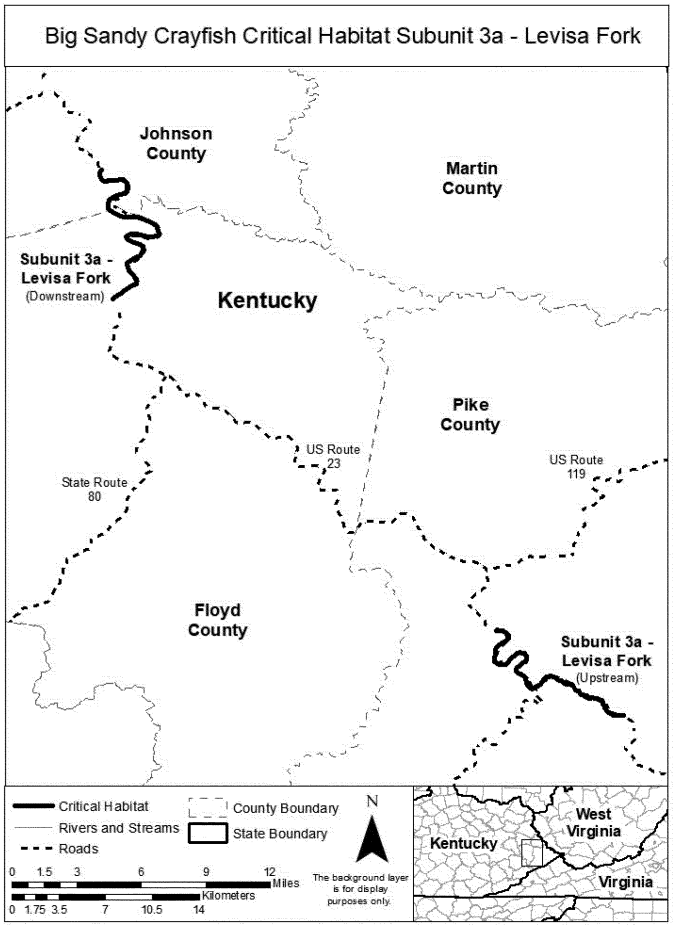
(9) Unit 3: Lower Levisa Fork—Floyd, Johnson, and Pike Counties, Kentucky.

(i) Subunit 3a: Levisa Fork, Floyd, Johnson, and Pike Counties, Kentucky.

(A) Subunit 3a consists of approximately 15.9 km (9.9 mi) of Levisa Fork from its confluence with Russell Fork at Levisa Junction, Kentucky, downstream to its confluence with Island Creek at Pikeville, Kentucky; and 17.5 skm (10.9 smi) of Levisa Fork from its confluence with Abbott Creek downstream to its confluence with Miller Creek at Auxier, Kentucky.

(B) Map of Subunit 3a follows:

Figure 14 to Big Sandy Crayfish paragraph (9)(i)(B)

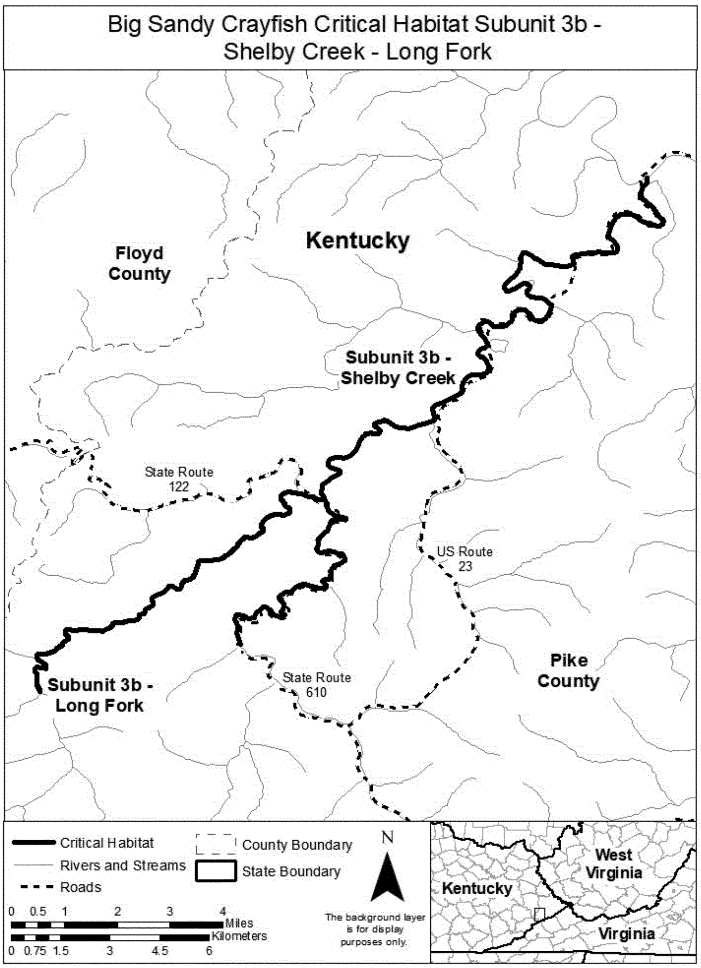


(ii) Subunit 3b: Shelby Creek and Long Fork, Pike County, Kentucky.

(A) Subunit 3b consists of approximately 32.2 skm (20.0 smi) of Shelby Creek from its confluence with Burk Branch downstream to its confluence with Levisa Fork at Shelbiana, Kentucky; and approximately 12.9 skm (8.0 smi) of Long Fork from the confluence of Right Fork Long Fork and Left Fork Long Fork downstream to the confluence of Long Fork and Shelby Creek at Virgie, Kentucky.

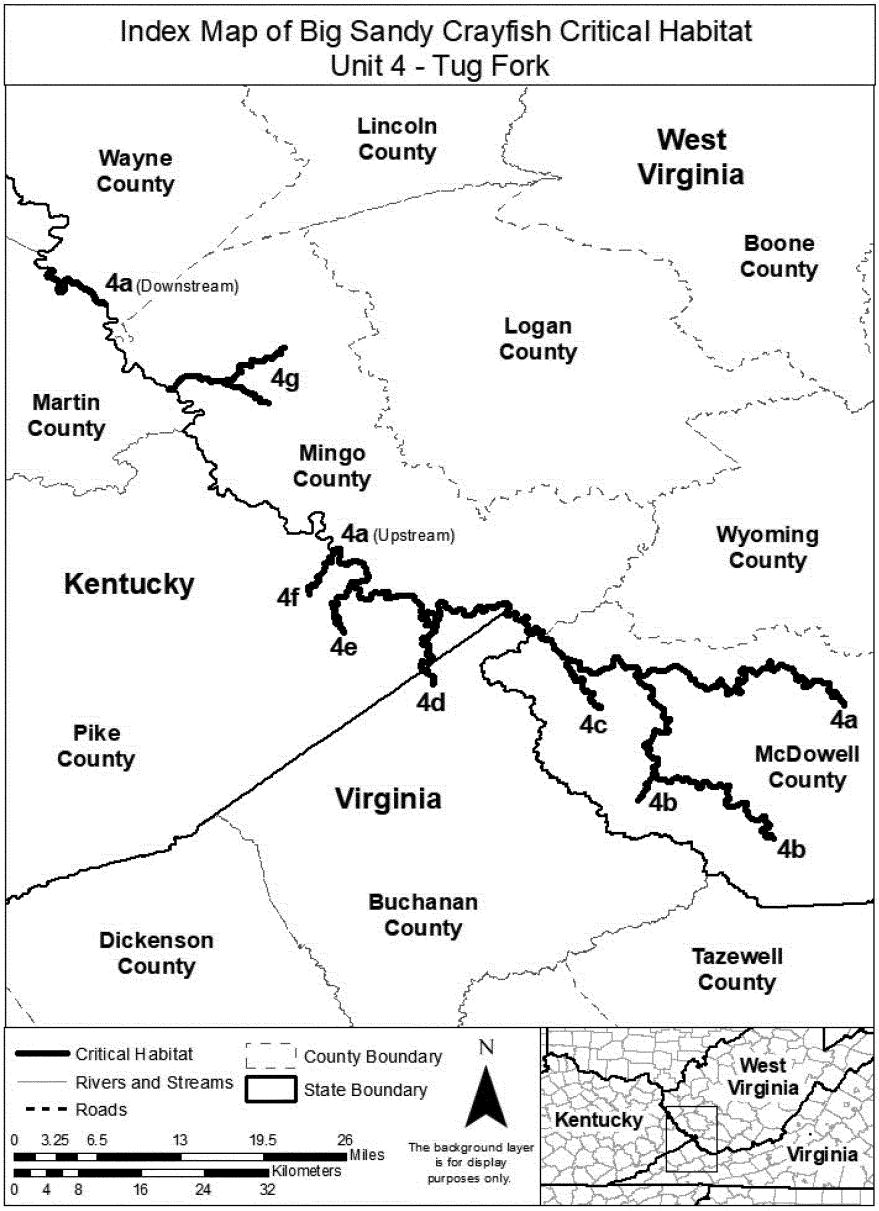
(B) Map of Subunit 3b follows:

Figure 15 to Big Sandy Crayfish paragraph (9)(ii)(B)



(10) Index map of critical habitat Unit 4 for the Big Sandy crayfish follows:

Figure 16 to Big Sandy Crayfish paragraph (10)



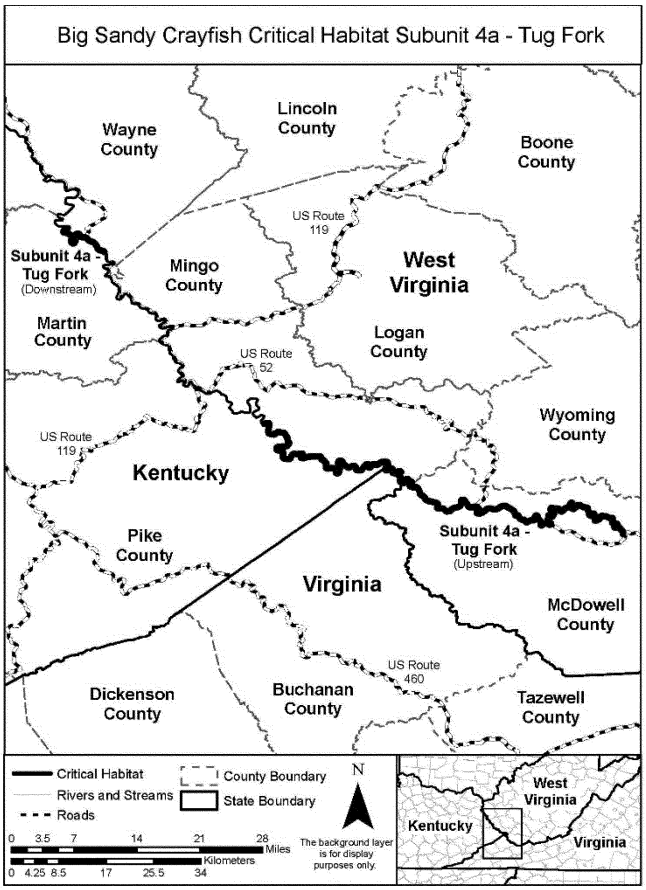
(11) Unit 4: Tug Fork—McDowell, Mingo, and Wayne Counties, West Virginia; Buchanan County, Virginia; and Pike and Martin Counties, Kentucky.

(i) Subunit 4a: Tug Fork, McDowell, Mingo, and Wayne Counties, West Virginia; Buchanan County, Virginia; and Pike and Martin Counties, Kentucky.

(A) Subunit 4a consists of approximately 106.1 skm (65.9 smi) of the Tug Fork from its confluence with Elkhorn Creek at Welch, West Virginia, downstream to its confluence with Blackberry Creek in Pike County, Kentucky; and 11.7 skm (7.3 smi) of the Tug Fork from its confluence with Little Elk Creek downstream to its confluence with Bull Creek at Crum, West Virginia.

(B) Map of Subunit 4a follows:

Figure 17 to Big Sandy Crayfish paragraph (11)(i)(B)

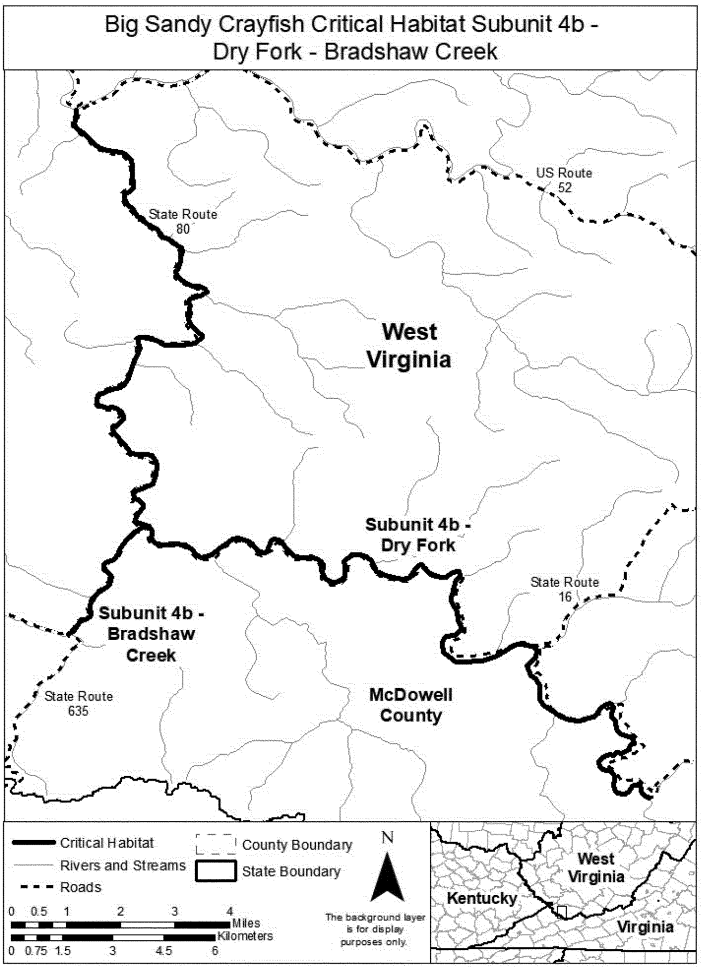


(ii) Subunit 4b: Dry Fork and Bradshaw Creek, McDowell County, West Virginia.

(A) Subunit 4b consists of approximately 45.2 skm (28.1 smi) of Dry Fork from its confluence with Jacobs Fork downstream to its confluence with Tug Fork at Iaeger, West Virginia; and approximately 4.6 skm (2.9 smi) of Bradshaw Creek from its confluence with Hite Fork at Jolo, West Virginia, downstream to its confluence with Dry Fork at Bradshaw, West Virginia.

(B) Map of Subunit 4b follows:

Figure 18 to Big Sandy Crayfish paragraph (11)(ii)(B)

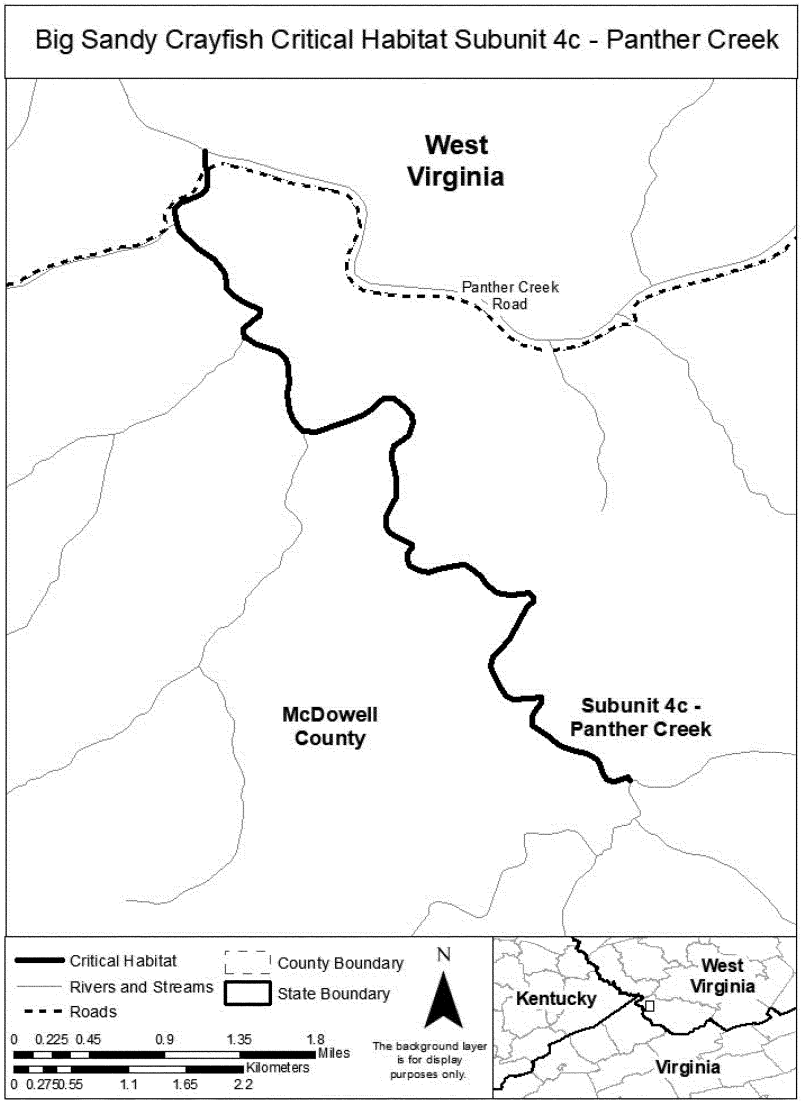


(iii) Subunit 4c: Panther Creek, McDowell County, West Virginia.

(A) Subunit 4c consists of approximately 10.7 skm (6.6 smi) of Panther Creek from its confluence with George Branch downstream to its confluence with Tug Fork at Panther, West Virginia.

(B) Map of Subunit 4c follows:

Figure 19 to Big Sandy Crayfish paragraph (11)(iii)(B)

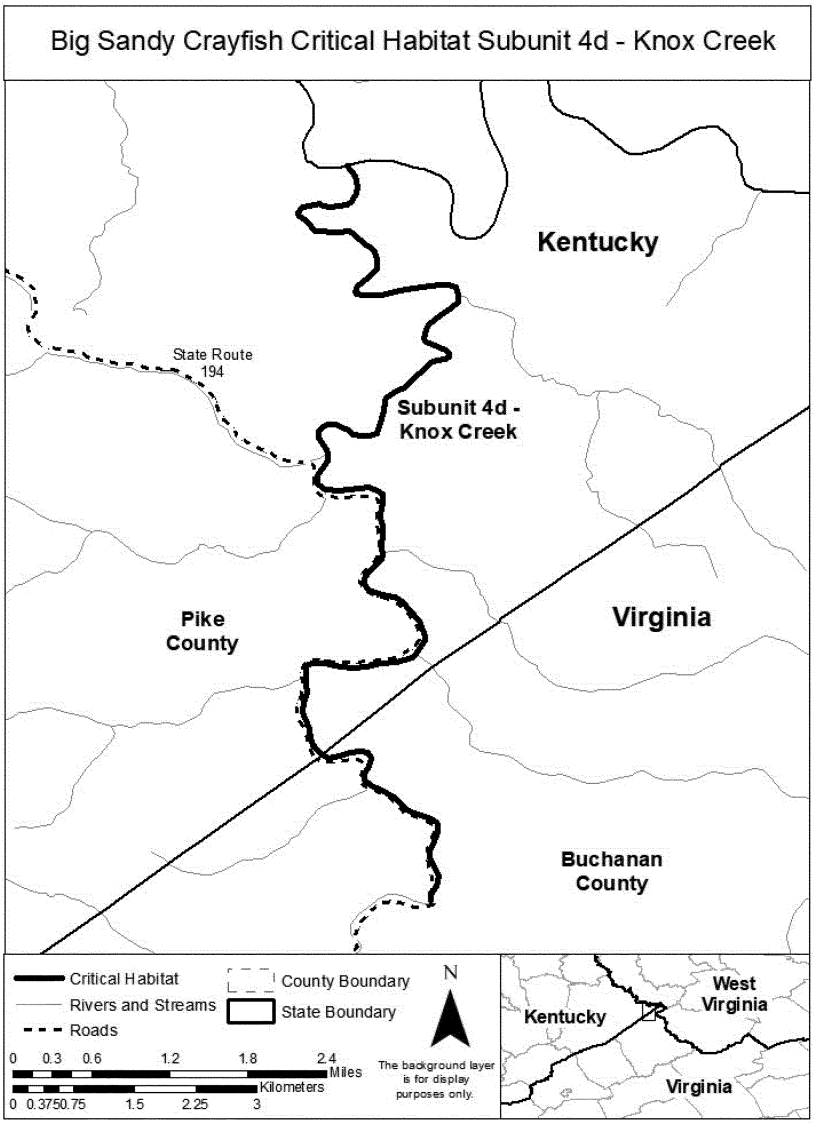


(iv) Subunit 4d: Knox Creek, Buchanan County, Virginia, and Pike County, Kentucky.

(A) Subunit 4d consists of approximately 16.6 skm (10.3 smi) of Knox Creek from its confluence with Cedar Branch downstream to its confluence with Tug Fork in Pike County, Kentucky.

(B) Map of Subunit 4d follows:

Figure 20 to Big Sandy Crayfish paragraph (11)(iv)(B)

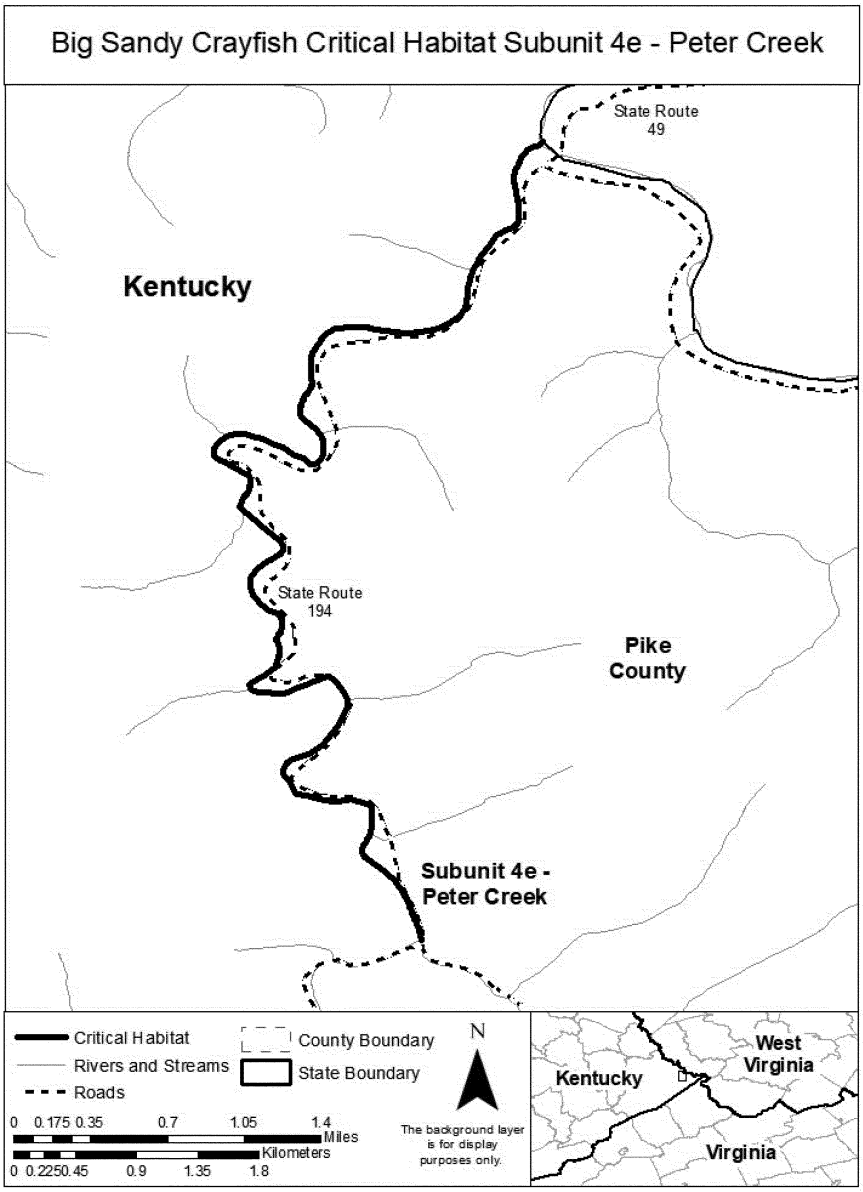


(v) Subunit 4e: Peter Creek, Pike County, Kentucky.

(A) Subunit 4e consists of approximately 10.1 skm (6.3 smi) of Peter Creek from the confluence of Left Fork Peter Creek and Right Fork Peter Creek at Phelps, Kentucky, downstream to the confluence of Peter Creek and Tug Fork at Freeburn, Kentucky.

(B) Map of Subunit 4e follows:

Figure 21 to Big Sandy Crayfish paragraph (11)(v)(B)

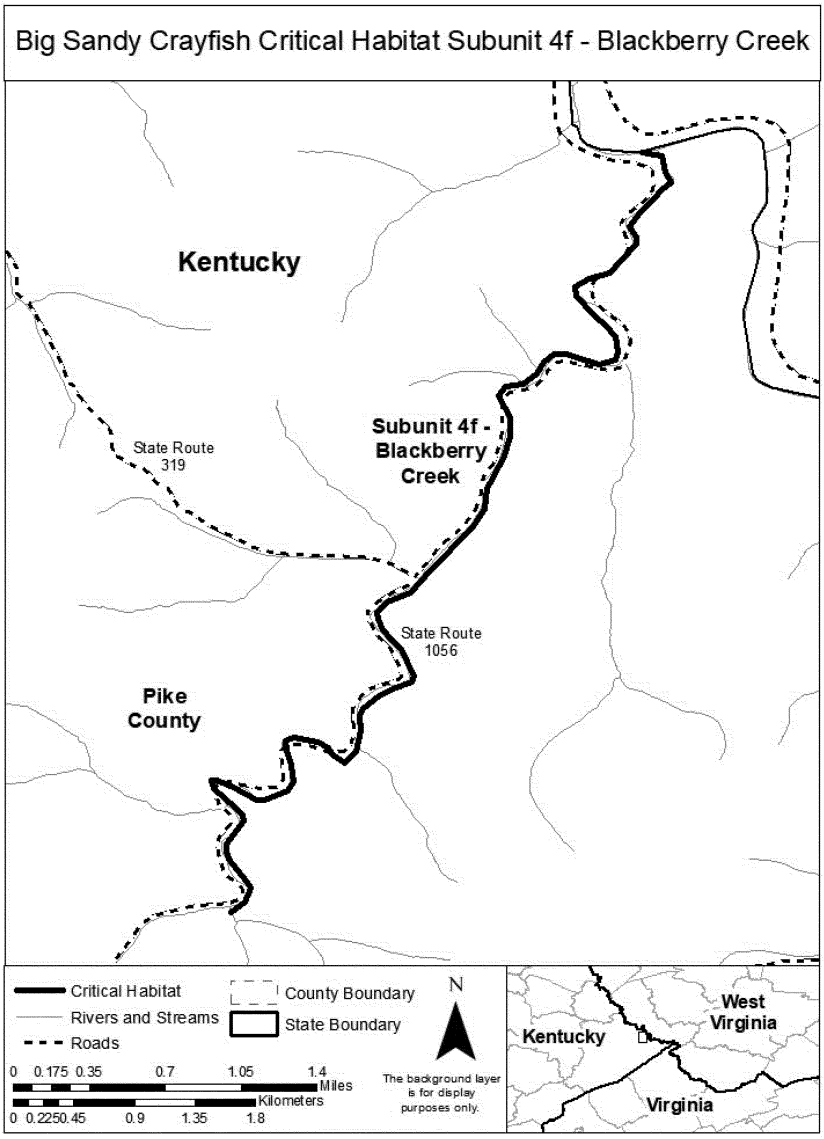


(vi) Subunit 4f: Blackberry Creek, Pike County, Kentucky.

(A) Subunit 4f consists of approximately 9.1 skm (5.7 smi) of Blackberry Creek its confluence with Bluespring Branch downstream to the confluence of Blackberry Creek and Tug Fork.

(B) Map of Subunit 4f follows:

Figure 22 to Big Sandy Crayfish paragraph (11)(vi)(B)

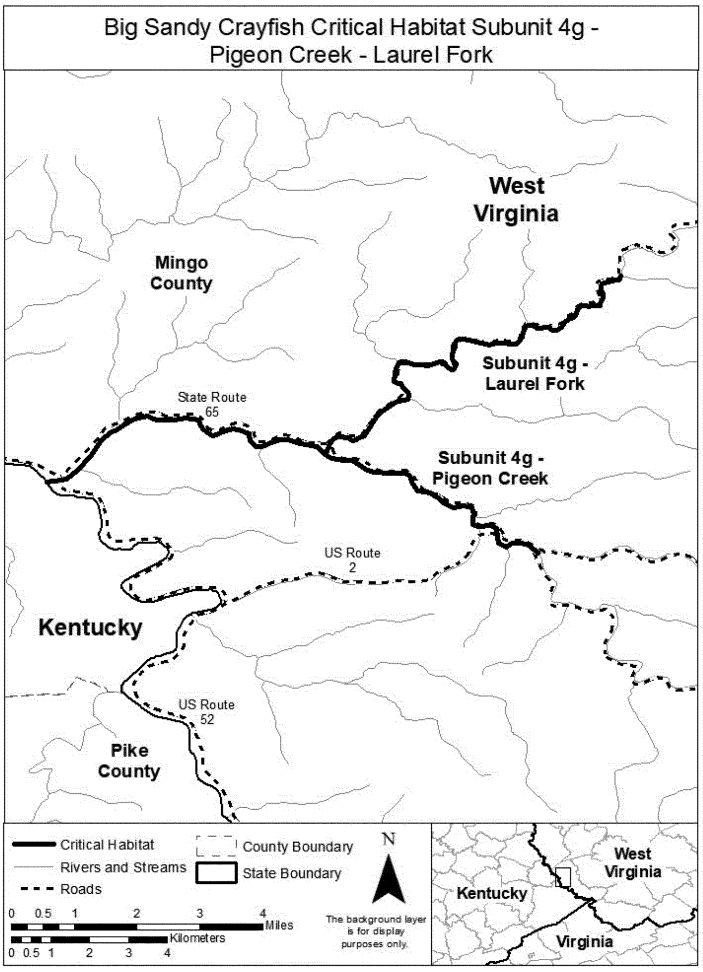


(vii) Subunit 4g: Pigeon Creek and Laurel Fork, Mingo County, West Virginia.

(A) Subunit 4g consists of approximately 14.0 skm (8.7 smi) of Pigeon Creek from its confluence with Trace Fork downstream to its confluence with Tug Fork; and approximately 11.1 skm (6.9 smi) of Laurel Fork from its confluence with Lick Branch downstream to its confluence with Pigeon Creek at Lenore, West Virginia.

(B) Map of Subunit 4g follows:

Figure 23 to Big Sandy Crayfish paragraph (11)(vii)(B)



Guyandotte River Crayfish (Cambarus veteranus)

(1) Critical habitat units are depicted for Logan and Wyoming Counties, West Virginia, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Guyandotte River crayfish consist of the following components:

(i) Fast-flowing stream reaches with unembedded slab boulders, cobbles, or isolated boulder clusters within an unobstructed stream continuum (*i.e.*. riffle, run, pool complexes) of permanent, moderate- to large-sized (generally third order and larger) streams and rivers (up to the ordinary high water mark as defined at 33 CFR 329.11).

(ii) Streams and rivers with natural variations in flow and seasonal flooding sufficient to effectively transport sediment and prevent substrate embeddedness.

(iii) Water quality characterized by seasonally moderated temperatures and physical and chemical parameters (*e.g.,* pH, conductivity, dissolved oxygen) sufficient for the normal behavior, growth, reproduction, and viability of all life stages of the species.

(iv) An adequate food base, indicated by a healthy aquatic community structure including native benthic macroinvertebrates, fishes, and plant matter (*e.g.,* leaf litter, algae, detritus).

(v) Aquatic habitats protected from riparian and instream activities that degrade the physical and biological features described in paragraphs (2)(i) through (iv) of this entry or cause physical (*e.g.,* crushing) injury or death to individual Guyandotte River crayfish.

(vi) An interconnected network of streams and rivers that have the physical and biological features described in paragraphs (2)(i) through (iv) of this entry and that allow for the movement of individual crayfish in response to environmental, physiological, or behavioral drivers. The scale of the interconnected stream network should be sufficient to allow for gene flow within and among watersheds.

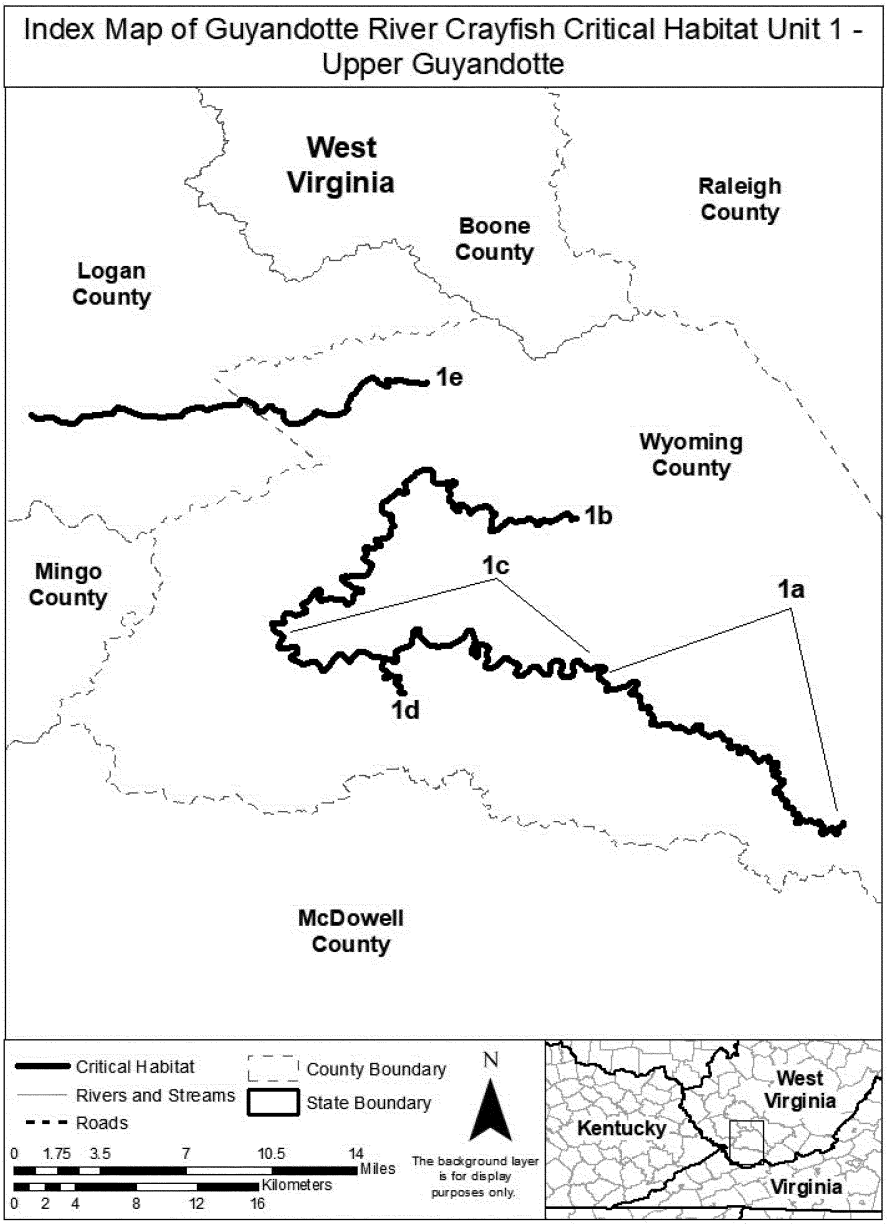
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on April 14, 2022.

(4) Data layers defining map units were created on a base of U.S. Geological Survey digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 15N coordinates. ESRI's ArcGIS 10.0 software was used to determine latitude and longitude coordinates using decimal degrees. The USA Topo ESRI online basemap service was referenced to identify features (like roads and streams) used to delineate the upstream and downstream extents of critical habitat units. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries

of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/westvirginiafieldoffice/*, at *https://www.regulations.gov* at Docket No. FWS–R5–ES–2019–0098, and at the North Atlantic–Appalachian Regional Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of critical habitat for the Guyandotte River crayfish follows:

Figure 1 to Guyandotte River Crayfish paragraph (5)



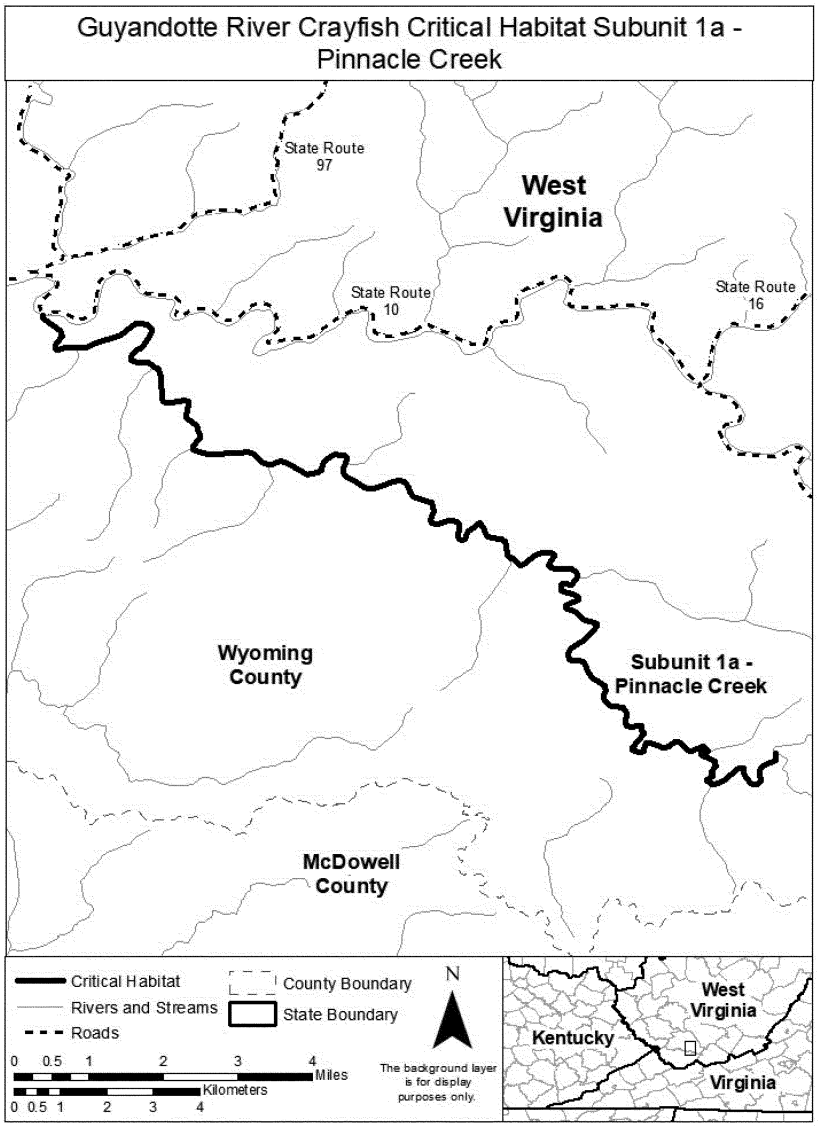
(6) Unit 1: Upper Guyandotte—Logan and Wyoming Counties, West Virginia.

(i) Subunit 1a: Pinnacle Creek, Wyoming County, West Virginia.

(A) Subunit 1a consists of approximately 28.6 skm (17.8 smi) of Pinnacle Creek from its confluence with Beartown Fork downstream to its confluence with the Guyandotte River at Pineville, West Virginia.

(B) Map of Subunit 1a follows:

Figure 2 to Guyandotte River Crayfish paragraph (6)(i)(B)

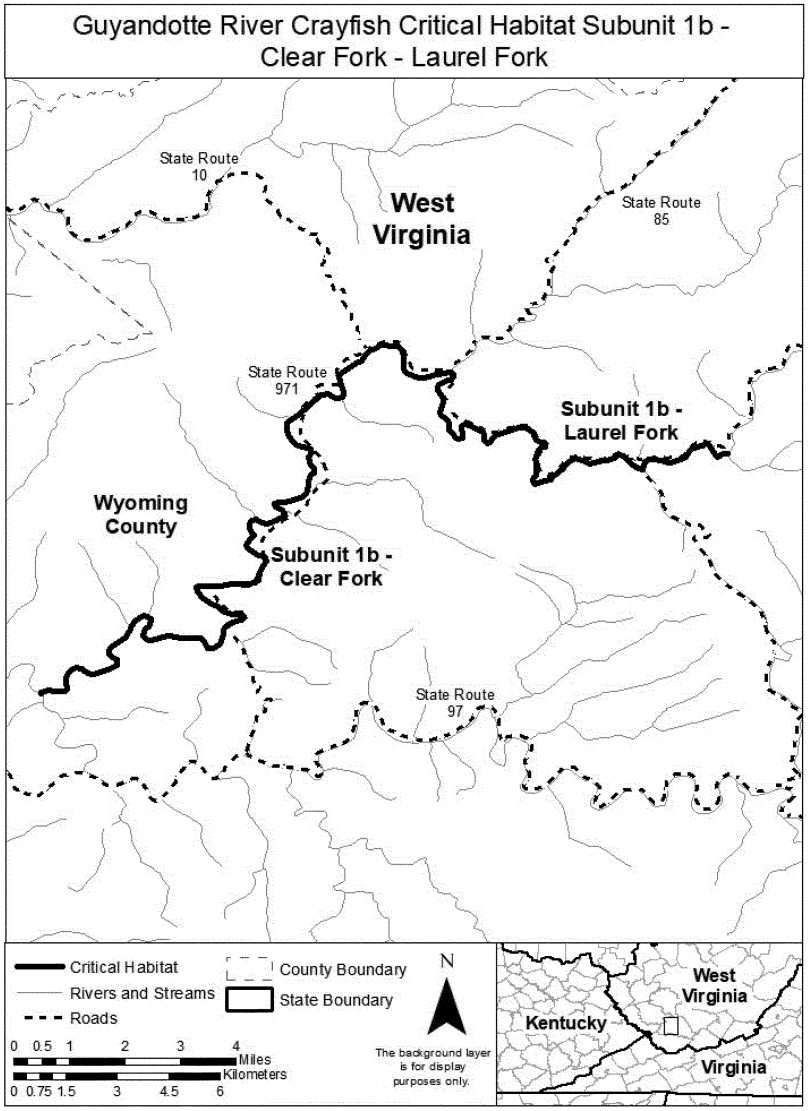


(ii) Subunit 1b: Clear Fork and Laurel Fork, Wyoming County, West Virginia.

(A) Subunit 1b consists of approximately 38.0 skm (23.6 smi) of Clear Fork and its primary tributary Laurel Fork from the confluence of Laurel Creek and Acord Branch downstream to the confluence of Clear Fork and the Guyandotte River.

(B) Map of Subunit 1b follows:

Figure 3 to Guyandotte River Crayfish paragraph (6)(ii)(B)

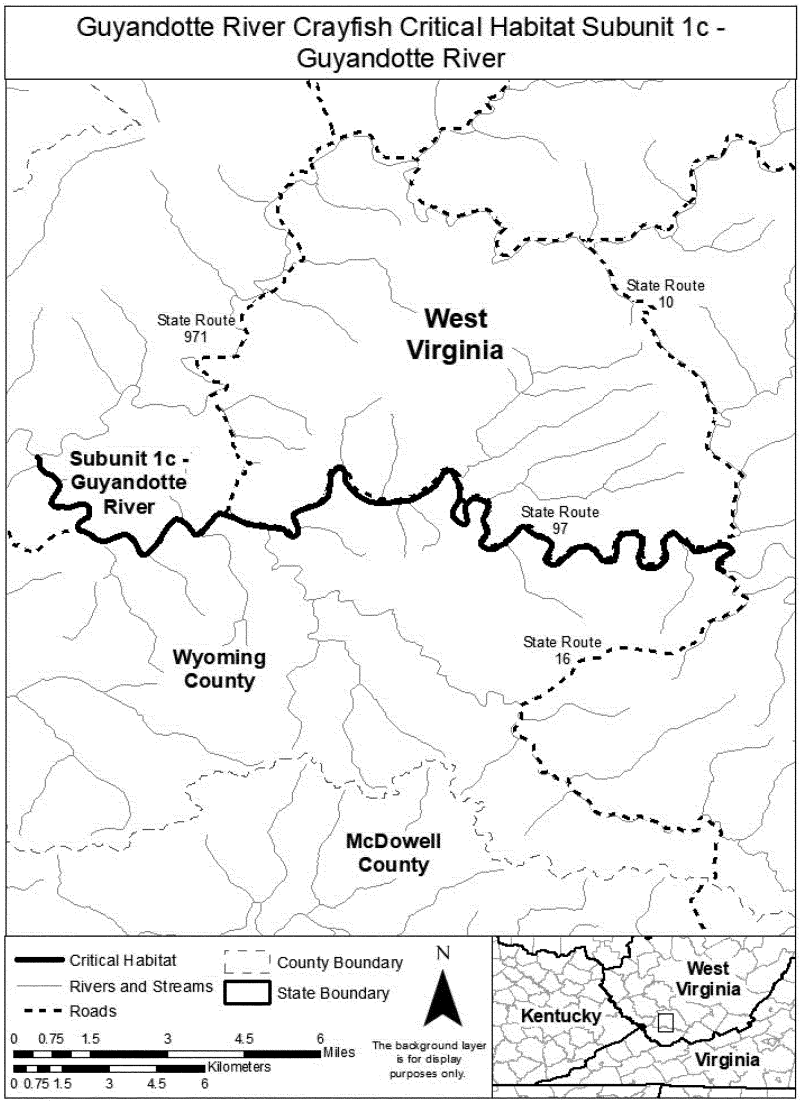


(iii) Subunit 1c: Guyandotte River, Wyoming County, West Virginia.

(A) Subunit 1c consists of approximately 35.8 skm (22.2 smi) of the Guyandotte River from its confluence with Pinnacle Creek at Pineville, West Virginia, downstream to its confluence with Clear Fork.

(B) Map of Subunit 1c follows:

Figure 4 to Guyandotte River Crayfish paragraph (6)(iii)(B)

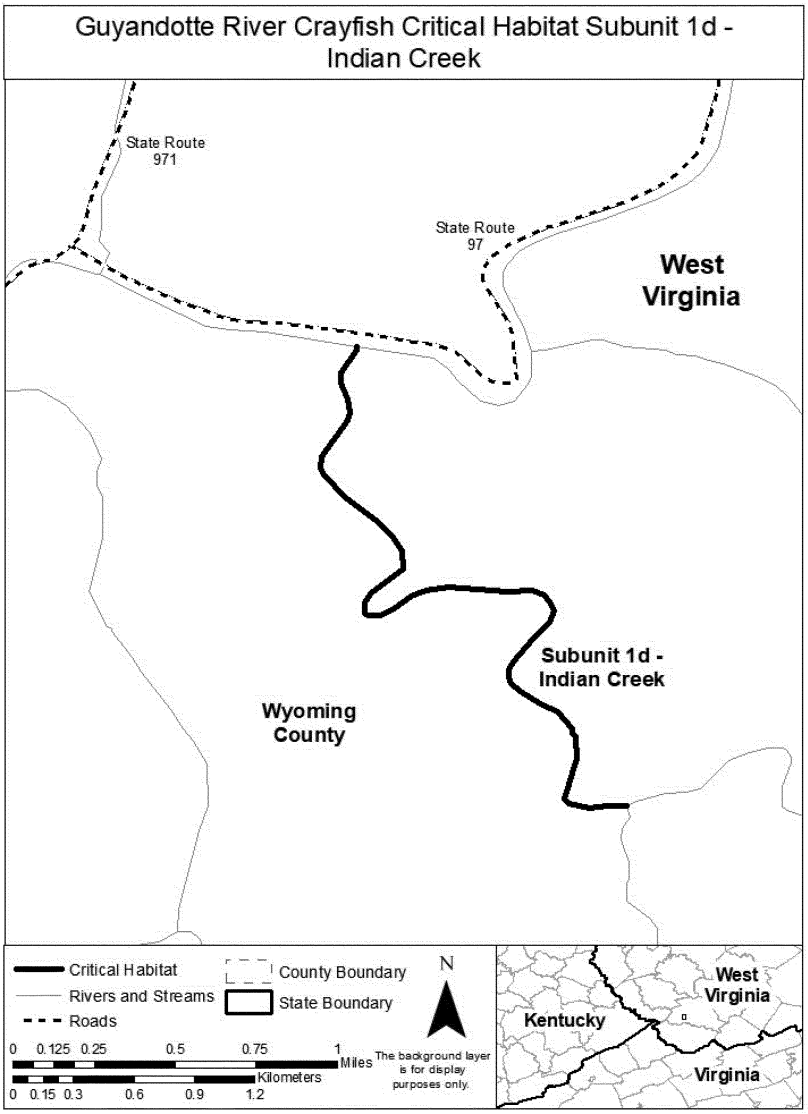


(iv) Subunit 1d: Indian Creek, Wyoming County, West Virginia.

(A) Subunit 1d consists of approximately 4.2 skm (2.6 smi) of Indian Creek from the confluence of Indian Creek and Brier Creek at Fanrock, West Virginia, to the confluence of Indian Creek and the Guyandotte River.

(B) Map of Subunit 1d follows:

Figure 5 to Guyandotte River Crayfish paragraph (6)(iv)(B)

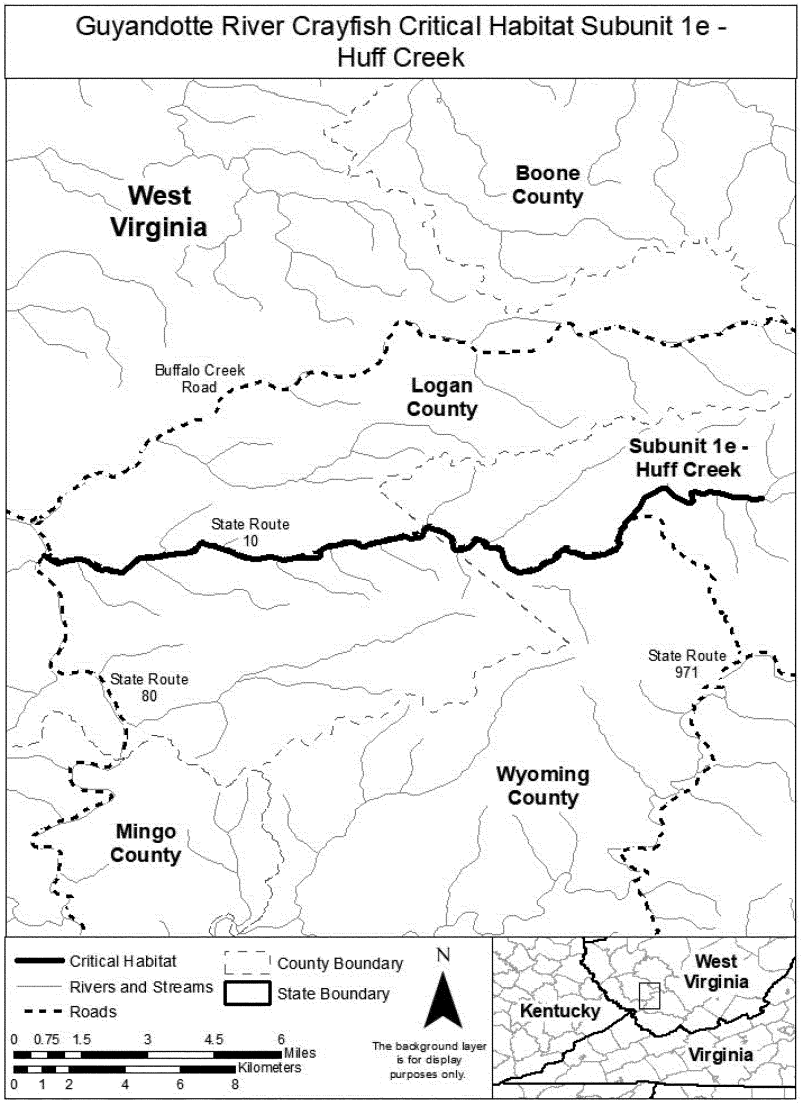


(v) Subunit 1e: Huff Creek, Wyoming and Logan Counties, West Virginia.

(A) Subunit 1e consists of approximately 28.0 skm (17.4 smi) of Huff Creek from its confluence with Straight Fork downstream to its confluence with the Guyandotte River at Huff, West Virginia.

(B) Map of Subunit 1e follows:

Figure 6 to Guyandotte River Crayfish paragraph (6)(v)(B)



* * * * *

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–04598 Filed 3–14–22; 8:45 am]

BILLING CODE 4333–15–C

FEDERAL REGISTER

Vol. 87 Tuesday,

No. 50 March 15, 2022

Part IV

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2570

Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2570

RIN 1210–ACO5

Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document gives notice of a proposed rule that, if adopted, would supersede the Department of Labor's (the Department) existing procedure governing the filing and processing of applications for administrative exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code of 1986 (the Code), and the Federal Employees' Retirement System Act of 1986 (FERSA). The Secretary of Labor (the Secretary) is authorized to grant exemptions from the prohibited transaction provisions of ERISA, the Code, and FERSA and to establish an exemption procedure to provide for such relief. The proposed rule would update the Department's prohibited transaction exemption procedures.

DATES: Written comments and requests for a public hearing on the proposed rule must be submitted to the Department within April 14, 2022.

ADDRESSES: All written comments and requests for a hearing concerning the proposed rule should be sent to the Office of Exemption Determinations through the Federal eRulemaking Portal and identified by RIN 1210–ACO5.

Federal eRulemaking Portal: www.regulations.gov at Docket ID number: EBSA–2022–0003. Follow the instructions for submitting comments.

See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Brian Shiker, telephone: (202) 693–8552, email: *shiker.brian@dol.gov,* Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

Customer Service Information: Individuals interested in obtaining information from the Department concerning ERISA and employee benefit plans may call the Employee Benefits Security Administration's Toll-Free Hotline, at 1–866–444–EBSA (3272) or visit the Department's website (*www.dol.gov/ebsa*).

SUPPLEMENTARY INFORMATION:

Comment Instructions

All comments and requests for a hearing must be received by the end of the comment period. Requests for a hearing must state the issues to be addressed and include a general description of the evidence to be presented at the hearing. In light of the current circumstances surrounding the COVID–19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to follow with paper copies. The comments and hearing requests will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW, Washington, DC 20210; however, the Public Disclosure Room may be closed for all or a portion of the comment period due to circumstances surrounding the COVID–19 pandemic caused by the novel coronavirus. Comments and hearing requests will also be available online at *www.regulations.gov,* at Docket ID number: EBSA–2022–0003 and *www.dol.gov/ebsa,* at no charge.

Warning: All comments received will be included in the public record without change and will be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, the Employee Benefits Security Administration (EBSA) recommends that you include your name and other contact information, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number), or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it. If you send an email directly to EBSA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Background

Part 4 of Title I of ERISA establishes an extensive framework of standards and rules that govern the conduct of ERISA plan fiduciaries; collectively, these rules are designed to safeguard the integrity of employee benefit plans. As part of this structure, ERISA section 406(a) generally prohibits a plan fiduciary from causing the plan to engage in a variety of transactions with certain related parties, unless a statutory or administrative exemption applies to the transaction. These related parties (which include plan fiduciaries, sponsoring employers, unions, service providers, and other persons who may be in a position to exercise improper influence over a plan) are defined as ''parties in interest'' in ERISA section 3(14). ERISA section 406(b) generally prohibits a plan fiduciary from (1) dealing with the assets of a plan in his or her own interest or for his or her account, (2) acting in any transaction involving the plan on behalf of a party whose interests are adverse to those of the plan or its participants and beneficiaries, or (3) receiving any consideration for his or her own personal account from a party dealing with the plan in connection with a transaction involving plan assets, unless an exemption specifically applies to such conduct. To supplement these provisions, ERISA sections 406(a)(1)(E) and 407(a) impose restrictions on the nature and extent of plan investments in assets such as ''employer securities'' (as defined in ERISA section 407(d)(1)) and ''employer real property'' (as defined in ERISA section 407(d)(2)). The transactions prohibited under ERISA sections 406 and 407 are referred to as ''prohibited transactions.''

Most of the transactions prohibited by ERISA section 406 are likewise prohibited by Code section 4975, which imposes an excise tax on those transactions to be paid by each ''disqualified person'' (defined in Code section 4975(e)(2) in virtually the same manner as the term ''party in interest'' is defined in ERISA section 3(14)) who engages in the prohibited transactions.

Prohibited Transaction Exemptions

Both ERISA and the Code contain various statutory exemptions from the prohibited transaction rules. These statutory exemptions were enacted by Congress to prevent the disruption of a number of customary business practices

involving employee benefit plans, parties in interest, and fiduciaries. The statutory exemptions afford relief for transactions such as loans to participants and stock ownership plans, the provision of services necessary for the operation of a plan, certain investment advice transactions involving individual account plan participants and beneficiaries, and the investment of plan assets into deposits in certain financial institutions regulated by state or Federal agencies.

In addition to the statutory exemptions, ERISA section 408(a) authorizes the Secretary to grant administrative exemptions from the restrictions of ERISA sections 406 and 407(a) in instances where the Secretary makes a finding on the record that relief is (1) administratively feasible, (2) in the interests of the plan and its participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plan. Similarly, Code section 4975(c)(2) of the Code authorizes the Secretary of the Treasury or his delegate to grant administrative exemptions from the prohibitions of Code section 4975(c)(1) upon making the same findings. Before an exemption is granted, notice of its pendency must be published in the **Federal Register** and interested persons must be given the opportunity to comment on the proposed exemption. If the exemption transaction involves potential fiduciary self-dealing or conflicts of interest, an opportunity for a public hearing must be provided.

ERISA section 408(a) authorizes the Secretary to grant administrative exemptions on either an individual or a class basis. Class exemptions provide general relief from the restrictions of ERISA, the Code, and FERSA to those parties in interest who engage in the categories of transactions described in the exemption and who also satisfy the conditions stipulated by the exemption. Persons who are in conformity with all the requirements of a class exemption are not ordinarily required to seek an individual exemption for the same transaction from the Department. Individual exemptions, by contrast, involve case-by-case determinations as to whether the specific facts represented by an applicant concerning an exemption transaction as well as the conditions applicable to such a transaction support a finding by the Department that the requirements for relief from the prohibited transaction provisions of ERISA, the Code, and FERSA have been satisfied in a particular instance. While the vast majority of administrative exemptions issued by the Department are the product of requests for relief from individual applicants or the broader employee benefits community, ERISA section 408(a) also authorizes the Department to initiate exemptions on its own motion.

In considering individual exemption requests from applicants, the Department exercises its authority under ERISA section 408(a) by carefully examining the decision-making process utilized by a plan's fiduciaries with respect to an exemption transaction. In general, the Department does not make determinations concerning the appropriateness or prudence of the investment proposals submitted by exemption applicants. However, the Department ordinarily will not give favorable consideration to an exemption request if the Department believes that the proposed transactions are inconsistent with the fiduciary responsibility provisions of ERISA sections 403 and 404. To protect plans and their participants, the Department requires that an exemption transaction be designed to minimize the potential for conflicts of interest or self-dealing. Moreover, the structure of the transaction under consideration should preclude unilateral action by the applicant that could disadvantage the plan.

Prohibited Transaction Exemption Procedure

ERISA section 408(a) and Code section 4975(c)(2) direct the Secretary and the Secretary of the Treasury (the Secretaries), respectively, to establish procedures for granting administrative exemptions. In connection with this directive, ERISA section 3003(b) directs the Secretaries to consult and coordinate with each other with respect to the establishment of rules applicable to the granting of exemptions from the prohibited transaction restrictions of ERISA and the Code. Further, under ERISA section 3004, the Secretaries are authorized to develop rules on a joint basis that are appropriate for the efficient administration of ERISA.

Pursuant to these statutory provisions, the Secretaries jointly issued an exemption procedure on April 28, 1975 (ERISA Procedure 75–1, 40 FR 18471, also issued as Rev. Proc. 75–26, 1975–1 C.B. 722). Under this procedure, a person seeking an exemption under both ERISA section 408(a) and Code section 4975 was obliged to file an exemption application with both the Internal Revenue Service (IRS) and the Department. However, requiring applicants to seek exemptive relief for the same transaction from two separate Federal departments soon proved administratively cumbersome.

To resolve this problem, section 102 of Presidential Reorganization Plan No. 4 of 1978 (3 CFR, 1978 Comp., p. 332), reprinted in 5 U.S.C. app. at 672 (2006), and in 92 Stat. 3790 (1978)), effective on December 31, 1978, transferred the authority of the Secretary of the Treasury to issue exemptions under Code section 4975, to the Secretary with certain enumerated exceptions. As a result, the Secretary possesses authority under Code section 4975(c)(2) and ERISA section 408(a) to issue individual and class administrative exemptions from the prohibited transaction restrictions of ERISA and the Code. The Secretary has delegated this authority, along with most of the Secretary's other responsibilities under ERISA, to the Assistant Secretary of Labor for the Employee Benefits Security Administration.[1]

FERSA also contains prohibited transaction rules similar to those found in ERISA and the Code that are applicable to parties in interest with respect to the Federal Thrift Savings Fund established by FERSA. The Secretary is directed under FERSA to prescribe, by regulation, a procedure for granting administrative exemptions from certain of those prohibited transactions.[2] The Secretary also delegated this rulemaking authority under FERSA to the Assistant Secretary of Labor for the Employee Benefits Security Administration.[3]

Over time, the Department has issued additional guidance explaining its policies and practices relating to the consideration of exemption applications. In 1985, the Department published a statement of policy concerning the issuance of retroactive exemptions from the prohibited transaction provisions of section 406 of ERISA and section 4975 of the Code (ERISA Technical Release 85–1, January 22, 1985). This statement noted that in evaluating future applications for retroactive exemptions, the Department would ordinarily take into account a variety of objective factors in determining whether a plan fiduciary had exhibited good faith conduct in connection with the past prohibited transaction for which relief is sought (such as whether the fiduciary had utilized a contemporaneous independent appraisal or reference to an objective third-party source, *e.g.,* a stock

[1] *See* Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

[2] 5 U.S.C. 8477(c)(3).

[3] *See* Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

exchange, in establishing the fair market value of the plan assets acquired or disposed of by the plan in connection with the transaction at issue). However, while noting that the satisfaction of such objective criteria might be indicative of a fiduciary's good faith conduct, the release cautioned that the Department would routinely examine the totality of facts and circumstances surrounding a past prohibited transaction before reaching a final determination on whether a retroactive exemption is warranted.

In 1990, the Department published a final regulation (29 CFR 2570.30 through 2570.52 (1991), reprinted in 55 FR 32847 (August 10, 1990)), setting forth a revised exemption procedure that superseded ERISA Procedure 75–1 (the Exemption Procedure Regulation). This regulation, which became effective on September 10, 1990, reflected the jurisdictional changes made by Presidential Reorganization Plan No. 4 and extended the scope of the exemption procedure to applications for relief from the FERSA prohibited transaction rules. In addition, the Exemption Procedure Regulation codified various informal exemption guidelines developed by the Department since the adoption of ERISA Procedure 75–1.

In 1995, the Department issued a publication entitled ''Exemption Procedures under Federal Pension Law'' (the 1995 Exemption Publication). In addition to providing a brief overview of the exemption process, the 1995 Exemption Publication included definitions of technical terms such as ''qualified independent fiduciary,'' ''qualified independent appraiser,'' and ''qualified appraisal report.'' These definitions, derived from conditions contained in previously granted exemptions, provide important guidance about the Department's standards concerning the independence, knowledge, and competence of third-party experts retained by a plan to review and oversee an exemption transaction, as well as the contents of the reports and representations the Department ordinarily requires from such experts.

Most recently, the Department published an updated Exemption Procedure Regulation in 2011 (29 CFR 2570.30 through 2570.52 (2011)).[4] The updated Exemption Procedure Regulation revised the prohibited transaction exemption procedure to reflect changes in the Department's exemption practices since the previous exemption procedure was issued in 1990. Among other things, the Department consolidated elements of the exemption policies and guidance previously found in ERISA Technical Release 85–1 and the 1995 Exemption Publication within a single, comprehensive final regulation. The updated Exemption Procedure Regulation promoted the prompt and efficient consideration of all exemption applications by (1) clarifying the types of information and documentation generally required for a complete filing, (2) affording expanded opportunities for the electronic submission of information and comments relating to an exemption, and (3) providing plan participants and other interested persons with a more thorough understanding of the exemption under consideration.

[4] 76 FR 66637 (October 27, 2011).

Proposed Changes to the Exemption Procedure Regulation

The current Exemption Procedure Regulation consists of 23 individual sections (§§ 2570.30 through 2570.52) arranged by topic that generally reflect the chronological order of the steps the Department takes to process an exemption application. This proposed revision to the Exemption Procedure Regulation retains the current section-by-section topical structure and most of the operative language. The Department made some proposed changes to the Exemption Procedure Regulation to improve its readability and other substantive amendments that are discussed below. The Department requests comments on these changes, particularly whether the changes improve the clarity of the procedure and whether additional clarifying edits would be useful. As discussed throughout this preamble, the Department is interested in how its process may better allow the Department to ensure administrative prohibited transaction exemptions satisfy the applicable statutory criteria.

Section 2570.30

Section 2570.30 sets forth the scope of the Exemption Procedure Regulation. It addresses filing and processing of applications for both individual and class exemptions that the Department may propose and grant pursuant to ERISA section 408(a), Code section 4975(c)(2), FERSA, and on its own motion. Paragraph (b) broadly addresses the Department's power to issue exemptions. The proposal revises the text that is applicable to retroactive exemptions by including a statement that the Department will, among many other things, review any retroactive exemption application to determine whether any plan participants or beneficiaries were harmed by the transaction for which retroactive relief is sought. This language reinforces the Department's existing policy that it, generally, will not support a request for a retroactive exemption involving a transaction that negatively impacted participants and beneficiaries. Further, the Department emphasizes in the amended text that it will apply a high level of scrutiny to any retroactive exemption application using longstanding standards that have been previously set forth by the Department in the Exemption Procedure Regulation. As a result, the Department strongly suggests that a party that anticipates engaging in a transaction that would require exemptive relief should contact the Department before engaging in the transaction.

Paragraph (e) addresses oral requests for exemptions. Generally, the Department will not accept oral exemption applications or orally grant exemptions. The proposal revises the regulatory text to clarify that the Department will provide feedback to oral inquiries but will not be bound by that feedback. However, any statements made by the party making the inquiry will become part of the administrative record.

Finally, the proposal adds a new paragraph (g), which provides that the Department issues administrative exemptions at its sole discretion based on the statutory criteria set forth in ERISA section 408(a) and Code section 4975(c)(2). In conjunction with this amendment, the proposal states that the existence of previously issued administrative exemptions is not determinative of whether the Department will propose future exemption applications with the same or similar facts, or whether a proposed exemption will contain the same conditions as a similar previously issued administrative exemption. The addition of this language reinforces that Department's existing policy that it has the sole discretionary authority to issue exemptions and is not bound by facts or conditions of prior exemptions in making determinations with respect to an exemption application. This policy allows the Department to retain sufficient flexibility to grant exemptions that are appropriate in an ever-changing business, legislative, and regulatory policy environment.

Section 2570.31

Section 2570.31 sets forth definitions that are used throughout the Exemption Procedure Regulation. While most of the definitions have not been revised other than to improve readability, the

Department has made substantive revisions to several existing definitions and added new definitions. The changes are proposed to address issues that the Department has often experienced in its regular review of exemption applications. The Department requests comments on these revisions, including whether these proposed changes are clear, appropriately reflect the manner in which entities interact with ERISA-covered plans and plan participants and beneficiaries, and assist the Department in making its statutory finding.

First, the proposal revises the definition of ''affiliate'' set forth in paragraph (a) to include: (1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person. For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual; any officer, director, partner, employee, or relative (as defined in ERISA section 3(15)) of any such person; or (2) any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, partner, or five percent or more owner. The revision reflects the definition of affiliate the Department commonly uses in most recent individual and class exemptions. In addition to rewording the text for clarity, the revised definition includes all employees and officers, rather than those who are highly compensated (as defined in Code section 4975(e)(2)(H) or have direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets involved in the subject exemption transaction. This change will help the Department more accurately identify whether a particular transaction involves conflicts of interest.

The proposal also revises the definition of the term ''qualified independent appraiser'' in paragraph (i). The amended definition defines a qualified independent appraiser as any individual or entity with appropriate training, experience, and facilities to provide a qualified appraisal report on behalf of the plan regarding the particular asset or property appraised in the report that is independent of and unrelated to any party involved in the exemption transaction (as defined in paragraph (l)). The Department determines the independence of the appraiser based on all relevant facts and circumstances. In making this determination, the Department will take into account the amount of the appraiser's revenues and projected revenues for the current Federal income tax year (including amounts received for preparing the appraisal report) that will be derived from parties involved in the exemption transaction relative to the appraiser's revenues from all sources for the appraiser's prior Federal income tax year and the appraiser's projected revenue for the current Federal income tax year as well as the appraiser's related business interests. An appraiser will not be treated as independent if the revenues it receives, or is projected to receive, within the current Federal income tax year from parties involved in the exemption transaction are more than two percent of such appraiser's annual revenues from all sources based upon either its prior Federal income tax year or the appraiser's projected revenues for the current Federal income tax year, unless the Department determines otherwise in its sole discretion.

The proposal also revises the qualified independent appraiser definition to provide that the appraiser must be independent of any potential qualified independent fiduciary in addition to other parties involved in the exemption transaction. The Department added this language to ensure that the appraiser will not be pressured to deliver a valuation reflecting undue influence from the fiduciary.

The Department proposes to revise the definition to clearly limit the amount of present and projected revenue an appraiser may receive from parties involved in the exemption transaction relative to revenues it received from all sources. The Department is proposing to set this limit at two percent determined using prior and projected tax year information; provided, that the Department may, in its sole discretion, determine otherwise. The revision clarifies the method that must be used to calculate the limitation and ensures that all sources of income are included in the analysis. The revised definition also emphasizes the Department's default assumption that a two percent limitation is essential to ensuring the appraiser's independence. These revisions are intended to assist the Department in more accurately identifying potential conflicts of interest that could affect an appraiser's independence.

Further bolstering the independence of the appraiser, the definition of a ''qualified appraisal report'' in paragraph (h) is revised to require the report to be prepared solely on behalf of the plan, which ensures that the qualified independent appraiser only takes into account the interest of the plan and its participants and beneficiaries when it produces the report.

The proposal revises the definition of a ''qualified independent fiduciary'' in paragraph (j). A qualified independent fiduciary is defined as any individual or entity with appropriate training, experience, and facilities to act on behalf of the plan regarding the exemption transaction in accordance with the fiduciary duties and responsibilities prescribed by ERISA that is independent of and unrelated to: Any party involved in the exemption transaction (as defined in paragraph (l)) and any other party involved in the development of the exemption request. In general, the Department will determine the independence of a fiduciary based on of all relevant facts and circumstances. Among other things, the Department will consider whether the fiduciary has an interest in the subject transaction or future transactions of the same nature or type. In making this determination, the Department will also take into account, among other things, the amount of both the fiduciary's revenues and projected revenues for the current Federal income tax year (including amounts received for preparing fiduciary reports) that will be derived from parties involved in the exemption transaction relative to the fiduciary's revenues from all sources for the prior Federal income tax year or the fiduciary's projected revenues from all sources for the current Federal income tax year. A fiduciary will not be treated as independent if the revenues it receives or is projected to receive from parties (and their affiliates) involved in the exemption transaction within the current Federal income tax year are more than two percent of either the fiduciary's annual revenues from all sources based upon its prior year Federal income tax return or the fiduciary's projected revenue for the current Federal income tax year, unless, in its sole discretion, the Department determines otherwise.

As with the revision to definition of a qualified independent appraiser, the proposal revises the definition of a qualified independent fiduciary to ensure that the fiduciary is truly independent. Thus, the definition is revised to require the fiduciary to be independent not only from parties involved in the exemption transaction but also from any other party involved in the development of the exemption request. The revised language would include persons that are not parties that engage in in the exemption transaction but are otherwise involved in developing the exemption request, such as consultants or advisors that assist a

plan sponsor in structuring exemption transactions and submitting exemption applications.

Consistent with this approach, the proposal also revises the independent fiduciary definition to state that the Department will consider whether a fiduciary has an interest in the exemption transaction or in future transactions of the same nature or type in determining whether a fiduciary is independent. This language addresses the Department's concern that a fiduciary may not be independent if it has a business interest in promoting the exemption transaction. For example, a fiduciary may be affected by a conflict of interest if it motivated to use the exemption transaction to promote its fiduciary services to potential clients contemplating similar transactions or if its work with respect to the exemption transaction is connected to a valued relationship with a third party, such as an investment advisor or bank.

Finally, as with the definition of a qualified independent appraiser, the proposal revises the independent fiduciary definition to clearly limit the amount of present and projected revenue that a fiduciary may receive from parties involved in the exemption transaction across all of the fiduciary's related business interests. This Department is proposing to set this limitation at two percent using prior and projected tax year information; provided, that the Department may, in its sole discretion, determine otherwise. The revision clarifies how the percentage limitation is calculated and ensures that all sources of income are included in the analysis. The revised definition also emphasizes the Department's default assumption that the revenue limitation is essential to ensuring the fiduciary's independence. These revisions would assist the Department in more accurately identifying potential conflicts, and, thereby, provide important information for the Department to assess the independence of the fiduciary involved in the exemption transaction.

The proposal also adds a new definition of ''pre-submission applicant'' in paragraph (k) that defines a pre-submission applicant as a party that contacts the Department, either orally or in writing, to inquire whether a party with a particular fact pattern would need to submit an exemption application and, if so, what conditions and relief would be applicable. This definition does not include a party that contacts the Department to inquire broadly without reference to a specific fact pattern. The Department is proposing to add this definition to clearly distinguish parties making inquiries that may potentially lead to an exemption application from parties that simply seek non-fact specific guidance. The distinction impacts how the Department addresses the inquiries and whether an administrative record is created.

Paragraph (l) adds a new definition of ''party involved in the exemption transaction'' that includes the following: (1) A party in interest (as defined in paragraph (f)); (2) any party (or its affiliate) that is engaged in the exemption transaction; and (3) any party (or its affiliates) that provides services with respect to the exemption transaction to either the plan or a party described in (1) or (2). This term replaces the more limited term ''party in interest'' in multiple places throughout the Exemption Procedure Regulation to more accurately describe parties that have interests in the exemption transaction. The Department believes that parties engaged in the transaction (and their affiliates) that are not ''parties in interest'' could have interests and potential conflicts that should be addressed by the Exemption Procedure Regulation. Similarly, the Department proposes to include service providers in the definition to ensure that all parties with interests in the transaction are included.

Section 2570.32

The proposal makes two revisions to § 2570.32. First, paragraph (a) is revised to describe ''persons who may apply for exemption.'' The Department is proposing to delete the language in paragraph (a) stating that ''the Department will initiate exemption proceedings upon the application of'' to clarify that this paragraph addresses only those parties who are permitted to apply for an exemption but does not address whether the Department is required to initiate an exemption proceeding. The decision to initiate an exemption proceeding remains within the Department's sole discretion.

The second revision addresses the creation of the administrative record, because the start of the exemption application process, whether through a formal application or contact by a pre-submission applicant, is tied to the creation of the administrative record. To reflect the addition of new paragraph (d), the Department has added ''and the administrative record'' to the title of § 2570.32.

The revision addresses questions applicants have historically asked the Department regarding the creation of the administrative record. Specifically, paragraph (d)(1) provides that the administrative record is open for public inspection, pursuant to § 2570.51(a), from the date an applicant or pre-submission applicant provides any information or documentation to the Office of Exemption Determinations. In the past, some applicants were uncertain regarding when the administrative record was available for public review. The proposal's language sets forth the Department's longstanding position that the administrative record is always available for public review, because the exemption process is open, transparent, and subject to public scrutiny at all times.

Paragraph (d)(2) provides that the administrative record includes, but is not limited to, the following items: (1) Any documents submitted to, and accepted by, the Department before the initial application, whether provided in writing by the applicant or pre-submission applicant or notes taken by the Department at a pre-submission conference; (2) the initial exemption application and any modifications or supplements thereto; (3) all correspondence with the applicant or pre-submission applicant, whether before or after the applicant's submission of the exemption application; and (4) any supporting information provided by the applicant or pre-submission applicant orally or in writing (as well as any comments and testimony received by the Department in connection with an application). Importantly, the language specifically includes all information provided by a pre-submission applicant, whether in writing or orally. The pre-submission information is included in the record because if a pre-submission applicant pursues an application, the information provided by the applicant before submitting its application will ultimately inform the Department's decision making with respect to the exemption application. In addition, the Department proposes to clarify that the administrative record only includes information accepted by the Department. If, for example, the applicant submits trades secrets, the Department will reject the information and not include it in the administrative record as discussed in § 2570.33(c).

Finally, paragraph (d)(3) updates the regulation to reflect modern methods of communication. Thus, the paragraph provides that if documents are required to be provided in writing by either the applicant or the Department, the documents may be provided either by mail or electronically, unless otherwise required by the Department at its sole discretion.

Section 2570.33

In § 2570.33, the Department proposes to revise the regulatory text to clarify situations in which it will not consider an exemption application. The Department requests comments on these clarifications, including other situations where the Department should or should not consider an exemption application.

First, the Department is proposing to amend paragraph (a)(1) to include applications that fail to include current information to clarify that the Department will treat an applicant's failure to include current information in the same manner as a failure to include information. Absent current information, the Department cannot develop an accurate understanding of the facts underlying an application.

The Department also is proposing to revise paragraph (a)(2), which generally excludes from consideration an application involving: (1) a transaction or transactions that are the subject of an investigation for possible violations of part 1 or 4 of subtitle B of Title I of ERISA or sections 8477 or 8478 of FERSA; or (2) a party in interest who is the subject of such an investigation or who is a defendant in an action by the Department or the IRS to enforce those provisions of ERISA or FERSA.

The proposed revision expands the existing exclusion to include any ERISA investigations (not only Sections 8477 and 8478), as well as investigations under any other Federal or state law. The proposal also expands the limitation on parties that are the subject of an investigation or a defendant in an action brought by the Department or the IRS to include any other regulatory agency enforcing ERISA, the Code, FERSA, or any other Federal or state laws. The proposed expansion of the paragraph addresses the Department's concerns regarding prohibited transactions that are engaged in by bad actors. Before considering an application for a transaction that otherwise is prohibited, the Department must be completely free from doubt regarding the transaction and the motivations of the parties involved in order to make its findings under ERISA section 408(a).

The proposal deletes the language in the current paragraph (c) regarding the administrative record, because that topic is now addressed in proposed revisions to § 2570.32 discussed above. The proposal revises the part of paragraph (c) addressing the submission of confidential information. Currently, the rule provides that if an applicant designates any information required by the rule or requested by the Department as confidential, the Department will determine whether the information is material to the exemption determination. If it determines the information to be material, the Department will not process the application unless the applicant withdraws the claim of confidentiality. The proposal revises this language to clarify that the Department will not review an application that includes confidential information, with an exception for confidential designations by a Federal, state, or other governmental entity. This means that if an applicant submits any confidential information, even outside of the application itself, the Department will not review the information nor process the exemption application. The Department will process that application only after the applicant withdraws its claim of confidentiality or revokes it submission of the confidential information.

The revised language also states that by submitting an exemption application, an applicant consents to public disclosure of the entire administrative record pursuant to § 2570.51. This revision places the applicant on notice that it is consenting to the public disclosure of all information in the administrative record when it submits an exemption application.

In place of the current paragraph (d), the Department is proposing to add a new paragraph (d) that governs communications with pre-submission applicants as newly defined in § 2570.31(k). Paragraph (d) provides that the Department will not communicate with a pre-submission applicant or its representative, whether through written correspondence or a conference, if the pre-submission applicant does not: (1) Identify and fully describe the transaction for which exemptive relief is sought; (2) identify the applicant, the applicable plan(s), and the relevant parties to the exemption transaction; and (3) set forth the prohibited transaction provision(s) that the applicant believes are applicable. This language is proposed to address a recurring problem faced by the Department when a pre-submission applicant seeks informal guidance from the Department while disclosing an incomplete set of facts and later bases its arguments for an exemption on the Department's informal guidance received before the submission. While the Department welcomes pre-submission requests for guidance, it is imperative that parties approaching the Department for such guidance regarding a specific exemption transaction provide the Department with sufficient information to allow it to properly attribute the guidance to a specific pre-submission applicant and determine the transaction for which such guidance is requested and the relevant prohibited transaction provisions that are applicable to the transaction.

Section 2570.34

Section 2570.34 addresses information the Department requires applicants to include in class and individual exemption applications. The proposal revises § 2570.34 to ensure that the Department receives sufficient information to evaluate an exemption application. While the proposal expands the amount of information the Department would require to be included in an application in some cases, the Department's intention in expanding the required information is to streamline the exemption process by ensuring that most of the information the Department needs to make an exemption determination is available to it when the application is submitted, which will reduce the need for back and forth communication between the applicant and the Department after the application is submitted. The Department requests comments on the proposed revisions, including whether the Department should consider other types of information.

Specifically, paragraphs (a)(1) and (3) are revised to require addresses, phone numbers, and email addresses to be provided for the applicants, representatives, and parties in interest. Requiring this information to be included in the initial application would ensure that the Department can efficiently contact the proper parties. In addition, the Department is proposing to replace the original paragraph (a)(4) with new paragraphs (a)(4), (5) and (a)(7) to facilitate the Department's understanding of the decision-making process the applicant undertook to determine that it was necessary to submit an exemption application. Accordingly, new paragraph (a)(4) would require the applicant to include in its application a description of: (1) The reason(s) for engaging in the exemption transaction; (2) any material benefit that a party involved in the exemption transaction may receive as a result of the subject transaction (including the avoidance of any materially adverse outcome by a party as a result of engaging in the exemption transaction); and (3) the costs and benefits of the exemption transaction to the affected plan(s), participants, and beneficiaries, including quantification of those costs and benefits to the extent possible. The Department is proposing

this language to facilitate its understanding of the underlying rationale for the exemption transaction including the costs and benefits for both the party involved in the transaction and the plan and its participants and beneficiaries. For example, an applicant who is a plan sponsor will need to provide not only a rationale for engaging in the exemption transaction, but also a statement of the costs and benefits to the sponsor, as well as the costs and benefits to the plan.

The Department is proposing to add a new paragraph (a)(5) that builds on paragraph (a)(4) by requiring applicants to provide a detailed description of possible alternatives to the exemption transaction that would not involve a prohibited transaction and why the applicant did not pursue those alternatives. The Department's intention in proposing this language is to require the applicant to evaluate whether the exemption transaction could be structured in a manner that would not result in a prohibited transaction. Structuring a transaction in a manner that is prohibited by ERISA and requires an exemption should not be an applicant's default approach. The Department believes that an applicant must fully evaluate whether an exemption transaction could be structured in a non-prohibited manner before applying for an exemption that would attain the same results and benefits to the plan and its participants and beneficiaries as the prohibited transaction.

The proposal also inserts a new paragraph (a)(7) that replaces the prior requirement for an applicant to state why the transaction is customary to the industry with a requirement for the applicant to set forth a description of each conflict of interest or potential instance of self-dealing that would be permitted if the exemption is granted. The Department is proposing to make this change, because the prior ''customary to the industry'' language did not sufficiently inform the Department of the conflicts of interest and instances of self-dealing involved in an exemption transaction or the costs and benefits to a plan and its participants and beneficiaries. The new language would assist the Department in identifying conflicts of interest and instances of self-dealing involved in an exemption transaction, and thereby facilitate the Department's analysis regarding whether the exemption transaction is structured to properly protect the interest of the plan and its participants and beneficiaries. Together, the proposal's new paragraphs (a)(4), (5), and (7) would help the Department better understand the proposed transaction and its implications, so that the Department could make the required findings under ERISA section 408(a) as to whether a requested exemption would be (1) administratively feasible, (2) in the interests of the plan and of its participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries.

The final revisions to paragraph (a) are intended to provide consistency among exemption applications. The revised paragraph (a)(8) simply expands the disclosure requirement by requiring applicants to include in their application a statement regarding whether the transaction is the subject of investigation or enforcement actions by any regulatory authority. This change is consistent with the amendments proposed in § 2570.33 and ensures that the Department has the information it needs to make an informed decision regarding an exemption application.

The proposal's new paragraph (a)(10) would requires that if any exemption application uses a definition of the term ''affiliate,'' the applicant include in its application a statement that either (1) the definition of affiliate set forth in § 2570.31(a) is applicable or (2) explains why a different affiliate definition should be applied. The Department believes this language will encourage the use of a single, consistent affiliate definition among all exemptions, when possible. This consistency will allow anyone who reviews an exemption application to more easily compare provisions of different exemptions and prevent the development of unforeseen exemption issues that could result from variations in the definition.

Paragraph (b) addresses some of the Department's specific concerns with respect to exemption transactions. The most substantial change would add proposed paragraph (b)(2)(i), which requires applicants to include a statement that the exemption transaction (A) will be in the best interest of the plan and its participants and beneficiaries; (B) all compensation received, directly or indirectly, by a party involved in the exemption transaction will not exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and (C) all of the statements to the Department, the plan, or, if applicable, the qualified independent fiduciary or qualified independent appraiser about the exemption transaction and other relevant matters are not materially misleading at the time the statements are made. Otherwise, the applicant must explain why these exemption standards should not be applicable to the exemption transaction.

For purposes of paragraph (b), an exemption transaction is in the best interest of a plan if the plan fiduciary causing the plan to enter into the transaction determines, with the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would, in the conduct of an enterprise of a like character and with like aims, enter into the exemption transaction based on the circumstances and needs of the plan. Such fiduciary shall not place the financial or other interests of itself, a party to the exemption transaction, or any affiliate ahead of the interests of the plan, or subordinate the plan's interests to any party or affiliate.

Paragraph (b)(2) generally incorporates compliance with ''impartial conduct standards'' as formalized in Prohibited Transaction Exemption 2020–02 as a baseline condition for approved exemptions. However, the Department recognizes that impartial conduct standards may not be appropriate or necessary in all exemption transactions. Therefore, paragraph (b)(2) gives applicants an opportunity to affirmatively explain why the impartial conduct standards should not be applicable to their exemption transactions.

Proposed paragraph (b)(4) (previously paragraph (b)(3)) provides that if an advisory opinion has been requested by any party to the exemption transaction from the Department with respect to any issue relating to the exemption transaction, the exemption application must include (1) a copy of the letter concluding the Department's action on the advisory opinion request; or (2) if the Department has not yet concluded its action on the request, a copy of the request or the date on which it was submitted together with the Department's correspondence control number as indicated in the acknowledgment letter. The Department is revising this provision for readability and to require an applicant to include with its application any opinion or guidance issued by the Department and any other opinions or guidance issued by Federal, state, or regulatory bodies regarding the exemption transaction. The proposal expands the prior text to ensure that all relevant information regarding the exemption transaction, including guidance issued in connection to the transaction by other Federal, state, or regulatory bodies is available to the Department when making its determination whether to grant an exemption.

The Department proposes to make substantial revisions to the requirements set forth in paragraphs (c) through (f) regarding statements and documents about qualified independent appraisers and qualified independent fiduciaries that are involved in an exemption transaction. The changes relate to the revisions made to the definitions of qualified independent appraiser and qualified independent fiduciary in § 2570.31. Overall, the proposed changes further ensure that the appraiser and fiduciary are independent and that their valuations and oversight over the exemption transaction are reliable and valid.

The proposal's revised paragraph (c) addresses statements and documents included in the application by the qualified independent appraiser. The proposal extends the provisions of paragraph (c) to auditors and accountants. As a result, paragraph (c) would apply to all statements submitted by appraisers, auditors, and accountants to ensure that the Department can rely on financial documents submitted by third parties.

More specifically, the proposal would revise several provisions that govern the information that must be included in any statements submitted in an application by an appraiser, auditor or accountant. First, a new paragraph (c)(1) would be added to require the statements to include a signed and dated declaration under penalty of perjury that, to the best of the qualified independent appraiser's, auditor's, or accountant's knowledge and belief, all of the representations made in such statement are true and correct.

Next, the Department is proposing to expand paragraph (c)(2) to specifically address the contractual obligations of the appraiser, auditor, or accountant. The revised provision requires a copy of the qualified independent appraiser's, auditor's, or accountant's engagement letter and, if applicable, contract with the plan describing the specific duties the appraiser, auditor, or accountant shall undertake to be included with an application. The proposed provision provides that the appraiser, auditor, or accountant's letter or contract may not: (1) Include any provision that provides for the direct or indirect indemnification or reimbursement of the independent appraiser, auditor, or accountant by the plan or another party for any failure to adhere to its contractual obligations or to Federal and state laws applicable to the appraiser's, auditor's, or accountant's work; or (2) waive any rights, claims or remedies of the plan or its participants and beneficiaries under ERISA, the Code, or other Federal and state laws against the independent appraiser, auditor's, or accountant's with respect to the exemption transaction.

Proposed paragraph (c)(2) would prevent appraisers, auditors, and accountants from avoiding accountability to the plan and its participants by relying on indemnification or reimbursement provisions, whether direct or indirect, to avoid financial liability for their failure to comply with their contract or state or Federal law. When parties agree to relieve appraisers, auditors, and accountants from accountability through releases, waivers, and indemnification or reimbursement agreements, they undermine the protective conditions of the exemption, compromise the independence of their services, and cast doubt on the reliability of the service providers' work.

Building on the proposal's theme of independence, paragraph (c)(4) would also be revised to state that submitted documents must contain a detailed description of any relationship that the qualified independent appraiser, auditor, or accountant has had or may have with the plan or any party involved in the exemption transaction, or with any party or its affiliates involved in the development of the exemption request that may influence the appraiser, auditor, or accountant, including a description of any past engagements with the appraiser, auditor, or accountant. The amendment would add a requirement to the current regulatory text requiring the appraiser, auditor, or accountant to provide detailed information regarding relationships with any party or its affiliates involved in the development of the exemption request that may influence it. In addition to this expansion, the relationship disclosure must include past engagements. The Department includes this additional language in order to address instances in which a party has potentially conflicting relationships because it is dependent on or otherwise regularly involved with parties that develop transactions that may rely on the receipt of exemptions as a part of its business.

The Department is proposing to delete the statement in current paragraph (c)(4)(iii) that requires an applicant to submit a new appraisal to the Department if an appraisal report is one year or more old. This deletion would make clear to applicants that they must submit a current appraisal report with their application, and that the Department would not move forward with its analysis of an exemption transaction without receipt of a recent appraisal report.

The proposal also makes changes in paragraph (c)(8). The revisions are discreet changes that are consistent with the revised definition of a qualified independent appraiser in § 2570.31(i) and describe how the revenue limitations thereunder are calculated.

Specifically with respect to the qualified independent appraiser, the Department proposes to add a new paragraph (d) that would require an applicant to include with its application the following information regarding an appraiser: A statement describing the process by which the independent appraiser was selected, including the due diligence performed, the potential independent appraiser candidates reviewed, and the references contacted; and a statement that the independent appraiser has appropriate technical training and proficiency with respect to the specific details of the exemption transaction. The Department is proposing to add new paragraph (d) to promote a prudent and loyal selection process to hire a qualified independent appraiser. Without such information, the Department has little or no insight into the prudence of the hiring process.

The Department similarly proposes to add a new paragraph (e) that would require applicants requesting an exemption for transactions requiring the retention of a qualified independent fiduciary to represent the interest of the plan, to include a statement that: (1) Describes the process by which the independent fiduciary was selected, including the due diligence performed, the potential independent fiduciary candidates reviewed, and the references contacted; and (2) represents that the independent fiduciary has appropriate technical training and proficiency with respect to ERISA and the Code and the specific details of the exemption transaction to serve as an independent fiduciary. As with paragraph (d), the new paragraph is added to promote a prudent and loyal selection process for a critically important plan service provider.

The Department would revise paragraph (f), which specifies the information an applicant must include in the qualified independent fiduciary's statement required to be submitted with its application. As with the changes to the qualified independent appraiser's statement, the changes to the qualified independent fiduciary's statement are designed to bolster independence and reliability.

Accordingly, paragraph (f)(2) would be revised to provide the applicant must include a copy of the qualified

independent fiduciary's engagement letter and contract, which could not: (1) Contain any provisions that violates ERISA section 410, which prohibits exculpatory provisions; (2) include any provision that provides for the direct or indirect indemnification or reimbursement of the independent fiduciary by the plan or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the independent fiduciary's work; or (3) waive any rights, claims or remedies of the plan under ERISA, state, or Federal law against the independent fiduciary with respect to the exemption transaction.

The Department has proposed to include new paragraph (f)(2) to ensure that the qualified independent fiduciary remains financially responsible for its own decisions while acting as a fiduciary with respect to the exemption transaction. This limitation extends to any third party retained by the fiduciary in connection with the fiduciary's engagement letter or contract.

In order to ensure that qualified independent fiduciaries have sufficient resources to compensate plans for any losses for which they are liable, the Department proposes to require such fiduciaries to maintain fiduciary liability insurance in an amount that is sufficient to indemnify the plan for damages resulting from a breach by the independent fiduciary of either (1) ERISA, the Code, or any other Federal or state law or (2) its contract or engagement letter under proposed paragraph (f)(3). The insurance may not contain an exclusion for actions brought by the Secretary or any other Federal, state, or regulatory body; the plan; or plan participants or beneficiaries.

The Department understands that some entities that provide ERISA fiduciary services with respect to exemption transactions may not be either sufficiently liquid or capitalized to address liability that might arise in connection with an exemption transaction, especially in light of the proposal's language limiting indemnification, reimbursement, and waivers. Without the addition of paragraph (f)(3), the Department believes that the new provisions in paragraph (f)(2) may not provide the protections to plans and their participant and beneficiaries that the Department intends. By requiring independent fiduciaries to acquire and maintain fiduciary liability insurance, the Department believes the fiduciary is more likely to act prudently when serving as a fiduciary with respect to the exemption transaction, and plans, participate will receive better protection from liability resulting from fiduciary breaches.

The proposal makes additional changes to paragraph (f) to further bolster the qualified independent fiduciary's independence. First, proposed paragraph (f)(6) would expand the existing acknowledgement provision to require the acknowledgement to state that the fiduciary understands its duties and responsibilities under ERISA; is acting as a fiduciary of the plan with respect to the exemption transaction; has no material conflicts of interest with respect to the exemption transaction; and is not acting as an agent or representative of the plan sponsor. The proposal expands the acknowledgement in order to capture more potential conflicts. Under the proposed amendment, the fiduciary no longer could simply acknowledge that it is an ERISA fiduciary, but would also have to acknowledge that it is acting with respect to the transaction solely in the interest of the plan, not acting on behalf of the plan sponsor, and not subject to conflicts of interest.

The proposal would also revise paragraph (f)(7) to provide that the qualified independent fiduciary certify in writing that the exemption transaction complies with the impartial conducts standards set forth in proposed paragraphs (b)(2)(i)(A) through (C).

Paragraph (f)(9) is revised to reflect the changes to the definition of a qualified independent fiduciary. The changes require additional disclosures regarding the fiduciary's revenue to ensure that the fiduciary meets the terms of the definition.

The proposal adds a new paragraph (f)(10) that would require the qualified independent fiduciary to state that it has no conflicts of interest with respect to the exemption transaction that could affect the exercise of its best judgment as a fiduciary. The requirement would put the fiduciary on the record that it has no conflicts that could impact its judgment and, thereby, promote compliance with the exemption's terms.

The final proposed revisions to paragraph (f) would require the exemption application to address whether the qualified independent fiduciary is under investigation or examination or engaged in any litigation or continuing controversy. Specifically, the fiduciary would be required to state that either, within the last five years, the independent fiduciary has not been under investigation or examination by, and has not engaged in litigation, or a continuing controversy with, the Department, the Internal Revenue Service, the Justice Department, the Pension Benefit Guaranty Corporation, the Federal Retirement Thrift Investment Board, or any other Federal or state entity involving compliance with provisions of ERISA, the Code, FERSA, or other Federal or state law; or include a statement describing the applicable investigation, examination, litigation or controversy. The addition of this paragraph ensures that the Department would have full knowledge of any potential issues or conflicts that involve the fiduciary. Without a full disclosure by the fiduciary with respect to all of items delineated in the paragraph, the Department may not be able to fully evaluate the qualifications and independence of the qualified independent fiduciary and whether the selection of the fiduciary was prudent.

Lastly, a proposed new paragraph (f)(12) would connect with proposed paragraph (f)(11) by requiring the exemption application to include the qualified independent fiduciary's statement either that it has not been either convicted or released from imprisonment, whichever is later, within the last 13 years as a result of: (1) Any felony involving abuse or misuse of such person's position or employment with an employee benefit plan or a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime of which any of the foregoing crimes is an element; or any crime described in ERISA section 411 or (2) convicted by a foreign court of competent jurisdiction or released from imprisonment, whichever is later, as a result of any crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense described in (1) and a description of the circumstances of any such conviction; or a statement describing a conviction or release from imprisonment described in (1) or (2). As with proposed paragraph (f)(11), the required statement would ensure that the Department has important information relevant to the qualifications and independence of the fiduciary and to the prudence and loyalty of the applicant's selection of the independent fiduciary.

Section 2570.35

Section 2570.35 addresses information that solely needs to be included in an individual exemption application. As with changes elsewhere in this proposal, multiple changes are made to current § 2570.35 for readability and consistency with changes made in other sections of the Exemption Procedure Regulation. In addition, some minor changes are included in the proposal that would require the mail and email addresses of the plan and parties in interest to which the exemption application applies and a reminder that applicants should not submit social security numbers. The Department requests comments on these changes, including the clarified requirements related to information about previously consummated exemption transactions and criminal convictions.

Beyond those changes, the proposal revises paragraph (a)(6) to more clearly address foreign convictions. While the Department believes the current language includes foreign convictions, the proposal now clearly would require applicants to disclose in their application whether, within the last thirteen years, they or any party involved in the exemption had been convicted by a foreign court of competent jurisdiction or released from imprisonment, whichever is later, as a result of any crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense described in paragraph (a)(6)(i) and a description of the circumstances of any such conviction. For purposes of this section, a person shall be deemed to have been ''convicted'' from the date of the trial court's judgment, regardless of whether that judgment remains under appeal and the foreign jurisdiction considers a trial court judgment final while under appeal. Clarifying the treatment of foreign convictions serves to remove uncertainty from the exemption application process and ensures that the Department receives all relevant information.

The proposal also revises current paragraph (a)(12), which requires the applicant to state the percentage of plan assets affected by the exemption transaction to provide that if the exemption transaction includes the acquisition of an asset by the plan, the fair market value of the asset to be acquired must be included in both the numerator and denominator of the applicable fraction. The new language simply clarifies the Department's understanding of how to calculate the fair market value percentage in an acquisition so that the percentage accurately reflects the impact of the exemption transaction on overall plan assets.

Paragraph (a)(18) requires applicants to provide information on which parties will bear the cost of the exemption application and notifying interested persons. The proposal revises and expands the paragraph to require that the applicant disclose the person(s) or entity who will bear the costs of: (1) The exemption application; (2) any commissions, fees, or costs associated with the exemption transaction, and any related transaction; and (3) notifying interested persons; provided, in each case, that the plan may not bear the costs of the exemption application, commissions, fees, and costs incurred to notify interested persons unless the Department determines, at its sole discretion, that a compelling circumstance exists that necessitates the payment of these expenses by the plan. The expanded language clarifies that the disclosure is intended to capture all of the costs and fees associated with the exemption transaction, not just those immediately derived from the submission of the exemption application. In this way, the Department can better understand the true cost of a particular exemption transaction. Further, the new language emphasizes the Department's view that the costs of the application, exemption transaction, and notice should not be borne by the plan and its participants and beneficiaries. Unless truly compelling circumstance exist, exemption transaction expenses should be the responsibility of parties other than the plan.

Finally, the proposal adds a new paragraph (a)(20). The new paragraph requires the applicant to state in its application whether any prior transactions have occurred between (1) the plan or plan sponsor and (2) a party involved in the exemption transaction. Requiring this information would allow the Department to determine where the exemption transaction fits in the relationship between the plan and the parties involved in the exemption transaction and to evaluate whether the exemption transaction is part of a larger set of transactions or a pattern of practice.

The proposal makes a minor change to paragraph (b)(4). Currently, the paragraph requires the application to contain a disclosure of a net worth statement with respect to any party in interest providing a personal guarantee with respect to the exemption transaction. The proposal expands this language to cover not just parties in interest, but any party providing such a guarantee. The expansion of the language would allow the Department to more accurately determine the value of any guarantee associated with the exemption transaction.

In accordance with its discussion of § 2570.30 above as it pertains to retroactive exemption requests, the Department would also make specific revisions to the requirements for retroactive exemptions in paragraph (d). The Department proposes to amend current paragraph (d)(1) to state that the Department will consider exemption requests for retroactive relief only when (1) the safeguards necessary for the grant of a prospective exemption were in place at the time at which the parties entered into the transaction, and (2) the plan and its participants and beneficiaries have not been harmed by the transaction. An applicant for a retroactive exemption must demonstrate that the responsible plan fiduciaries acted in good faith by taking all appropriate steps necessary to protect the plan from abuse, loss, and risk at the time of the transaction. An applicant should further explain and describe whether the transaction could have been performed without engaging in a prohibited transaction. The proposal revises prior language to emphasize the applicant must demonstrate that the plan and its participants and beneficiaries were not harmed by the exemption transaction. The Department cannot readily make the findings required by Section 408(a) of ERISA that the transaction is in the interests of the plan and its participants and beneficiaries, and protective of their rights, if, in fact, the transaction was harmful to plan participants and beneficiaries. Further, the applicant must demonstrate that the plan fiduciaries took all appropriate steps necessary to prevent abuse, loss, and risk when the transaction took place. Including such information in the exemption application demonstrates to the Department that the fiduciaries were acting prudently to protect the plan and its participants and beneficiaries when the transaction took place. Consistent with this requirement, the proposed amendment includes language requiring the applicant to show that it evaluated other possibilities to the exemption transaction and made a determination that the exemption transaction was the appropriate option in light of the other possible solutions that were available, if any.

In order to assist applicants in demonstrating that they acted in good faith when entering into a previously

consummated exemption transaction, proposed paragraph (d)(2) provides factors the Department will take into account when reviewing a retroactive exemption application. Paragraph (d)(2)(i) is revised to state that one of the factors the Department will consider is the involvement of an independent fiduciary before a transaction occurs who acts on behalf of the plan and is qualified to negotiate, approve, and monitor the transaction; provided, however, the Department may consider, at its sole discretion, an independent fiduciary's appointment and retrospective review after completion of the exemption transaction due to exigent circumstances. The proposal revises the prior language in order to provide that, in certain exigent circumstances, the Department may consider, at its sole discretion, the approval of an independent fiduciary after the fact. The Department recognizes that under certain rare and extreme circumstance an independent fiduciary's approval of the transaction after the fact may serve to assist the Department in determining whether an applicant acted in good faith.

The proposal also revises paragraph (d)(2)(v) to assist with the good faith determination. Under the amendment, the applicant would be required to submit evidence that the plan fiduciary did not engage in an act or transaction that the fiduciary should have known was prohibited under ERISA section 406 and/or Code section 4975 consistent with its ERISA fiduciary duties and responsibilities. The revised language applies the more appropriate ERISA standard that a fiduciary is responsible not only for what it knows, but what it should have known. Setting forth this standard ensures that the plan fiduciary actively engaged and evaluated the exemption transaction.

Finally, the proposal revises the last paragraph on retroactive exemptions. Paragraph (d)(3) addresses the Department's position that it will not consider retroactive exemption requests if the exemption transaction resulted in a loss for the plan. The proposal modifies the existing language to make absolutely clear that the Department's starting presumption is that it will simply not consider such requests. However, the Department also clarifies that the determination as to loss is only applied at the time of the exemption application. Thus, if the facts later show that the exemption transaction did result in a loss months or years after the completion of the exemption application, that information is not relevant to the exemption determination, which is made based on the facts available at the time.

Section 2570.36

Section 2570.36 addresses where to file an exemption application. The proposal modernizes the submission process by no longer requiring a paper submission, and instead directs applicants to *e-oed@dol.gov* for submission. Applicants would retain the right to submit a paper application, and the proposal provides current information on the correct delivery addresses while noting that that the address published in the Exemption Procedure Regulation may change over time. The Department will always provide the current submission address on its website.

Section 2570.37

Section 2570.37 addresses an applicant's duty to supplement the exemption application. The proposal revises paragraph (a) to state that applicants have a duty to promptly notify the Department of any material changes to facts or representations either during the Department's consideration of the application or following the Department's grant of an exemption. This duty only extends to the information that was provided at the time of the grant of the exemption. The proposal also expands the duty to disclose to the Department whether a party participating in the exemption transaction is the subject of an investigation or enforcement act in paragraph (b) by proposing to include investigative and enforcement actions by any Federal or state governmental entity, not just the Department, the Internal Revenue Service, the Justice Department, the Pension Benefit Guaranty Corporation, and the Federal Retirement Thrift Investment Board.

Section 2570.38

Section 2570.38 addresses the issuance of tentative denial letters before the Department issues a final denial letter. Tentative denial letters, often referred to as TD letters, inform the applicant of issues that it needs to resolve with the Department before the Department is able to grant an exemption. The proposal revises the text to clarify that the Department may extend the twenty-day period during which an applicant normally would be required to request a hearing or notify the Department of its intent to submit additional information following the issuance of a tentative denial letter at its sole discretion. The Department is proposing this change to inform applicants that the 20-day period provides a hard deadline for the applicant to reply unless the Department chooses to extend the period at its sole discretion based on the facts and circumstances.

Section 2570.39

Section 2570.39 addresses the applicant's ability to submit additional information. Consistent with other revisions to the Exemption Procedure Regulation, the proposal revises the text to update the manner by which the applicant may communicate with the Department. Beyond those updates, the proposal revises paragraph (b), and then makes conforming changes throughout the section, to provide that while the applicant is required to submit the additional information within forty days of the date the tentative denial letter was issued by the Department, the Department may, at its sole discretion extend the time period. As with § 2570.38, this change is made to inform the applicant that the time period is a hard deadline, unless the Department chooses to extend the period pursuant to its own discretion based on the facts and circumstances.

The proposal also deletes paragraph (d). The paragraph provided that if an applicant could not submit all of the supplementary information within the forty-day time period (unless extended by the Department), it could withdraw the application and reinstate it at a later time. The proposal deletes this provision to be consistent with proposed changes to § 2570.44, which covers withdrawn applications. As described below, the Department proposes to amend its approach regarding withdrawals and reapplications in that section.

Section 2570.40

Section 2570.40 addresses conferences between the applicant, or its representative, and the Department. The Department requests comments related to the revisions, particularly whether additional information or clarity might be useful.

Paragraph (b) provides that, generally, an applicant is entitled to only one conference under the Exemption Procedure Regulation. The proposal retains this text, but adds additional language providing that the Department may request the applicant to participate in additional conferences at its sole discretion. The Department would make such a request if it determines the conferences are appropriate based on the facts and circumstances of the exemption application.

The Department also proposes to revise paragraphs (d) through (h), which

govern the timing of conferences and the submission of information. As with changes to §§ 2570.39 and 2570.40(b), the proposed amendment revises the sections to provide that the Department may, at its sole discretion extend time periods. These changes are made to similarly inform the applicant that the time periods outlined in the section provide a hard deadline for the applicant, unless the Department, based on the facts and circumstances, chooses to extend the period pursuant to its own discretion.

The proposal also adds a new paragraph (i) providing that the Department, at its sole discretion, may hold a conference with any party, including the qualified independent fiduciary or the qualified independent appraiser, regarding any matter related to an exemption request without the presence of the applicant or other parties to the exemption transaction or their representatives. Any such conferences may occur in addition to the conference with the applicant described in § 2570.40(b). The proposal adds this language to clarify that the Department is not limited with respect to whom it holds conferences. The Department proposes to reserve this right, because it may determine that under certain circumstances the Department may need to meet with a third party in order accurately assess the exemption application. For example, the Department may determine that a discussion with a qualified independent fiduciary without the presence of the applicant or its representative, may provide additional insight into the qualified independent fiduciary's work if the applicant is not present to influence the explanation of the fiduciary's work product or limit the topics which are discussed.

Section 2570.41

Section 2570.41 addresses final denial letters, which are the final action taken by the Department with respect to an application if the Department has determined that an exemption will not be granted for an exemption transaction. The proposal adds a new paragraph (a), which provides that the Department will issue a final denial letter without issuing a tentative denial letter under § 2570.38 or conducting a hearing on the exemption under either § 2570.46 or § 2570.47, if the Department determines, at its sole discretion, that: (1) The applicant has failed to submit information requested by the Department in a timely manner; (2) the information provided by the applicant does not meet the requirements of §§ 2570.34 and 2570.35; or (3) if a conference has been held between the Department and the applicant before the issuance of a tentative denial letter during which the Department and the applicant addressed the reasons for denial that otherwise would have been set forth in a tentative denial letter pursuant to § 2570.38. While the language of §§ 2570.38, 2570.46, and 2570.47 does not require a tentative denial letter to be sent or a hearing occur under all circumstances, the current language does not clearly state that the Department may issue a final denial letter without taking those steps. To clear up this uncertainty, the proposal adds the new text to make clear that the Department, based on the reasons outlined herein, may issue final denial letters without tentative denial letters or hearings. The Department requests comments on the proposed revisions, including whether there are any circumstances in which plan participants and beneficiaries may be adversely impacted by the issuance of a final denial letter where the Department has not first issued a tentative denial letter.

The proposal also adds a new paragraph (e) which states the Department will issue a final denial letter where the applicant either (1) asks to withdraw the exemption application or (2) communicates to the Department that it is not interested in continuing the application process. This revision is consistent with the changes being made in § 2570.44. The proposal adds this text in order to provide that if the applicant decides it no longer is interested in an exemption, whether communicated through either a withdrawal or a statement of disinterest, the Department will formally memorializes the ultimate disposition of the application by issuing a final denial letter. The proposed amendment will help the Department more clearly track and manage exemption applications.

Section 2570.42

When the Department comes to the initial decision that the issuance of an exemption is warranted, § 2570.42 provides that the Department must provide for notice and comment through the publication of a proposed exemption in the **Federal Register**. The proposal revises a portion of paragraph (d). Previously, the paragraph provided that when the proposed exemption includes relief from ERISA section 406(b), Code section 4975(c)(1)(E), or FERSA section 8477(c)(2), the proposal must inform interested persons who would be adversely affected by the transaction of their right to request a hearing under § 2570.46. The proposal deletes the reference to interested persons who would be adversely affected by the exemption transaction, thus, making the text applicable to all interested persons. This revision was made to both reflect the difficulty in determining which parties are adversely affected and to ensure all parties that might have relevant information to the Department's final determination are provided with an opportunity to communicate that information.

Section 2570.43

Upon publication of a proposed exemption in the **Federal Register**, § 2570.43 provides that the applicant must provide notice to interested persons of the pendency of the exemption. The section outlines the process by which the notice is drafted and provided. The proposal revises paragraph (a) to delete ''adversely'' and replace it with ''materially'' when applying the term to the interested parties' right to a hearing to remain consistent with the proposal's revision to § 2570.42 discussed above. The proposal also makes minor changes regarding how a commenter may submit their comment and adds language to existing text advising commenters not to disclose personal data that also advises commenters not to submit confidential or otherwise protected information.

Section 2570.44

Section 2570.44 addresses the withdrawal of an exemption application. The existing provision allows an applicant to withdraw their application without the Department's issuance of a formal final denial letter. The proposal revises paragraph (b) to provide explicitly that that Department will terminate all proceedings regarding the application upon receiving an applicant's withdrawal request and issue a final denial letter. The issuance of the final denial letter will formally close the application and allow the Department to better manage its inventory of exemption applications.

The proposal revises paragraph (d) to provide that if an applicant chooses to reapply after withdrawing its application, the applicant must update all previously furnished information with respect to the prior application and the exemption transaction. Applicants currently can reapply without providing additional information after withdrawing their applications, unless the request occurs more than two years after withdrawal; however, the Department believes that applicants should be required to completely update all information when they reapply for an exemption. Therefore, the proposal

treats the withdrawal as a formal denial, which shifts the burden to the applicant to present an updated application to the Department for its review.

Finally, the proposal adds a new paragraph (f) stating that following the withdrawal of an exemption application, the administrative record will remain subject to public inspection pursuant to § 2570.51. The Department is proposing this revision to clearly set forth the Department's policy that the administrative record for an exemption will always be available for public inspection after it is created.

Section 2570.45

Section 2570.45 addresses formal requests for reconsideration following a denial. The proposal adds a new paragraph (g), which provides that a request for reinstatement of an exemption application following a withdrawal pursuant to § 2570.44(d) is not a request for reconsideration governed by § 2570.45. The Department is adding this text to draw a clear distinction between §§ 2570.44 and 2570.45.

Section 2570.46

Current § 2570.46 covers the right to a hearing with respect to a proposed exemption that provides relief from ERISA section 406(b), Code section 4975(c)(1)(E) or (F), or FERSA section 8477(c)(2) for any interested person who may be adversely affected by the exemption. The Department is proposing to expand the right to a hearing to any person who may be materially affected by an exemption that provides the relief described in this section. The determination of whether a person is materially affected would be at the sole discretion of the Department. The proposal deletes the reference to interested persons to allow any party materially affected by the exemption to provide material information. The Department requests comments on this provision, including information about the benefits or drawbacks of holding a hearing before deciding whether to grant a proposed exemption.

Similarly, the Department is changing the word ''adversely'' to ''materially'' in order to capture all relevant information with respect to the exemption transaction. Combined, these revisions assist the Department in its review of the exemption transaction by ensuring that potentially helpful information is not excluded.

The proposal also makes a minor revision to paragraph (b). The Department is inserting language to explicitly state that the Department will hold a hearing when it is necessary to explore material factual information with respect to the proposed exemption. Factual information is limited to the proposed exemption in order to ensure that the hearing is relevant to the Department's exemption determination.

Section 2570.47

The proposal does not make any revisions to § 2570.47.

Section 2570.48

Section 2570.48 restates the Department's ERISA section 408 statutory finding requirements. The proposal's only material change was to clarify that the Department must make a finding that the exemption is administratively feasible ''for the Department.'' The language was revised to add ''for the Department'' in order to clarify that the finding concerns whether the Department can feasibly administer the exemption, not the applicant.

Section 2570.49

Section 2570.49 addresses the various effects of and limits on the grant of an exemption. The proposal revises paragraph (e) to clarify that the determination as to whether a particular statement contained in (or omitted from) an exemption application constitutes a material fact or representation based on the totality of the facts and circumstances is made by the Department in its sole discretion. The addition of the ''sole discretion'' language reinforce the language of the existing paragraph and clarifies that the Department retains sole discretion with respect to the determination.

Section 2570.50

Section 2570.50 addresses the revocation and modification of existing exemptions. The Department requests comments on the revisions, including information about what steps might be taken to mitigate any harm to plan participants and beneficiaries in the event an exemption is revoked or modified.

The proposal substantially revises paragraph (a) to provide that, if material changes in facts, circumstances, or representations occur after an exemption take effect, including whether a qualified independent fiduciary resigns, is terminated, or is convicted of a crime, the Department, at its sole discretion, may take steps to revoke or modify the exemption. In the event that the qualified independent fiduciary resigns, is terminated, or is convicted of a crime, the proposal requires the applicant to notify the Department within thirty 30 days of the resignation, termination, or conviction, and the Department reserves the right to request the applicant to provide the Department with any of the information required pursuant to § 2570.34(e) and (f) at a time determined by the Department at its sole discretion.

The proposal revises paragraph (a) to ensure that granted exemptions remain protective of plans and their participants and beneficiaries. The Department reserves the right at its sole discretion to determine if material changes impact the grounds upon which the exemption was issued, thereby necessitating a change. The paragraph provides a tool by which the Department can evaluate ongoing exemptions and ensure the exemptions continue to meet the ERISA statutory requirements.

The proposal's revision of paragraph (a) also expands beyond the core material facts to address the qualified independent fiduciary. In many exemptions that employ qualified independent fiduciaries, the fiduciaries represent one of the exemption's core protective conditions. It is imperative that an applicant inform the Department if the independent fiduciary ceases to serve in that role because it resigns, is terminated, or is convicted of a crime. The proposed language would ensure that the Department will be informed of the changed circumstances and require the applicant to take necessary actions to ensure the exemption continues to be protective of the plan and its participants and beneficiaries.

In connection with the qualified independent fiduciary issue, the proposal reserves the Department's right to request that the applicant provide any of the information required pursuant to § 2570.34(e) and (f) at a time determined by the Department at its sole discretion. The Department's ability to take action with respect to the fiduciary is bolstered by this ability. The proposal's provision for access to information assists the Department's ultimate disposition of the issue and serves to ensure the exemption remains protective.

Lastly, the proposal would revise paragraph (c), which currently permits the Department to revoke or modify an exemption under certain circumstances and to give the modifications retroactive effect. The proposal would delete the reservation of the Department's right to make retroactive changes, and instead provide that changes would be prospective only. The amendment reflects the Department's concern that the ability to make retroactive changes undermines the legitimate reliance interests of applicants, plans,

participants and beneficiaries in exemptions that have been granted pursuant to specific conditions.

Section 2750.51

Section 2570.51 addresses public inspection and the provision of copies of the administrative record. The proposal revises the current language in coordination with § 2570.32(d), which addresses the administrative record and the information included in the administrative record. The proposal clarifies that from the date the administrative record is established, as determined by § 2570.32(d), the administrative record is open to the public and available to copy. In addition, the proposal updates paragraph (b) to allow copies of the administrative record to be furnished electronically at the staff's discretion.

Effective Date

The Department proposes to make this regulation effective 90 days after the date of publication of the final rulemaking in the **Federal Register**.

Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not ''significant'' within the meaning of section 3(f) of the Executive order and therefore is not subject to review by OMB.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, the reporting burden (time and financial resources) is minimized, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the information collection request (ICR) included in the proposed amendment of the Exemption Procedure Regulation. A copy of the ICR may be obtained by contacting the person listed in the PRA Addressee section below. The Department has submitted a copy of the proposed rule to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department is particularly interested in comments that:

(A) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(B) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(C) Enhance the quality, utility, and clarity of the information to be collected; and

(D) Help minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; and marked ''Attention: Desk Officer for the Employee Benefits Security Administration.'' Comments can also be submitted by Fax: 202–395–5806 (this is not a toll-free number), or by email: *OIRA_submission@omb.eop.gov.* OMB requests that comments be received by April 14, 2022, which is 30 days from publication of the proposed amendment to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to James Butikofer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210 or by email at: *ebsa.opr@dol.gov.* These are not toll-free numbers. A copy of the ICR also may be obtained at *https://www.RegInfo.gov.*

Background

Both ERISA and the Code contain various statutory exemptions from the prohibited transaction rules. In addition, ERISA section 408(a) authorizes the Secretary to grant administrative exemptions from the restrictions of ERISA sections 406 and 407(a), while Code section 4975(c)(2) authorizes the Secretary of the Treasury or his delegate to grant exemptions from the prohibitions of Code section 4975(c)(1). ERISA section 408(a) and Code section 4975(c)(2) also direct the Secretary and the Secretary of the Treasury, respectively, to establish procedures to carry out the purposes of these sections.

Under ERISA section 3003(b), the Secretary and the Secretary of the Treasury are directed to consult and coordinate with each other with respect to the establishment of rules applicable to the granting of exemptions from the prohibited transaction restrictions of ERISA and the Code. Under ERISA section 3004, moreover, the Secretary and the Secretary of the Treasury are authorized to develop jointly rules appropriate for the efficient administration of ERISA.

Under section 102 of Reorganization Plan No. 4 of 1978, the foregoing authority of the Secretary of the Treasury to issue exemptions under Code section 4975 was transferred, with certain enumerated exceptions not discussed herein, to the Secretary. Accordingly, the Secretary now possesses the authority under Code section 4975(c)(2), as well as under ERISA section 408(a), to issue individual and class exemptions from the prohibited transaction rules of ERISA and the Code.

On April 28, 1975, the Department published ERISA Procedure 75–1 in the **Federal Register** (40 FR 18471). This procedure provided necessary information to the affected public regarding the procedure to follow when requesting an exemption. On August 10, 1990, the Department issued its current exemption procedure regulation, which

replaced ERISA Procedure 75–1, for applications for prohibited transaction exemptions filed on or after September 10, 1990. (29 CFR 2570.30 through 2570.52, 55 FR 32836, Aug. 10, 1990) Most recently, the Department published an updated Exemption Procedure Regulation in 2011 (29 CFR 2570.30 through 2570.52 (2011)). The updated Exemption Procedure Regulation revised the prohibited transaction exemption procedure to reflect changes in the Department's exemption practices since the previous exemption procedure was issued in 1990.

Under the current Exemption Procedure Regulation, the Department requires information to be provided in a written application pursuant to the requirements set forth in the Exemption Procedure Regulation. The written application is an ICR for purposes of the PRA. Sections 2570.34 and 2570.35 of the current Exemption Procedure Regulation describe the information that must be supplied by the applicant, such as, but not limited to: Identifying information (name, type of plan, EIN number, etc.); an estimate of the number of plan participants; a detailed description of the exemption transaction and the parties for which an exemption is requested; a statement regarding which section of ERISA is thought to be violated and whether transaction(s) involved have already been entered into; a statement of whether the transaction is customary in the industry; a statement of the hardship or economic loss, if any, which would result if the exemption were denied; and a statement explaining why the proposed exemption would be administratively feasible, in the interests of the plan and protective of the rights of plan participants and beneficiaries. In addition, the applicant must certify that the information supplied is accurate and complete.

The proposed amendment to the Exemption Procedure Regulation would expand the ICR contained in §§ 2570.34 and 2570.35 in several respects. First, the proposal seeks to expand the information sought about the proposed exemption transaction, such as requiring a more detailed description of the exemption transaction, including the benefits derived by the parties and the costs and benefits to the plan; alternative transactions considered; and descriptions of all conflicts of interest and self-dealing. Second, the proposal requires the inclusion of additional information in exemption applications such as a statement regarding whether the exemption transaction is in the best interest of the plan and its participant and beneficiaries and expanded disclosures with respect to any Advisory Opinions that the applicant requests with respect to any issue relating to the exemption transaction and investigations by any Federal, state, or regulatory body.

The proposal also would revise the ICR to expand the number of specialized parties from whom statements and documents must be included in exemption applications. The specialized parties covered by the existing requirements would be expanded to include not just independent appraisers and fiduciaries, but also auditors and accountants acting on the behalf of the plan, and the documents required to be disclosed with respect to those parties would expand to cover any documents submitted by those parties in support of the application. Specialized parties would be required to disclose, among other things, additional information regarding their contracts, including, but not limited to, information on indemnification provisions, waivers, and relationships with other parties involved in the exemption transaction. In addition, the qualified independent fiduciary would be required to provide more information, such as, but not limited to: Information regarding conflicts of interest and fiduciary liability insurance and whether the fiduciary has been under investigation or convicted of certain crimes.

In addition to the requirements created by the application described in §§ 2570.34 and 2570.35, additional requirements are added by amending § 2570.34(d) with respect to a pre-submission applicant. Specifically, if an applicant desires to engage in a pre-submission conference or correspondence, the applicant or its representative must (1) identify and fully describe the exemption transaction; (2) identify the applicant, the applicable plan(s), and the relevant parties to the exemption transaction; and (3) set forth the prohibited transactions that the applicant believes are applicable.

Finally, the Department proposes to amend § 2570.36 to provide that the application and supporting documents may be submitted electronically. The Department expects that no longer requiring paper copies should reduce the burden associated with this ICR.

In order to assess the hour and cost burden of the revision to the current ICR associated with the Exemption Procedure Regulation, the Department updated its estimate of the number of exemption requests it expects to receive and the hour and cost burden associated with providing information required to be submitted by applicants, including the new information required under this proposal. The Department also adjusted its estimate of the labor rates for professional and clerical help and the size of plans filing exemption requests with the Department. In the revised estimate, the costs of hiring outside service providers (such as, law firms specializing in ERISA, outside appraisers, and financial experts) are accounted for as a cost burden. Requirements related to these services are more explicitly specified in the proposed rule than they were in the previous procedure, and any paperwork costs associated with these requirements are built into the estimated fees for outside services.

Annual Hour Burden

Between 2019 and 2021, the Department received an average of 22 requests annually for prohibited transaction exemptions. For purposes of this analysis, the Department assumes that the Department will receive approximately the same number of applications annually over the next three years. The paperwork burden consists of the time outside attorneys will spend to prepare and submit an exemption application, and the time required to prepare and distribute the notice of a proposed exemption to interested parties. Because notices are only distributed once a proposed application for an exemption has been published in the **Federal Register**, the Department estimates that four applications annually will proceed to the notice stage based on the number of notices published between 2019 and 2021.

An exemption application may be made either directly by plans or by parties-in-interest to plans. The preparation of an application, however, is generally conducted by, or under the direction of, attorneys with specialized knowledge of employee benefit plans. The Department assumes that these same attorneys will also prepare and distribute the notice of the application to interested parties.

The Department estimates that, on average, 12 hours of in-house legal professional and 13 hours of in-house clerical time will be spent preparing the documentation for the application that will be used by the outside counsel. The Department estimates that total labor costs (wages plus benefits plus overhead) for legal staff would average $140.96 per hour and $55.23 per hour for clerical staff.[5] Therefore, the

[5] The Department estimates of labor costs by occupation reflect estimates of total compensation and overhead costs. Estimates for total

Department estimates that preparing the documentation for the application would require 264 in-house legal professional hours (22 applications times 12 hours) and 286 clerical hours (22 applications times 13 hours) resulting in 550 total hours at an equivalent cost of approximately $53,009.[6] [7]

An exemption application may be made either directly by plans or by parties-in-interest to plans. The preparation of an exemption application, however, generally is conducted by or under the direction of attorneys with specialized knowledge of ERISA. The Department assumes that these same attorneys will also prepare and distribute the notice of the application to interested parties. As discussed above, the Department proposes to revise the requirements for specialized statements and documents. The specialized parties would be required to disclose, among other things, additional information regarding their contracts, including, but not limited to, information on indemnification provisions, waivers, and relationships with other parties involved in the exemption transaction.

Because of the large amount of paperwork that is submitted (applications average approximately 100 pages with varying numbers of supporting documents), and complexity of the issues, the Department estimates that, on average, 52 hours of outside legal professional work will be spent preparing the documentation for the application. The Department requests comment on the accuracy of this assumption and notes that there could be a large dispersion in the number of hours required, based on the complexity of the application. Total labor costs (wages plus benefits plus overhead) for outside legal staff was estimated to average $494.00 per hour.[8] Therefore, the Department estimates that preparing the applications will require 1,144 in-house legal professional hours (22 applications times 52 hours) with an equivalent cost of $565,136. This estimate includes potential meetings with Department personnel as well as preparation of supplementary documents that are requested following some of these meetings. For some of the more complex cases, the Department will request a Summary of Proposed Exemption (SPE), which will involve a one page summary of the rationale for the transaction.

As discussed above, the Department proposes to make substantial revisions to the requirements set forth in paragraphs (c) through (f) regarding statements and documents about qualified independent appraisers and qualified independent fiduciaries that are involved in an exemption transaction. The changes relate to the revisions made to the definitions of qualified independent appraiser and qualified independent fiduciary in § 2570.31. The Department assumes that an outside qualified independent fiduciary and an outside appraiser/expert will help prepare documentation for the application. Total labor costs for outside fiduciary and outside appraiser were estimated to average $291.23 per hour.[9] Therefore, the Department estimates that preparing the applications will require 748 hours of work by outside fiduciaries (22 applications times 34 hours) and 308 hours of work by outside appraisers/experts (22 times 14 hours) totaling approximately $307,539. The new requirements contained in the proposal are incorporated into these estimates.[10]

For applications that reach the stage of publication in the **Federal Register** as pending approval, a notice must be prepared and distributed to interested parties. The Department estimates that four applications will be published annually and that approximately 3,480 notices to interested parties will be distributed. The distribution of the notices is estimated to require about 5 minutes of in-house clerical time per interested party. Therefore, distribution of notices will require approximately 290 hours at an equivalent cost of approximately $16,017 (5 minutes/60 minutes) times 3,480 notices times $55.23 hourly clerical rate).

Proposed amendments to § 2730.31(k) define a pre-submission applicant and § 2570.34(d) imposes requirements on the pre-submission applicant. If an applicant desires to engage in a pre-submission conference or correspondence, the applicant or its representative must (1) identify and fully describe the exemption transaction; (2) identify the applicant, the applicable plan(s), and the relevant parties to the exemption transaction; and (3) set forth the prohibited transactions that the applicant believes are applicable. While the number of entities that would satisfy the definition of pre-submission applicant is not tracked, most applicants do contact the Department. Other entities that satisfy the definition of a pre-submission applicant, but that do not end up submitting an application also contact the Department. To account for these additional entities, an estimate of 25 pre-submission applicants is used. The required information is required on the application, so for those submitting an application, the requirement does not create a new burden, but rather only changes the timing of providing the information. For those five entities that do not submit an application, an hour of an in-house legal professional's time could be required. This creates an additional five hours of burden with an equivalent cost of $705.[11]

The overall hour burden for this ICR is approximately 3,045 hours at an equivalent cost of approximately $942,406.

Annual Cost Burden

The Department estimates that 3,480 notices to interested persons will be sent, and that 2,784 of the notices (80 percent) will distributed via first class mail with a material cost of $0.05 per page and distribution costs of $0.58 per notice. This generates an estimated cost of approximately $1,754. The Department further estimates that approximately 522 (15 percent of the total number of notices) will be distributed electronically and 174 (5 percent) will be distributed by alternative means approved by the Department, for example in highly visible area within a factory, at no cost. The Department notes that it determines whether it is appropriate to distribute

compensation are based on mean hourly wages by occupation from the 2020 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation from the 2020 National Compensation Survey's Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2017 Service Annual Survey. To estimate overhead cost on an occupational basis, the Office of Research and Analysis allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each NAICS industry. All values are presented in 2020 dollars.

[6] The 286 in-house clerical hours are estimated to cost $15,796 and the 264 in-house legal professional hours are estimated to cost $37,213. This totals to $53,009.

[7] Any discrepancies in the calculations are a result of rounding.

[8] The outside legal staff labor rate is a composite weighted average of the Laffey Matrix for Wage Rates. (($381 × 0.4) + ($468 × 0.35) + ($676 × 0.15) + ($764 × 0.1) = $494). *http://www.laffeymatrix.com/see.html.*

[9] The wage rate for the outside fiduciary and outside appraiser, which was estimated as $250 in 2014, was adjusted for inflation. The CPI in October 2014 was 237.433 (*https://www.bls.gov/news.release/archives/cpi_11202014.pdf*) and the CPI in October 2021 was 276.589 (*https://www.bls.gov/news.release/pdf/cpi.pdf*). Thus, the percent change in the CPI from October 2014 to October 2021 is estimated to be approximately 1.165 and therefore, the adjusted wage rate is $291 ($250 × 1.165).

[10] The 308 outside appraiser/expert hours are estimated to cost $89,699 and the 748 outside fiduciary hours are estimated to cost $217,840. This totals to $307,539.

[11] (5 * $140.96) = $705.

notices by means other than mailing on a case-by-case basis and only will allow a method to be used that ensures actual receipt based on the demographics of the class of interested persons.

The Departments estimates that SPEs will be requested with respect to approximately three submissions (15 percent of the 22 submissions) per year, and that the SPEs with be sent with the notices. Based on an average plan size of 696 participants per plan, this results in the distribution of approximately 2,297 SPEs, of which approximately 1,837 (80 percent) will be mailed. The material cost associated with mailing the 1,837 SPEs at $.05 per page is approximately $92. Therefore, the total cost burden for distribution of the notices and SPEs is estimated to be approximately $1,846 ($1,754 for the notices + $92 for the cost of including the SPEs).

Overall, the cost burden associated with this ICR is approximately $1,846.

The paperwork burden estimates are summarized as follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act of 1974 Section 408(a) Prohibited Transaction Provisions Exemption Application Procedure.

OMB Control Number: 1210–0060.

Affected Public: Businesses or other for-profits.

Type of Review: Revision.

Estimated Number of Respondents: 22.

Estimated Number of Annual Responses: 5,799.

Frequency of Response: Annual or as needed.

Estimated Total Annual Burden Hours: 3,045 hours.

Estimated Total Annual Burden Cost: $1,846.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless the head of an agency certifies that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact.

For purposes of the RFA, the Department continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.[12] Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, the Department believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). The Department therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

By this standard, the Department estimates that nearly half the requests for exemptions would be from small plans. Thus, of the approximately 639,751 ERISA-covered small plans, the Department estimates that 20 small plans (.0031% of small plans) file prohibited transaction exemption applications each year. The Department does not consider this to be a substantial number of small entities. Therefore, based on the foregoing, pursuant to section 605(b) of RFA, the Assistant Secretary of the Employee Benefits Security Administration hereby certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Department invites comments on this certification and the potential impact of the rule on small entities.

Congressional Review Act

The proposed rule being issued here will, when finalized, be subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the proposed rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding $100 million or more, adjusted for inflation, on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not have federalism implications, because it has no substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. ERISA section 514 provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the National Government and the States.

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Federal Employees' Retirement System Act, Exemptions, Fiduciaries, Party in interest, Pensions, Prohibited transactions, Trusts and trustees.

For the reasons set forth in the preamble, the Department proposes to amend subchapter G, part 2570 of chapter XXV of title 29 of the Code of Federal Regulations as follows:

[12] The basis for this definition is found in ERISA section 104(a)(2), which permits the Secretary to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Pursuant to the authority of ERISA section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements.

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

■ 1. The authority citation for part 2570 continues to read as follows:

Authority: 5 U.S.C. 8477; 29 U.S.C. 1002(40), 1021, 1108, 1132, and 1135; sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App at 672 (2006); Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010).

Subpart I is also issued under 29 U.S.C. 1132(c)(8).

■ 2. Revise subpart B to read as follows:

Subpart B—Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications

Sec.

Subpart B—Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications

§ 2570.30 Scope of this subpart.

(a) The rules of procedure set forth in this subpart apply to applications for prohibited transaction exemptions issued by the Department under the authority of:

(1) Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA);

(2) Section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code); or

Note 1 to paragraph (a)(2). See H.R. Rep. No. 1280, 93d Cong., 2d Sess. 310 (1974), and also section 102 of Presidential Reorganization Plan No. 4 of 1978 (3 CFR, 1978 Comp., p. 332, reprinted in 5 U.S.C. app. at 672 (2006), and in 92 Stat. 3790 (1978)), effective December 31, 1978, which generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Department.

(3) The Federal Employees' Retirement System Act of 1986 (FERSA) (5 U.S.C. 8477(c)(3)).

(b) Under the rules of procedure in this subpart, the Department may conditionally or unconditionally exempt any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by ERISA section 406 and the corresponding restrictions of the Code and FERSA. While administrative exemptions granted under the rules in this subpart are ordinarily prospective in nature, it is possible that an applicant may obtain retroactive relief for past prohibited transactions if, among other things, the Department determines that appropriate safeguards were in place at the time the transaction was consummated, and no plan participants or beneficiaries were harmed by the transaction.

(c) The rules in this subpart govern the filing and processing of applications for both individual and class exemptions that the Department may propose and grant pursuant to the authorities cited in paragraph (a) of this section. The Department may also propose and grant exemptions on its own motion, in which case the procedures relating to publication of notices, hearings, evaluation, and public inspection of the administrative record, and modification or revocation of previously granted exemptions will apply.

(d) The issuance of an administrative exemption by the Department under the procedural rules in this subpart does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from the obligation to comply with certain other provisions of ERISA, the Code, or FERSA, including any prohibited transaction provisions to which the exemption does not apply, and the general fiduciary responsibility provisions of ERISA, if applicable, which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion; nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(e) The Department will not propose or issue exemptions upon oral request alone, nor will the Department grant exemptions orally. An applicant for an administrative exemption may request and receive oral feedback from Department employees in preparing an exemption application, which will not be binding on the Department in its processing of an exemption application or in its examination or audit of a plan. Such feedback will become part of the administrative record as set forth in § 2570.32(c).

(f) The Department will generally treat any exemption application that is filed solely under ERISA section 408(a) or solely under Code section 4975(c)(2) as an exemption request filed under both ERISA section 408(a) and Code section 4975(c)(2) if it relates to a plan that is subject to both ERISA and the Code and the transaction would be prohibited both by ERISA and the corresponding provisions of the Code.

(g) The Department's issuance of an administrative exemption is at its sole discretion based on the statutory criteria set forth in ERISA section 408(a) and Code section 4975(c)(2). The existence of previously issued administrative exemptions is not determinative of whether future exemption applications with the same or similar facts will be proposed, or whether a proposed exemption will contain the same conditions as a previously issued administrative exemption.

§ 2570.31 Definitions.

For purposes of the procedures in this subpart, the following definitions apply:

(a) An *affiliate of a person* means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person. For purposes of this paragraph (a)(1), the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(2) Any officer, director, partner, employee, or relative (as defined in ERISA section 3(15)) of any such person; or

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, partner, or five percent or more owner.

(b) A *class exemption* is an administrative exemption, granted under ERISA section 408(a), Code section 4975(c)(2), and/or 5 U.S.C. 8477(c)(3), which applies to any

transaction and party in interest within the class of transactions and parties in interest specified in the exemption when the conditions of the exemption are satisfied.

(c) *Department* means the U.S. Department of Labor and includes the Secretary of Labor or his or her delegate exercising authority with respect to prohibited transaction exemptions to which this subpart applies.

(d) *Exemption transaction* means the transaction or transactions for which an exemption is requested.

(e) An *individual exemption* is an administrative exemption, granted under ERISA section 408(a), Code section 4975(c)(2), and/or 5 U.S.C. 8477(c)(3), which applies only to the specific parties in interest and transactions named or otherwise defined in the exemption.

(f) A *party in interest* means a person described in ERISA section 3(14) or 5 U.S.C. 8477(a)(4) and includes a disqualified person, as defined in Code section 4975(e)(2).

(g) *Pooled fund* means an account or fund for the collective investment of the assets of two or more unrelated plans, including (but not limited to) a pooled separate account maintained by an insurance company and a common or collective trust fund maintained by a bank or similar financial institution.

(h) A *qualified appraisal report* is any appraisal report that:

(1) Is prepared solely on behalf of the plan by a qualified independent appraiser; and

(2) Satisfies all of the requirements set forth in § 2570.34(c)(4).

(i) A *qualified independent appraiser* is any individual or entity with appropriate training, experience, and facilities to provide a qualified appraisal report on behalf of the plan regarding the particular asset or property appraised in the report, that is independent of and unrelated to:

(1) Any party involved in the exemption transaction (as defined in paragaph (l) of this section); and

(2) The qualified independent fiduciary, if one is present with respect to the exemption transaction; in general, the determination as to the independence of the appraiser is made by the Department on the basis of all relevant facts and circumstances. In making this determination, the Department will take into account the amount of the appraiser's revenues and projected revenues for the current Federal income tax year (including amounts received for preparing the appraisal report) that will be derived from parties involved in the exemption transaction relative to the appraiser's revenues from all sources for the appraiser's prior Federal income tax year and the appraiser's projected revenue for the current Federal income tax year as well as the appraiser's related business interests. An appraiser will not be treated as independent if the revenues it receives or is projected to receive, within the current Federal income tax year, from parties involved in the exemption transaction are more than two percent of such appraiser's annual revenues from all sources based upon either its prior Federal income tax year or the appraiser's projected revenues for the current Federal income tax year, unless, in its sole discretion, the Department determines otherwise.

(j) A *qualified independent fiduciary* is any individual or entity with appropriate training, experience, and facilities to act on behalf of the plan regarding the exemption transaction in accordance with the fiduciary duties and responsibilities prescribed by ERISA, that is independent of and unrelated to: Any party involved in the exemption transaction (as defined in paragraph (l) of this section) and any other party involved in the development of the exemption request. In general, the determination as to the independence of a fiduciary will be made by the Department on the basis of all relevant facts and circumstances. Among other things, the Department will consider whether the fiduciary has an interest in the subject transaction or future transactions of the same nature or type. In making this determination, the Department will also take into account, among other things, the amount of both the fiduciary's revenues and projected revenues for the current Federal income tax year (including amounts received for preparing fiduciary reports) that will be derived from parties involved in the exemption transaction relative to the fiduciary's revenues from all sources for the prior Federal income tax year or the fiduciary's projected revenues from all sources for the current Federal income tax year. A fiduciary will not be treated as independent if the revenues it receives or is projected to receive, within the current Federal income tax year, from parties (and their affiliates) involved in the exemption transaction are more than two percent of either the fiduciary's annual revenues from all sources based upon its prior Federal income tax year or the fiduciary's projected revenue for the current Federal income tax year, unless, in its sole discretion, the Department determines otherwise.

(k) A *pre-submission applicant* is a party that contacts the Department, either orally or in writing, to inquire whether a party with a particular fact pattern would need to submit an exemption application and, if so, what conditions and relief would be applicable. A party that contacts the Department to inquire broadly, without reference to a specific fact pattern, about prohibited transaction exemptions is not a pre-submission applicant.

(l) A *party involved in the exemption transaction* includes:

(1) A party in interest (as defined in paragraph (f) of this section);

(2) Any party that is engaged in the exemption transaction or an affiliate of the party that is engaged in the exemption transaction; and

(3) Any party providing services to either the plan or a party described in paragraph (1)(1) or (2) of this section with respect to the exemption transaction or its affiliates.

§ 2570.32 Persons who may apply for exemptions and the administrative record.

(a) The persons who may apply for exemptions are as follows:

(1) Any party in interest to a plan who is or may be a party to the exemption transaction;

(2) Any plan which is a party to the exemption transaction; or

(3) In the case of an application for an exemption covering a class of parties in interest or a class of transactions, in addition to any person described in paragraphs (a)(1) and (2) of this section, an association or organization representing parties in interest who may be parties to the exemption transaction.

(b) An application by or for a person described in paragraph (a) of this section may be submitted by the applicant or by an authorized representative. An application submitted by an authorized representative of the applicant must include proof of authority in the form of:

(1) A power of attorney; or

(2) A written certification from the applicant that the representative is authorized to file the application.

(c) If the authorized representative of an applicant submits an application for an exemption to the Department together with proof of authority to file the application as required by paragraph (b) of this section, the Department will direct all correspondence and inquiries concerning the application to the representative unless requested to do otherwise by the applicant.

(d)(1) The administrative record is open for public inspection, pursuant to § 2570.51(a), from the date an applicant or pre-submission applicant provides any information or documentation to the Office of Exemption Determinations.

(2) The administrative record includes, but is not limited to: Any documents submitted to, and accepted by, the Department before the initial application, whether provided in writing by the applicant or pre-submission applicant or as notes taken at a pre-submission conference; the initial exemption application and any modifications or supplements to the application; all correspondence with the applicant or pre-submission applicant, whether before or after the applicant's submission of the exemption application; and any supporting information provided by the applicant or pre-submission applicant, whether provided orally or in writing (as well as any comments and testimony received by the Department in connection with an application).

(3) If documents are required to be provided in writing, by either the applicant or the Department, the documents may be provided either by mail or electronically, unless otherwise indicated by the Department at its sole discretion.

§ 2570.33 Applications the Department will not ordinarily consider.

(a) The Department ordinarily will not consider:

(1) An application that fails to include all the information required by §§ 2570.34 and 2570.35 (or fails to include current information) or otherwise fails to conform to the requirements in this subpart; or

(2) An application involving a transaction or transactions which are the subject of an investigation for possible violations of ERISA, the Code, FERSA, or any other Federal or state law; or an application involving a party in interest who is the subject of such an investigation or who is a defendant in an action by the Department, the Internal Revenue Service, or any other regulatory entity to enforce ERISA, the Code, FERSA, or any other Federal or state laws.

(b) An application for an individual exemption relating to a specific transaction or transactions ordinarily will not be considered if the Department has under consideration a class exemption relating to the same type of transaction or transactions. Notwithstanding the foregoing, the Department may consider such an application if the issuance of the final class exemption may not be imminent, and the Department determines that time constraints necessitate consideration of the transaction on an individual basis.

(c) If a party, excluding a Federal, state, or other governmental entity, designates as confidential any information submitted in connection with its exemption request, the Department will not process the application unless and until the applicant withdraws its claim of confidentiality. By submitting an exemption application, an applicant consents to public disclosure, pursuant to § 2570.51, of the entire administrative record.

(d) The Department will not engage a pre-submission applicant or its representative, whether through written correspondence or a conference, if the pre-submission applicant does not:

(1) Identify and fully describe the exemption transaction;

(2) Identify the applicant, the applicable plan(s), and the relevant parties to the exemption transaction; and

(3) Set forth the prohibited transactions that the applicant believes are applicable.

§ 2570.34 Information to be included in every exemption application.

(a) All applications for exemptions must contain the following information:

(1) The name(s), address(es), phone number(s), and email address(es) of the applicant(s);

(2) A detailed description of the exemption transaction, including the identification of all the parties involved in the exemption transaction, a description of any larger integrated transaction of which the exemption transaction is a part, and a chronology of the events leading up to the transaction;

(3) The identity, address, phone number, and email address of any representatives for the affected plan(s) and parties in interest and what individuals or entities they represent;

(4) A description of:

(i) The reason(s) for engaging in the exemption transaction;

(ii) Any material benefit that may be received by a party involved in the exemption transaction as a result of the subject transaction (including the avoidance of any materially adverse outcome by a party as a result of engaging in the exemption transaction); and

(iii) The costs and benefits of the exemption transaction to the affected plan(s), participants, and beneficiaries, including quantification of those costs and benefits to the extent possible;

(5) A detailed description of the alternatives to the exemption transaction that did not involve a prohibited transaction and why those alternatives were not pursued;

(6) The prohibited transaction provisions from which exemptive relief is requested and the reason why the exemption transaction would violate each such provision;

(7) A description of each conflict of interest or potential instance of self-dealing that would be permitted if the exemption is granted;

(8) Whether the exemption transaction is or has been the subject of an investigation or enforcement action by the Department, the Internal Revenue Service, or any other regulatory authority; and

(9) The hardship or economic loss, if any, which would result to the person or persons on behalf of whom the exemption is sought, to affected plans, and to their participants and beneficiaries from denial of the exemption.

(10) With respect to the exemption transaction's definition of affiliate, if applicable, either a statement that the definition of affiliate set forth in § 2570.31(a) is applicable or a statement setting forth why a different affiliate definition should be applied.

(b) All applications for exemption must also contain the following:

(1) A statement explaining why the requested exemption would meet the requirements of ERISA section 408(a) by being—

(i) Administratively feasible for the Department;

(ii) In the interests of affected plans and their participants and beneficiaries; and

(iii) Protective of the rights of participants and beneficiaries of affected plans.

(2) A statement that the exemption transaction either:

(i)(A) Will be in the best interest of the plan and its participants and beneficiaries;

(B) That all compensation received, directly or indirectly, by a party involved in the exemption transaction does not exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and

(C) That all of the statements to the Department, the plan, or, if applicable, the qualified independent fiduciary or qualified independent appraiser about the exemption transaction and other relevant matters are not, at the time the statements are made, materially misleading; or

(ii) Why the exemption standards in paragrpahs (b)(2)(i)(A) through (C) of this section should not be applicable to the exemption transaction.

(iii) For purposes of this paragraph (b)(2), an exemption transaction is in the best interest of a plan if the plan fiduciary causing the plan to enter into

the transaction determines, with the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would, in the conduct of an enterprise of a like character and with like aims, enter into the exemption transaction based on the circumstances and needs of the plan. Such fiduciary shall not place the financial or other interests of itself, a party to the exemption transaction, or any affiliate ahead of the interests of the plan, or subordinate the plan's interests to any party or affiliate.

(3) With respect to the notification of interested persons required by § 2570.43:

(i) A description of the interested persons to whom the applicant intends to provide notice;

(ii) The manner in which the applicant will provide such notice; and

(iii) An estimate of the time the applicant will need to furnish notice to all interested persons following publication of a notice of the proposed exemption in the **Federal Register**.

(4) If any party to the exemption transaction has requested either an advisory opinion from the Department or any similar opinion or guidance from another Federal, state, or regulatory body with respect to any issue relating to the exemption transaction—

(i) A copy of the opinion, letter, or similar document concluding the Department's or other entity's action on the request; or

(ii) If the Department or other entity has not yet concluded its action on the request:

(A) A copy of the request or the date on which it was submitted and, solely with respect to an advisory opinion request to the Department, the Department's correspondence control number as indicated in the acknowledgment letter; and

(B) An explanation of the effect of the issuance of an advisory opinion by the Department or similar opinion or guidance from another Federal, state, or regulatory body would have upon the exemption transaction.

(5) If the application is to be signed by anyone other than the party in interest seeking exemptive relief on his or her own behalf, a statement which—

(i) Identifies the individual signing the application and his or her position or title; and

(ii) Explains briefly the basis of his or her familiarity with the matters discussed in the application.

(6)(i) A declaration in the following form:

Under penalty of perjury, I declare that I am familiar with the matters discussed in this application and, to the best of my knowledge and belief, the representations made in this application are true and correct.

(ii) This declaration must be dated and signed by:

(A) The applicant, in its individual capacity, in the case of an individual party in interest seeking exemptive relief on his or her own behalf;

(B) A corporate officer or partner where the applicant is a corporation or partnership;

(C) A designated officer or official where the applicant is an association, organization or other unincorporated enterprise; or

(D) The plan fiduciary that has the authority, responsibility, and control with respect to the exemption transaction where the applicant is a plan.

(c) Statements and documents from a qualified independent appraiser, auditor, or accountant acting solely on behalf of the plan, such as appraisal reports, analyses of market conditions, audits, or financial documents submitted to support an application for exemption must be accompanied by a statement of consent from such appraiser, auditor, or accountant acknowledging that the statement is being submitted to the Department as part of an application for exemption. Such statements by the qualified independent appraiser, auditor, or accountant must also contain the following written information:

(1) A signed and dated declaration under penalty of perjury that, to the best of the qualified independent appraiser's, auditor's, or accountant's knowledge and belief, all of the representations made in such statement are true and correct;

(2) A copy of the qualified independent appraiser's, auditor's, or accountant's engagement letter and, if applicable, contract with the plan describing the specific duties the appraiser, auditor, or accountant shall undertake. The letter or contract may not:

(i) Include any provision that provides for the direct or indirect indemnification or reimbursement of the independent appraiser, auditor, or accountant by the plan or another party for any failure to adhere to its contractual obligations or to Federal and state laws applicable to the appraiser's, auditor's, or accountant's work; or

(ii) Waive any rights, claims or remedies of the plan or its participants and beneficiaries under ERISA, the Code, or other Federal and state laws against the independent appraiser, auditor, or accountant with respect to the exemption transaction;

(3) A summary of the qualified independent appraiser's, auditor's, or accountant's qualifications to serve in such capacity;

(4) A detailed description of any relationship that the qualified independent appraiser, auditor, or accountant has had or may have with the plan or any party involved in the exemption transaction, or with any party or its affiliates involved in the development of the exemption request that may influence the appraiser, auditor, or accountant, including a description of any past engagements with the appraiser, auditor, or accountant;

(5) A written appraisal report prepared by the qualified independent appraiser, acting solely on behalf of the plan, rather than, for example, on behalf of the plan sponsor, must satisfy the following requirements:

(i) The report must describe the method(s) used in determining the fair market value of the subject asset(s) and an explanation of why such method best reflects the fair market value of the asset(s);

(ii) The report must take into account any special benefit that a party involved in the exemption transaction may derive from control of the asset(s), such as from owning an adjacent parcel of real property or gaining voting control over a company; and

(iii) The report must be current and not more than one year old from the date of the transaction, and there must be a written update by the qualified independent appraiser affirming the accuracy of the appraisal as of the date of the transaction;

(6) If the subject of the appraisal report is real property, the qualified independent appraiser shall submit a written representation that he or she is a member of a professional organization of appraisers that can sanction its members for misconduct;

(7) If the subject of the appraisal report is an asset other than real property, the qualified independent appraiser shall submit a written representation describing the appraiser's prior experience in valuing assets of the same type; and

(8) The qualified independent appraiser shall submit a written representation disclosing the percentage of its current revenue that is derived from any party involved in the exemption transaction with respect to both the prior Federal income tax year and current Federal income tax year; in general, such percentage shall be computed with respect to the two

separate disclosures by comparing, in fractional form:

(i) The amount of the appraiser's projected revenues from the current Federal income tax year (including amounts received from preparing the appraisal report) that will be derived from the parties involved in the exemption transaction (expressed as a numerator); and

(ii) The appraiser's revenues from all sources for the prior Federal income tax year (expressed as a denominator) or the appraiser's projected revenues from all sources for the current Federal income tax year (expressed as a denominator).

(d) For those exemption transactions requiring the retention of a qualified independent appraiser, the applicant must include:

(1) A statement describing the process by which the independent appraiser was selected, including the due diligence performed, the potential independent appraiser candidates reviewed, and the references contacted; and

(2) A statement that the independent appraiser has appropriate technical training and proficiency with respect to the specific details of the exemption transaction.

(e) For those exemption transactions requiring the retention of a qualified independent fiduciary to represent the interest of the plan, the applicant must include:

(1) A statement describing the process by which the independent fiduciary was selected, including the due diligence performed, the potential independent fiduciary candidates reviewed, and the references contacted; and

(2) A statement that the independent fiduciary has appropriate technical training and proficiency with respect to:

(i) ERISA and the Code; and

(ii) The specific details of the exemption transaction.

(f) For exemption transactions requiring the retention of a qualified independent fiduciary to represent the interests of the plan, a statement must be submitted by the independent fiduciary that contains the following written information:

(1) A signed and dated declaration under penalty of perjury that, to the best of the qualified independent fiduciary's knowledge and belief, all of the representations made in such statement are true and correct;

(2) A copy of the qualified independent fiduciary's engagement letter and, if applicable, contract with the plan describing the fiduciary's specific duties. The letter or contract may not:

(i) Contain any provisions that violates ERISA section 410;

(ii) Include any provision that provides for the direct or indirect indemnification or reimbursement of the independent fiduciary by the plan or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the independent fiduciary's work; or

(iii) Waive any rights, claims, or remedies of the plan under ERISA, state, or Federal law against the independent fiduciary with respect to the exemption transaction;

(3)(i) A statement that the independent fiduciary maintains fiduciary liability insurance in an amount that is sufficient to indemnify the plan for damages resulting from a breach by the independent fiduciary of either:

(A) ERISA, the Code, or any other Federal or state law; or

(B) Its contract or engagement letter.

(ii) The insurance may not contain an exclusion for actions brought by the Secretary or any other Federal, state, or regulatory body; the plan; or plan participants or beneficiaries;

(4) An explanation of the bases for the conclusion that the fiduciary is a qualified independent fiduciary, which also must include a summary of that person's qualifications to serve in such capacity, as well as a description of any prior experience by that person or other demonstrated characteristics of the fiduciary (such as special areas of expertise) that render that person or entity suitable to perform its duties on behalf of the plan with respect to the exemption transaction;

(5) A detailed description of any relationship that the qualified independent fiduciary has had or may have with a party involved in the exemption transaction;

(6) An acknowledgement by the qualified independent fiduciary that it understands its duties and responsibilities under ERISA; is acting as a fiduciary of the plan with respect to the exemption transaction; has no material conflicts of interest with respect to the exemption transaction; and is not acting as an agent or representative of the plan sponsor;

(7) The qualified independent fiduciary's opinion on whether the exemption transaction would be in the interests of the plan and its participants and beneficiaries, protective of the rights of participants and beneficiaries of the plan, and in compliance with the standards set forth in paragraphs (b)(2)(i)(A) through (C) of this section, if applicable, along with a statement of the reasons on which the opinion is based;

(8) Where the exemption transaction is continuing in nature, a declaration by the qualified independent fiduciary that it is authorized to take all appropriate actions to safeguard the interests of the plan, and will, during the pendency of the transaction:

(i) Monitor the exemption transaction on behalf of the plan and its participants and beneficiaries on a continuing basis;

(ii) Ensure that the exemption transaction remains in the interests of the plan and its participants and beneficiaries and, if not, take any appropriate actions available under the particular circumstances; and

(iii) Enforce compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction;

(9) The qualified independent fiduciary shall submit a written representation disclosing the percentage of the independent fiduciary's current revenue that is derived from any party involved in the exemption transaction with respect to both the prior Federal income tax year and current Federal income tax year; in general, such percentage shall be computed with respect to the two disclosures by comparing in fractional form:

(i) The amount of the independent fiduciary's projected revenues from the current Federal income tax year that will be derived from the parties involved in the transaction (expressed as a numerator); and

(ii) The independent fiduciary's revenues from all sources (excluding fixed, non-discretionary retirement income) for the prior Federal income tax year (expressed as a denominator) and the independent fiduciary's projected revenue from all sources (excluding fixed, non-discretionary retirement income) for the current Federal income tax year (expressed as a denominator);

(10) A statement that the independent fiduciary has no conflicts of interest with respect to the exemption transaction that could affect the exercise of its best judgment as a fiduciary;

(11) Either:

(i) A statement that, within the last five years, the independent fiduciary has not been under investigation or examination by, and has not engaged in litigation, or a continuing controversy with, the Department, the Internal Revenue Service, the Justice Department, the Pension Benefit Guaranty Corporation, the Federal Retirement Thrift Investment Board, or any other Federal or state entity involving compliance with provisions of ERISA, the Code, FERSA, or other Federal or state law; or

(ii) A statement describing the applicable investigation, examination, litigation or controversy; and

(12)(i) Either a statement that, within the last 13 years, the independent fiduciary has not been either convicted or released from imprisonment, whichever is later, as a result of:

(A) Any felony involving abuse or misuse of such person's position or employment with an employee benefit plan or a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime of which any of the foregoing crimes is an element; or any crime described in ERISA section 411; or

(B) Convicted by a foreign court of competent jurisdiction or released from imprisonment, whichever is later, as a result of any crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense described in:

(*1*) And a description of the circumstances of any such conviction; or

(*2*) A statement describing a conviction or release from imprisonment described in paragraph (f)(12)(i)(A) of this section or this paragrpah (f)(12)(i)(B).

(ii) For purposes of this paragraph (f), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal; and regardless of whether the foreign jurisdiction considers a trial court judgment final while under appeal.

(g) Statements, as applicable, from other third-party experts, including but not limited to economists or market specialists, submitted on behalf of the plan to support an exemption application must be accompanied by a statement of consent from such expert acknowledging that the statement prepared on behalf of the plan is being submitted to the Department as part of an exemption application. Such statements must also contain the following written information:

(1) A copy of the expert's engagement letter and, if applicable, contract with the plan describing the specific duties the expert will undertake;

(2) A summary of the expert's qualifications to serve in such capacity; and

(3) A detailed description of any relationship that the expert has had or may have with any party involved in the exemption transaction that may influence the actions of the expert.

(h) An application for exemption may also include a draft of the requested exemption which describes the transaction and parties in interest for which exemptive relief is sought and the specific conditions under which the exemption would apply.

§ 2570.35 Information to be included in applications for individual exemptions only.

(a) Except as provided in paragraph (c) of this section, every application for an individual exemption must include, in addition to the information specified in § 2570.34, the following information:

(1) The name, address, email address, telephone number, and type of plan or plans to which the requested exemption applies;

(2) The Employer Identification Number (EIN) and the plan number (PN) used by such plan or plans in all reporting and disclosure required by the Department (individuals should not submit Social Security numbers);

(3) Whether any plan or trust affected by the requested exemption has ever been found by the Department, the Internal Revenue Service, or by a court to have violated the exclusive benefit rule of Code section 401(a), Code section 4975(c)(1), ERISA sections 406 or 407(a), or 5 U.S.C. 8477(c)(3), including a description of the circumstances surrounding such violation;

(4) Whether any relief under ERISA section 408(a), Code section 4975(c)(2), or 5 U.S.C. 8477(c)(3) has been requested by, or provided to, the applicant or any of the parties involved in the exemption transaction and, if so, the exemption application number or the prohibited transaction exemption number;

(5) Whether the applicant or any of the parties involved in the exemption transaction are currently, or have been within the last five years, defendants in any lawsuits or criminal actions concerning their conduct as a fiduciary or party in interest with respect to any plan (other than lawsuits with respect to a routine claim for benefits), and a description of the circumstances of the lawsuits or criminal actions;

(6)(i) Whether the applicant (including any person described in § 2570.34(b)(6)(ii)) or any of the parties involved in the exemption transaction has, within the last 13 years, been either convicted or released from imprisonment, whichever is later, as a result of:

(A) Any felony involving abuse or misuse of such person's position or employment with an employee benefit plan or a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime of which any of the foregoing crimes is an element; or any crime described in ERISA section 411; or

(B) Convicted by a foreign court of competent jurisdiction or released from imprisonment, whichever is later, as a result of any crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense described in paragraph (a)(6)(i)(A) of this section and a description of the circumstances of any such conviction in paragraph (a)(6)(i)(A) of this section or this paragraph (a)(6)(i)(B).

(ii) For purposes of this paragraph (a), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal and regardless of whether the foreign jurisdiction considers a trial court judgment final while under appeal;

(7) Whether, within the last five years, any plan affected by the exemption transaction, or any party involved in the exemption transaction, has been under investigation or examination by, or has been engaged in litigation or a continuing controversy with, the Department, the Internal Revenue Service, the Justice Department, the Pension Benefit Guaranty Corporation, the Federal Retirement Thrift Investment Board, or any other regulatory body involving compliance with provisions of ERISA, the Code, FERSA, or any other Federal or state law. If so, the applicant must provide a brief statement describing the investigation, examination, litigation or controversy. The Department reserves the right to require the production of additional information or documentation concerning any of the above matters. In this regard, a denial of the exemption application will result from a failure to provide additional information requested by the Department;

(8) Whether any plan affected by the requested exemption has experienced a reportable event under ERISA section 4043, and, if so, a description of the circumstances of any such reportable event;

(9) Whether a notice of intent to terminate has been filed under ERISA section 4041 respecting any plan affected by the requested exemption, and, if so, a description of the circumstances for the issuance of such notice;

(10) Names, addresses, phone numbers, and email addresses of all parties involved in the subject transaction;

(11) The estimated number of participants and beneficiaries in each plan affected by the requested exemption as of the date of the application;

(12) The percentage of the fair market value of the total assets of each affected plan that is involved in the exemption transaction. If the exemption transaction includes the acquisition of an asset by the plan, the fair market value of the asset to be acquired must be included in both the numerator and denominator of the fraction;

(13) Whether the exemption transaction has been consummated or will be consummated only if the exemption is granted;

(14) If the exemption transaction has already been consummated:

(i) The circumstances which resulted in plan fiduciaries causing the plan(s) to engage in the transaction before obtaining an exemption from the Department;

(ii) Whether the transaction has been terminated;

(iii) Whether the transaction has been corrected as defined in Code section 4975(f)(5);

(iv) Whether Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, has been filed with the Internal Revenue Service with respect to the transaction; and

(v) Whether any excise taxes due under Code section 4975(a) and (b), or any civil penalties due under ERISA section 502(i) or (l) by reason of the transaction have been paid. If so, the applicant should submit documentation (*e.g.,* a canceled check) demonstrating that the excise taxes or civil penalties were paid;

(15) The name of every person who has authority or investment discretion over any plan assets involved in the exemption transaction and the relationship of each such person to the parties in interest involved in the exemption transaction and the affiliates of such parties in interest;

(16) Whether or not the assets of the affected plan(s) are invested, directly or indirectly, in loans to any party involved in the exemption transaction, in property leased to any party involved in the exemption transaction, or in securities issued by any party involved in the exemption transaction, and, if such investments exist, a statement for each of these three types of investments which indicates:

(i) The type of investment to which the statement pertains;

(ii) The aggregate fair market value of all investments of this type as reflected in the plan's most recent annual report;

(iii) The approximate percentage of the fair market value of the plan's total assets as shown in such annual report that is represented by all investments of this type; and

(iv) The statutory or administrative exemption covering these investments, if any;

(17) The approximate aggregate fair market value of the total assets of each affected plan;

(18) The person(s) or entity who will bear the costs of:

(i) The exemption application;

(ii) Any commissions, fees, or costs associated with the exemption transaction, and any related transaction; and

(iii) Notifying interested persons; provided, in each case, that the plan may not bear the costs of the exemption application, commissions, fees, and costs incurred to notify interested persons unless the Department determines, at its sole discretion, that a compelling circumstance exists that necessitates the payment of these expenses by the plan;

(19) Whether an independent fiduciary is or will be involved in the exemption transaction and, if so, the names of the persons who will bear the cost of the fee payable to such fiduciary; and

(20) Any prior transaction between:

(i) The plan or plan sponsor; and

(ii) A party involved in the exemption transaction.

(b) Each application for an individual exemption must also include:

(1) True copies of all contracts, deeds, agreements, and instruments, as well as relevant portions of plan documents, trust agreements, and any other documents bearing on the exemption transaction;

(2) A discussion of the facts relevant to the exemption transaction that are reflected in the documents listed in paragraph (b)(1) of this section and an analysis of their bearing on the requested exemption;

(3) A copy of the most recent financial statements of each plan affected by the requested exemption; and

(4) A net worth statement with respect to any party that is providing a personal guarantee with respect to the exemption transaction.

(c) Special rules for applications for individual exemption involving pooled funds are as follows:

(1) The information required by paragraphs (a)(8) through (12) of this section is not required to be furnished in an application for individual exemption involving one or more pooled funds.

(2) The information required by paragraphs (a)(1) through (7) and (13) through (19) of this section and by paragraphs (b)(1) through (3) of this section must be furnished in reference to the pooled fund, rather than to the plans participating therein. (For purposes of this paragraph (c)(2), the information required by paragraph (a)(16) of this section relates solely to other pooled fund transactions with, and investments in, parties in interest involved in the exemption transaction which are also sponsors of plans which invest in the pooled fund.)

(3) The following information must also be furnished—

(i) The estimated number of plans that are participating (or will participate) in the pooled fund; and

(ii) The minimum and maximum limits imposed by the pooled fund (if any) on the portion of the total assets of each plan that may be invested in the pooled fund.

(4) Additional requirements for applications for individual exemptions involving pooled funds in which certain plans participate are as follows:

(i) This paragraph (c)(4) applies to any application for an individual exemption involving one or more pooled funds in which any plan participating therein—

(A) Invests an amount which exceeds 20 percent of the total assets of the pooled fund; or

(B) Covers employees of:

(*1*) The party sponsoring or maintaining the pooled fund, or any affiliate of such party; or

(*2*) Any fiduciary with investment discretion over the pooled fund's assets, or any affiliate of such fiduciary.

(ii) The exemption application must include, with respect to each plan described in paragraph (c)(4)(i) of this section, the information required by paragraphs (a)(1) through (3), (5) through (7), (10), (12) through (16), and (18) and (19) of this section. The information required by this paragraph (c)(4)(ii) must be furnished in reference to the plan's investment in the pooled

fund (*e.g.,* the names, addresses, phone numbers, and email addresses of all fiduciaries responsible for the plan's investment in the pooled fund (paragraph (a)(10) of this section), the percentage of the assets of the plan invested in the pooled fund (paragraph (a)(12) of this section), whether the plan's investment in the pooled fund has been consummated or will be consummated only if the exemption is granted (paragraph (a)(13) of this section, etc.).

(iii) The information required by paragraph (c)(4) of this section is in addition to the information required by paragraphs (c)(2) and (3) of this section relating to information furnished by reference to the pooled fund.

(5) The special rule and the additional requirements described in paragraphs (c)(1) through (4) of this section do not apply to an individual exemption request solely for the investment by a plan in a pooled fund. Such an application must provide the information required by paragraphs (a) and (b) of this section.

(d)(1) Generally, the Department will consider exemption requests for retroactive relief only when:

(i) The safeguards necessary for the grant of a prospective exemption were in place at the time at which the parties entered into the transaction; and

(ii) The plan and its participants and beneficiaries have not been harmed by the transaction. An applicant for a retroactive exemption must demonstrate that the responsible plan fiduciaries acted in good faith by taking all appropriate steps necessary to protect the plan from abuse, loss, and risk at the time of the transaction. An applicant should further explain and describe whether the transaction could have been performed without engaging in a prohibited transaction.

(2) Among the factors that the Department will take into account in making a finding that an applicant acted in good faith include the following:

(i) The involvement of an independent fiduciary before a transaction occurs who acts on behalf of the plan and is qualified to negotiate, approve, and monitor the transaction; provided, however, the Department may consider, at its sole discretion, an independent fiduciary's appointment and retrospective review after completion of the exemption transaction due to exigent circumstances;

(ii) The existence of a contemporaneous appraisal by a qualified independent appraiser or reference to an objective third party source, such as a stock or bond index;

(iii) The existence of a bidding process or evidence of comparable fair market transactions with unrelated third parties;

(iv) That the applicant has submitted an accurate and complete exemption application that contains documentation of all necessary and relevant facts and representations upon which the applicant relied. In this regard, the Department will accord appropriate weight to facts and representations which are prepared and certified by a source independent of the applicant;

(v) That the applicant has submitted evidence that the plan fiduciary did not engage in an act or transaction with respect to which the fiduciary should have known, consistent with its ERISA fiduciary duties and responsibilities, was prohibited under ERISA section 406 and/or Code section 4975. In this regard, the Department will accord appropriate weight to the submission of a contemporaneous, reasoned legal opinion of counsel, upon which the plan fiduciary relied in good faith before engaging in the act or transaction;

(vi) That the applicant has submitted a statement of the circumstances which prompted the submission of the application for exemption and the steps taken by the applicant with regard to the transaction upon discovery of the violation;

(vii) That the applicant has submitted a statement, prepared and certified by an independent person familiar with the types of transactions for which relief is requested, demonstrating that the terms and conditions of the transaction (including, in the case of an investment, the return in fact realized by the plan) were at least as favorable to the plan as that obtainable in a similar transaction with an unrelated party; and

(viii) Such other undertakings and assurances with respect to the plan and its participants that may be offered by the applicant which are relevant to the criteria under ERISA section 408(a) and Code section 4975(c)(2).

(3) The Department, as a general matter, will not consider requests for retroactive exemptions where transactions or conduct with respect to which an exemption is requested resulted in a loss to the plan, as determined pursuant to the facts existing at the time of the exemption application. In addition, the Department will not consider requests for exemptions where the transactions are inconsistent with the general fiduciary responsibility provisions of ERISA sections 403 or 404 or the exclusive benefit requirements of Code section 401(a).

§ 2570.36 Where to file an application.

The Department's prohibited transaction exemption program is administered by the Employee Benefits Security Administration (EBSA). Any exemption application governed by this subpart may be emailed to the Department at *e-OED@dol.gov.* The applicant is not required to submit a paper copy if an electronic copy is submitted. If the applicant wants to submit a paper copy of the application, it may be mailed via first-class mail to: Employee Benefits Security Administration, Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue NW, Suite 400 Washington, DC 20210 or via private carrier service to Employee Benefit Security Administration, U.S. Department of Labor, Office of Exemption Determinations, 122 C Street NW, Suite 400, Washington, DC 20001–2109. The mail or private carrier service addresses, however, may be subject to change, and the applicant should confirm the address with the Office of Exemption Determinations before submitting a paper copy of an application.

§ 2570.37 Duty to amend and supplement exemption applications.

(a) During the Department's consideration of an exemption request, and following any grant by the Department of an exemption request, an applicant must promptly notify the Department in writing if he or she discovers that any material fact or representation contained in the application or in any documents or testimony provided in support of the application was inaccurate at the time it was provided in support of the application. If any material fact or representation changes during this period, or if anything occurs that may affect the continuing accuracy of any such fact or representation, the applicant must promptly notify the Department in writing of the change. In addition, an applicant must promptly notify the Department in writing if it learns that a material fact or representation has been omitted from the exemption application.

(b) If, at any time during the pendency of an exemption application, the applicant or any other party who would participate in the exemption transaction becomes the subject of an investigation or enforcement action by the Department, the Internal Revenue Service, the Justice Department, the Pension Benefit Guaranty Corporation, the Federal Retirement Thrift Investment Board, or any other Federal or state governmental entity involving

compliance with provisions of ERISA, provisions of the Code relating to employee benefit plans, or provisions of FERSA relating to the Federal Thrift Savings Fund, the applicant must promptly notify the Department.

(c) The Department may require an applicant to provide any documentation it considers necessary to verify any statements contained in the application or in supporting materials or documents.

§ 2570.38 Tentative denial letters.

(a) If, after reviewing an exemption file, the Department tentatively concludes that it will not propose or grant the exemption, it will notify the applicant in writing, except as provided in paragraph (b) of this section. At the same time, the Department will provide a brief statement of the reasons for its tentative denial.

Note 1 to paragraph (a). As referenced in § 2570.33(a)(1), the Department will not hold a conference with, or issue a tentative denial letter to, an applicant who does not submit a complete application, or an applicant who does not provide current information.

(b) An applicant will have 20 days from the date of a tentative denial letter, unless the time period is extended by the Department at its sole discretion, to request a conference under § 2570.40 and/or to notify the Department of its intent to submit additional information under § 2570.39. If the Department does not receive a request for a conference or a notification of intent to submit additional information within that time, it will issue a final denial letter pursuant to § 2570.41.

§ 2570.39 Opportunities to submit additional information.

(a) An applicant may notify the Department of its intent to submit additional information supporting an exemption application by telephone, by letter sent to the address furnished in the applicant's tentative denial letter, or electronically to the email address provided in the applicant's tentative denial letter. At the same time, the applicant should indicate generally the type of information that will be submitted.

(b) The additional information an applicant intends to provide in support of the application must be in writing and be received by the Department within 40 days from the date the Department issues the tentative denial letter unless the time period is extended by the Department at its sole discretion. All such information must be accompanied by a declaration under penalty of perjury attesting to the truth and correctness of the information provided, which is dated and signed by a person qualified under § 2570.34(b)(6) to sign such a declaration. The information may be submitted either electronically or by mail.

(c) If, for reasons beyond its control, an applicant is unable to submit all the additional information he or she intends to provide in support of his or her application within the period described in paragraph (b) of this section, he or she may request an extension of time to furnish the information. Such requests must be made before the expiration of the time period described in paragraph (b), and the request will be granted, in the Department's sole discretion, only in unusual circumstances and for a limited period as determined by the Department. The request may be made by telephone, mail, or electronically.

(d) The Department will issue, without further notice, either by mail or electronically, a final denial letter denying the requested exemption pursuant to § 2570.41 where—

(1) The Department has not received the additional information that the applicant stated his or her intention to submit within the period described in paragraph (b) of this section, or within any additional period granted pursuant to paragraph (c) of this section; and

(2) The applicant did not request a conference pursuant to § 2570.38(b).

§ 2570.40 Conferences.

(a) Any conference between the Department and an applicant pertaining to a requested exemption will be held in Washington, DC, except that a telephone or electronic conference will be held at the applicant's request.

(b) An applicant is entitled to only one conference with respect to any exemption application. The Department may hold additional conferences at its sole discretion if it determines additional conference(s) are appropriate. An applicant will not be entitled to a conference, however, where the Department has held a hearing on the exemption under either § 2570.46 or § 2570.47.

(c) Insofar as possible, conferences will be scheduled as joint conferences with all applicants present where:

(1) More than one applicant has requested an exemption with respect to the same or similar types of transactions;

(2) The Department is considering the applications together as a request for a class exemption;

(3) The Department contemplates not granting the exemption; and

(4) More than one applicant has requested a conference.

(d) In instances where the applicant has requested a conference pursuant to § 2570.38(b) and also has submitted additional information pursuant to § 2570.39, the Department will schedule a conference under this section for a date and time that occurs within 20 days after the date on which the Department has provided either oral or written notification to the applicant that, after reviewing the additional information, it is still not prepared to propose the requested exemption or a later date at the sole discretion of the Department. If, for reasons beyond its control, the applicant cannot attend a conference within the time limit described in this paragraph (d), the applicant may request an extension of time for the scheduling of a conference, provided that such request is made before the expiration of the time limit. The Department, at its sole discretion, will only grant such an extension in unusual circumstances and for a brief period.

(e) In instances where the applicant has requested a conference pursuant to § 2570.38(b) but has not expressed an intent to submit additional information in support of the exemption application as provided in § 2570.39, the Department will schedule a conference under this section for a date and time that occurs within 40 days after the date of the issuance of the tentative denial letter described in § 2570.38(a) or a later date at the sole discretion of the Department. If, for reasons beyond its control, the applicant cannot attend a conference within the time limit described in this paragraph (e), the applicant may request an extension of time for the scheduling of a conference, provided that such request is made before the expiration of the time limit. The Department, at its sole discretion, will only grant such an extension in unusual circumstances and for a brief period.

(f) In instances where the applicant has requested a conference pursuant to § 2570.38(b), has notified the Department of its intent to submit additional information pursuant to § 2570.39, and has failed to furnish such information within 40 days from the date of the tentative denial letter, the Department will schedule a conference under this section for a date and time that occurs within 60 days after the date of the issuance of the tentative denial letter described in § 2570.38(a) or a later date as determined at the sole discretion of the Department. If, for reasons beyond its control, the applicant cannot attend a conference within the time limit described in this paragraph (f), the applicant may request an extension of

time for the scheduling of a conference, provided that such request is made before the expiration of the time limit. The Department, at its sole discretion, will only grant such an extension in unusual circumstances and for a brief period.

(g) If the applicant fails to either timely schedule or appear for a conference agreed to by the Department pursuant to this section, the applicant will be deemed to have waived its right to a conference.

(h) Within 20 days after the date of any conference held under this section or a later date at the sole discretion of the Department, the applicant may submit to the Department (electronically or in paper form) any additional written data, arguments, or precedents discussed at the conference but not previously or adequately presented in writing. If, for reasons beyond its control, the applicant is unable to submit the additional information within this time limit, the applicant may request an extension of time to furnish the information, provided that such request is made before the expiration of the time limit described in this paragraph (h). The Department, at its sole discretion, will only grant such an extension in unusual circumstances and for a brief period.

(i) The Department, at its sole discretion, may hold a conference with any party, including the qualified independent fiduciary or the qualified independent appraiser, regarding any matter related to an exemption request without the presence of the applicant or other parties to the exemption transaction, or their representatives. Any such conferences may occur in addition to the conference with the applicant described in paragraph (b) of this section.

§ 2570.41 Final denial letters.

The Department will issue a final denial letter denying a requested exemption, either by mail or electronically, where:

(a) Prior to issuing a tentative denial letter under § 2570.38 or conducting a hearing on the exemption under either § 2570.46 or § 2570.47, the Department determines, at its sole discretion, that:

(1) The applicant has failed to submit information requested by the Department in a timely manner;

(2) The information provided by the applicant does not meet the requirements of §§ 2570.34 and 2570.35; or

(3) If a conference has been held between the Department and the applicant prior to the issuance of a tentative denial letter during which the Department and the applicant addressed the reasons for denial that otherwise would have been set forth in a tentative denial letter pursuant to § 2570.38;

(b) The conditions for issuing a final denial letter specified in § 2570.38(b) or § 2570.39(d) are satisfied;

(c) After issuing a tentative denial letter under § 2570.38 and considering the entire record in the case, including all written information submitted pursuant to §§ 2570.39 and 2570.40, the Department decides not to propose an exemption or to withdraw an exemption already proposed;

(d) After proposing an exemption and conducting a hearing on the exemption under either § 2570.46 or § 2570.47 and after considering the entire record in the case, including the record of the hearing and any public comments, the Department decides to withdraw the proposed exemption; or

(e) The applicant either:

(1) Asks to withdraw the exemption application; or

(2) Communicates to the Department that it is not interested in continuing the application process.

§ 2570.42 Notice of proposed exemption.

If the Department tentatively decides that an administrative exemption is warranted, it will publish a notice of a proposed exemption in the **Federal Register**. In addition to providing notice of the pendency of the exemption before the Department, the notice will:

(a) Explain the exemption transaction and summarize the information and reasons in support of proposing the exemption;

(b) Describe the scope of relief and any conditions of the proposed exemption;

(c) Inform interested persons of their right to submit comments to the Department (either electronically or in writing) relating to the proposed exemption and establish a deadline for receipt of such comments; and

(d) Where the proposed exemption includes relief from the prohibitions of ERISA section 406(b), Code section 4975(c)(1)(E) or (F), or FERSA section 8477(c)(2), inform interested persons of their right to request a hearing under § 2570.46 and establish a deadline for receipt of requests for such hearings.

§ 2570.43 Notification of interested persons by applicant.

(a) If a notice of proposed exemption is published in the **Federal Register** in accordance with § 2570.42, the applicant must notify interested persons of the pendency of the exemption in the manner and within the time period specified in the application. If the Department determines that this notification would be inadequate, the applicant must obtain the Department's consent as to the manner and time period of providing the notice to interested persons. Any such notification must include:

(1) A copy of the notice of proposed exemption as published in the **Federal Register***;* and

(2) A supplemental statement in the following form:

You are hereby notified that the United States Department of Labor is considering granting an exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, or the Federal Employees' Retirement System Act of 1986. The exemption under consideration is summarized in the enclosed [Summary of Proposed Exemption, and described in greater detail in the accompanying] [1] Notice of Proposed Exemption. As a person who may be affected by this exemption, you have the right to comment on the proposed exemption by [date].[2] [If you may be materially affected by the grant of the exemption, you also have the right to request a hearing on the exemption by [date].] [3]

All comments and/or requests for a hearing should be addressed to the Office of Exemption Determinations, Employee Benefits Security Administration, Room ____,[4] U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, ATTENTION: Application No. ____.[5] Comments and hearing requests may also be transmitted to the Department electronically at *e-OED@dol.gov* or at *https://www.regulations.gov* (follow instructions for submission), and should prominently reference the application number listed above. Individuals submitting comments or requests for a hearing on this matter are advised not to disclose sensitive personal data, such as social security numbers or information that they consider confidential or otherwise protected.

The Department will make no final decision on the proposed exemption until it reviews the comments received in response to the enclosed notice. If the Department decides to hold a hearing on the exemption request before making its final decision, you

[1] To be added in instances where the Department requires the applicant to furnish a Summary of Proposed Exemption to interested persons as described in paragrpah (d) of this section.

[2] The applicant will write in this space the date of the last day of the time period specified in the notice of proposed exemption.

[3] To be added in the case of an exemption that provides relief from section 406(b) of ERISA or corresponding sections of the Code or FERSA.

[4] The applicant will fill in the room number of the Office of Exemptions Determinations. As of [date of publication of the final regulation], the room number of the Office of Exemption Determinations is N–5700.

[5] The applicant will fill in the exemption application number, which is stated in the notice of proposed exemption, as well as in all correspondence from the Department to the applicant regarding the application.

will be notified of the time and place of the hearing.

(b) The method used by an applicant to furnish notice to interested persons must be reasonably calculated to ensure that interested persons actually receive the notice. In all cases, personal delivery and delivery by first-class mail will be considered reasonable methods of furnishing notice. If the applicant elects to furnish notice electronically, he or she must provide satisfactory proof that the entire class of interested persons will be able to receive the notice.

(c) After furnishing the notification described in paragraph (a) of this section, an applicant must provide the Department with a written statement confirming that notice was furnished in accordance with the requirements in paragraph (b) of this section. This statement must be accompanied by a declaration under penalty of perjury attesting to the truth of the information provided in the statement and signed by a person qualified under § 2570.34(b)(6) to sign such a declaration. No exemption will be granted until such a statement and its accompanying declaration have been furnished to the Department.

(d) In addition to the provision of notification required by paragraph (a) of this section, the Department, in its discretion, may also require an applicant to furnish interested persons with a brief summary of the proposed exemption (Summary of Proposed Exemption), written in a manner calculated to be understood by the average recipient, which objectively describes:

(1) The exemption transaction and the parties in interest thereto;

(2) Why such transaction would violate the prohibited transaction provisions of ERISA, the Code, and/or FERSA from which relief is sought;

(3) The reasons why the plan seeks to engage in the transaction; and

(4) The conditions and safeguards proposed to protect the plan and its participants and beneficiaries from potential abuse or unnecessary risk of loss in the event the Department grants the exemption.

(e) Applicants who are required to provide interested persons with the Summary of Proposed Exemption described in paragraph (d) of this section shall furnish the Department with a copy of such summary for review and approval prior to its distribution to interested persons. Such applicants shall also provide confirmation to the Department that the Summary of Proposed Exemption was furnished to interested persons as part of the written statement and declaration required of exemption applicants by paragraph (c) of this section.

§ 2570.44 Withdrawal of exemption applications.

(a) An applicant may withdraw an application for an exemption at any time by oral or written (including electronic) notice to the Department. A withdrawn application generally shall not prejudice any subsequent applications for an exemption submitted by an applicant.

(b) Upon receiving an applicant's notice of withdrawal regarding an application for an individual exemption, the Department will issue a final denial letter in accordance with § 2570.41(e) and will terminate all proceedings relating to the application. If a notice of proposed exemption has been published in the **Federal Register**, the Department will publish a notice withdrawing the proposed exemption.

(c) Upon receiving an applicant's notice of withdrawal regarding an application for a class exemption or for an individual exemption that is being considered with other applications as a request for a class exemption, the Department will inform any other applicants for the exemption of the withdrawal. The Department will continue to process other applications for the same exemption. If all applicants for a particular class exemption withdraw their applications, the Department may either terminate all proceedings relating to the exemption or propose the exemption on its own motion.

(d) If, following the withdrawal of an exemption application, an applicant decides to reapply for the same exemption, he or she may contact the Department in writing (including electronically) to request that the application be reinstated. The applicant should refer to the application number assigned to the original application. If, at the time the original application was withdrawn, any additional information to be submitted to the Department under § 2570.39 was outstanding, that information must accompany the request for reinstatement of the application. The applicant must also update all previously furnished information to the Department in connection with a withdrawn application.

(e) Any request for reinstatement of a withdrawn application submitted, in accordance with paragraph (d) of this section, will be granted by the Department, and the Department will take whatever steps remained at the time the application was withdrawn to process the application.

(f) Following the withdrawal of an exemption application, the administrative record will remain subject to public inspection and copy pursuant to § 2570.51.

§ 2570.45 Requests for reconsideration.

(a) The Department will entertain one request for reconsideration of an exemption application that has been finally denied pursuant to § 2570.41 if the applicant presents in support of the application significant new facts or arguments, which, for good reason, could not have been submitted for the Department's consideration during its initial review of the exemption application.

(b) A request for reconsideration of a previously denied application must be made within 180 days after the issuance of the final denial letter and must be accompanied by a copy of the Department's final letter denying the exemption and a statement setting forth the new information and/or arguments that provide the basis for reconsideration.

(c) A request for reconsideration must also be accompanied by a declaration under penalty of perjury attesting to the truth of the new information provided, which is signed by a person qualified under § 2570.34(b)(6) to sign such a declaration.

(d) If, after reviewing a request for reconsideration, the Department decides that the facts and arguments presented do not warrant reversal of its original decision to deny the exemption, it will send a letter to the applicant reaffirming that decision.

(e) If, after reviewing a request for reconsideration, the Department decides, based on the new facts and arguments submitted, to reconsider its final denial letter, it will notify the applicant of its intent to reconsider the application in light of the new information presented. The Department will then take whatever steps remained at the time it issued its final denial letter to process the exemption application.

(f) If, at any point during its subsequent processing of the application, the Department decides again that the exemption is unwarranted, it will issue a letter affirming its final denial.

(g) A request for reinstatement of an exemption application pursuant to § 2570.44(d) is not a request for reconsideration governed by this section.

§ 2570.46 Hearings in opposition to exemptions from restrictions on fiduciary self-dealing and conflicts of interest.

(a) Any person who may be materially affected by an exemption which the Department proposes to grant from the restrictions of ERISA section 406(b), Code section 4975(c)(1)(E) or (F), or FERSA section 8477(c)(2) may request a hearing before the Department within the period of time specified in the **Federal Register** notice of the proposed exemption. Any such request must state:

(1) The name, address, telephone number, and email address of the person making the request;

(2) The nature of the person's interest in the exemption and the manner in which the person would be materially affected by the exemption; and

(3) A statement of the issues to be addressed and a general description of the evidence to be presented at the hearing.

(b) The Department will grant a request for a hearing made in accordance with paragraph (a) of this section where a hearing is necessary to fully explore material factual issues with respect to the proposed exemption identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing where:

(1) The request for the hearing is not timely, or otherwise fails to include the information required by paragraph (a) of this section;

(2) The only issues identified for exploration at the hearing are matters of law; or

(3) The factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

(c) An applicant for an exemption must notify interested persons in the event that the Department schedules a hearing on the exemption. Such notification must be given in the form, time, and manner prescribed by the Department. Ordinarily, however, adequate notification can be given by providing to interested persons a copy of the notice of hearing published by the Department in the **Federal Register** within 10 days of its publication, using any of the methods approved in § 2570.43(b).

(d) After furnishing the notice required by paragraph (c) of this section, an applicant must submit a statement confirming that notice was given in the form, manner, and time prescribed. This statement must be accompanied by a declaration under penalty of perjury attesting to the truth of the information provided in the statement, which is signed by a person qualified under § 2570.34(b)(6) to sign such a declaration.

§ 2570.47 Other hearings.

(a) In its discretion, the Department may schedule a hearing on its own motion where it determines that issues relevant to the exemption can be most fully or expeditiously explored at a hearing. A notice of such hearing shall be published by the Department in the **Federal Register**.

(b) An applicant for an exemption must notify interested persons of any hearing on an exemption scheduled by the Department in the manner described in § 2570.46(c). In addition, the applicant must submit a statement subscribed as true under penalty of perjury like that required in § 2570.46(d).

§ 2570.48 Decision to grant exemptions.

(a) The Department may not grant an exemption under ERISA section 408(a), Code section 4975(c)(2), or 5 U.S.C. 8477(c)(3)(C) unless, following evaluation of the facts and representations comprising the administrative record of the proposed exemption (including any comments received in response to a notice of proposed exemption and the record of any hearing held in connection with the proposed exemption), it finds that the exemption meets the statutory requirements by being:

(1) Administratively feasible for the Department;

(2) In the interests of the plan (or the Thrift Savings Fund in the case of FERSA) and of its participants and beneficiaries; and

(3) Protective of the rights of participants and beneficiaries of such plan (or the Thrift Savings Fund in the case of FERSA).

(b) In each instance where the Department determines to grant an exemption, it shall publish a notice in the **Federal Register** which summarizes the transaction or transactions for which exemptive relief has been granted and specifies the conditions under which such exemptive relief is available.

§ 2570.49 Limits on the effect of exemptions.

(a) An exemption does not take effect with respect to the exemption transaction unless the material facts and representations contained in the application and in any materials and documents submitted in support of the application were true and complete.

(b) An exemption is effective only for the period of time specified and only under the conditions set forth in the exemption.

(c) Only the specific parties to whom an exemption grants relief may rely on the exemption. If the notice granting an exemption does not limit exemptive relief to specific parties, all parties to the exemption transaction may rely on the exemption.

(d) For transactions that are continuing in nature, an exemption ceases to be effective if, during the continuation of the transaction, there are material changes to the original facts and representations underlying such exemption or if one or more of the exemption's conditions cease to be met.

(e) The determination as to whether, under the totality of the facts and circumstances, a particular statement contained in (or omitted from) an exemption application constitutes a material fact or representation is made by the Department in its sole discretion.

§ 2570.50 Revocation or modification of exemptions.

(a) If, after an exemption takes effect, material changes in facts, circumstances, or representations occur, including whether a qualified independent fiduciary resigns, is terminated, or is convicted of a crime, the Department, at its sole discretion, may take steps to revoke or modify the exemption. In the event that the qualified independent fiduciary resigns, is terminated, or is convicted of a crime, the applicant must notify the Department within 30 days of the resignation, termination, or conviction, and the Department reserves the right to request that the applicant provide the Department with any of the information required pursuant to § 2570.34(e) and (f) pursuant to a time determined by the Department at its sole discretion.

(b) Before revoking or modifying an exemption, the Department will publish a notice of its proposed action in the **Federal Register** and provide interested persons with an opportunity to comment on the proposed revocation or modification. Prior to the publication of such notice, the applicant will be notified of the Department's proposed action and the reasons therefore. Subsequent to the publication of the notice, the applicant will have the opportunity to comment on the proposed revocation or modification.

(c) The revocation or modification of an exemption will have prospective effect only.

§ 2570.51 Public inspection and copies.

(a) From the date the administrative record of each exemption is established pursuant to § 2570.32(d), the administrative record of each exemption will be open to public inspection and

copying at the EBSA Public Disclosure Room, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

(b) Upon request, the staff of the Public Disclosure Room will furnish photocopies of an administrative record, or any specified portion of that record, for a specified charge per page; or, at the discretion of the staff, provide the administrative record electronically for a specified charge.

§ 2570.52 Effective date.

This subpart is effective with respect to all exemptions filed with or initiated by the Department under ERISA section 408(a), Code section 4975(c)(2), and/or 5 U.S.C. 8477(c)(3) at any time on or after [date 90 days after date of publication of the final rule]. Applications for exemptions under ERISA section 408(a), Code section 4975(c)(2), and/or 5 U.S.C. 8477(c)(3) filed on or after December 27, 2011, but before [date 90 days after date of publication of the final rule], are governed by 29 CFR part 2570 (revised effective December 27, 2011).

Signed at Washington, DC, this 3rd day of March, 2022.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–04963 Filed 3–14–22; 8:45 am]

BILLING CODE 4510–29–P

FEDERAL REGISTER

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No. 50 March 15, 2022

Part V

The President

Memorandum of February 25, 2022—Delegation of Authority Under Section 506(a)(1) and Section 614(a)(1) of the Foreign Assistance Act of 1961

Federal Register
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Presidential Documents

Title 3—

The President

Memorandum of February 25, 2022

Delegation of Authority Under Section 506(a)(1) and Section 614(a)(1) of the Foreign Assistance Act of 1961

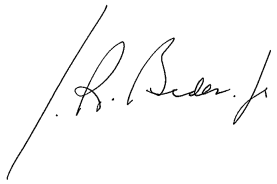
Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State the following authorities, subject to fulfilling the requirements of section 614(a)(3) and section 652 of the Foreign Assistance Act of 1961 (FAA), in order to provide immediate military assistance to Ukraine:

(1) the authority under section 614(a)(1) of the FAA to determine whether it is important to the security interests of the United States to furnish up to $250 million in assistance without regard to any provision of law within the purview of section 614(a)(1) of the FAA; and

(2) the authority under section 506(a)(1) of the FAA to direct the drawdown of up to an aggregate value of $350 million in defense articles and services of the Department of Defense, and military education and training, and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, February 25, 2022

[FR Doc. 2022–05615
Filed 3–14–22; 11:15 am]
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H.J. Res. 75/P.L. 117–95
Extension of Continuing Appropriations Act, 2022 (Mar. 11, 2022; 136 Stat. 33)

H.R. 2545/P.L. 117–96
To amend title 38, United States Code, to clarify the role of doctors of podiatric medicine in the Department of Veterans Affairs, and for other purposes. (Mar. 14, 2022; 136 Stat. 34)

S. 321/P.L. 117–97
'Six Triple Eight' Congressional Gold Medal Act of 2021 (Mar. 14, 2022; 136 Stat. 36)

Last List March 14, 2022

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