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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0884; Project Identifier AD–2022–00749–T; Amendment 39–22129; AD 2022–15–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–23–06, which applied to certain The Boeing Company Model 757–200, –200CB, and –300 series airplanes. AD 2019–23–06 required, depending on configuration, a general visual inspection for any previous repair, such as any reinforcing repair or local frame replacement repair, repetitive open hole high frequency eddy current (HFEC) inspections for any crack of the fuselage frame web fastener holes, on the left and right side of the airplane, and applicable on-condition actions. This AD was prompted by a determination that certain compliance times must be reduced. This AD requires the actions specified in AD 2019–23–06 with reduced compliances times for certain actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 17, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 17, 2022.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of January 13, 2020 (84 FR 67179, December 9, 2019).

The FAA must receive comments on this AD by September 16, 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 Boeing service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

For Aviation Partners Boeing service information identified in this final rule, contact Aviation Partners Boeing, 2811 South 102nd St., Suite 200, Seattle, WA 98168; phone: 206–830–7699; fax: 206–767–0535; email: *leng@aviationpartners.com;* internet: *https://www.aviationpartnersboeing.com.*x

You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0884.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0884; 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, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Peter Jarzomb, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5234; email: *peter.jarzomb@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued AD 2019–23–06, Amendment 39–19800 (84 FR 67179, December 9, 2019) (AD 2019–23–06), for certain The Boeing Company Model 757–200, –200CB, and –300 series airplanes. AD 2019–23–06 required, depending on configuration, a general visual inspection for any previous repair, such as any reinforcing repair or local frame replacement repair, repetitive open HFEC inspections for any crack of the fuselage frame web fastener holes, on the left and right side of the airplane, and applicable on-condition actions. AD 2019–23–06 was prompted by reports of cracks initiating in the fuselage frame web at body station (STA) 1640. The FAA issued AD 2019–23–06 to address cracks initiating in the fuselage frame web at STA 1640, which, if not detected and corrected, could result in reduced structural integrity of the airplane.

Actions Since AD 2019–23–06 Was Issued

Since the FAA issued AD 2019–23–06, severed fuselage frames were detected on three Model 757–200 airplanes before the 5,600 flight cycles compliance time allowed in AD 2019–23–06 for airplanes that have accomplished certain inspections. These incidents were detected on airplanes that had accumulated between 2,579 flight cycles and 3,311 flight cycles since accomplishing those inspections with no crack findings. Boeing investigated the compliance times for the other affected airplane models and determined that the inspection interval for Model 757–200 airplanes converted to a special freighter (SF) configurations is also inadequate to detect cracks before they reach a critical length. Based on these findings, it was determined that certain compliance times must be revised to address the unsafe condition.

For airplanes on which Aviation Partners Boeing (APB) blended or scimitar blended winglets are installed in accordance with Supplemental Type Certificate (STC) ST01518SE, APB and Boeing determined that the compliance times must also be reduced for the open HFEC inspection of the STA 1640 fuselage frame web fastener holes common to the S–14L and S–14R intercostal tee clip. In addition, it was determined that airplanes that have

been converted from a passenger to freighter configuration using VT Mobile Aerospace Engineering (MAE) Inc. STC ST03562AT must use the reduced compliance times because the configuration is identical to airplanes converted to The Boeing Company Model 757–200 special freighter airplanes using Boeing STC ST00916WI–D.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022. This service information specifies procedures for, depending on configuration, a general visual inspection for any previous repair, such as any reinforcing repair or local frame replacement repair, repetitive open hole HFEC inspections for any crack of the fuselage frame web fastener holes, on the left and right side of the airplane, and applicable on-condition actions. On-condition actions include installation of fasteners, oversizing of fastener holes, and repair. These documents are distinct since they apply to different airplane models in different configurations.

This AD also requires Aviation Partners Boeing Alert Service Bulletin AP757–53–002, Revision 3 dated August 14, 2019; and Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018; which the Director of the Federal Register approved for incorporation by reference as of January 13, 2020 (84 FR 67179, December 9, 2019).

This service information 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.

AD Requirements

Although this AD does not explicitly restate the requirements of AD 2019–23–06, this AD retains all of the requirements of AD 2019–23–06. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this AD. This AD reduces certain compliance times for certain actions. This AD requires accomplishment of the actions identified in the service information described previously, except for any differences identified as exceptions in the regulatory text of this AD.

For information on the procedures and compliance times, see Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022, at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0884.

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 forgoing notice and comment prior to adoption of this rule because the FAA received reports of severed fuselage frames at STA 1640 detected on airplanes prior to the 5,600 flight cycles compliance time allowed in AD 2019–23–06 for airplanes that have accomplished certain inspections. Cracks initiating in the fuselage frame web at STA 1640, if not detected and corrected, could result in reduced structural integrity of the airplane and loss of controllability of the airplane. Furthermore, failure of the No. 4 passenger door surround structure (frame) at STA 1640 due to cracks could lead to explosive decompression. 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 forgo 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–2022–0884 and Project Identifier AD–2022–00749–T'' 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 Peter Jarzomb, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5234; email: *peter.jarzomb@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 notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 419 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
General Visual Inspection (retained actions from AD 2019–23–06).	1 work-hours × $85 per hour = $85	$0	$85	$35,615.
Open Hole HFEC Inspection (retained actions from AD 2019–23–06).	35 work-hours × $85 per hour = $2,975 per inspection cycle.	0	$2,975 per inspection cycle.	$1,246,525 per inspection cycle.

The FAA estimates the following costs to do any necessary installation of fasteners and oversizing of fastener holes that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need these installations:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation of fasteners and oversizing of fastener holes	1 work-hour × $85 per hour = $85	$0	$85

The FAA has received no definitive data on which to base the cost estimates for the repairs specified in this AD.

The reduced compliance times specified in this AD add no additional economic burden.

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 above, 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:

■ a. Removing Airworthiness Directive (AD) 2019–23–06, Amendment 39–19800 (84 FR 67179, December 9, 2019); and

■ b. Adding the following new AD:

2022–15–09 The Boeing Company: Amendment 39–22129; Docket No. FAA–2022–0884; Project Identifier AD–2022–00749–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 17, 2022.

(b) Affected ADs

This AD replaces AD 2019–23–06, Amendment 39–19800 (84 FR 67179, December 9, 2019) (AD 2019–23–06).

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 53 Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks initiating in the fuselage frame web at body station (STA) 1640 and a determination that certain compliance times must be reduced due to severed fuselage frames reported at earlier flight cycles. The FAA is issuing this AD to address cracks initiating in the fuselage frame web at STA 1640, which, if not detected and corrected, could result in reduced structural integrity of the airplane and loss of controllability of the airplane. Furthermore, failure of the No. 4 passenger door surround structure (frame) at STA 1640 due to cracks could lead to explosive decompression.

(f) Compliance

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

(g) Required Actions

(1) For all airplanes except those identified in paragraphs (g)(2) through (4) of this AD: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–53A0112, Revision 1, dated June 17, 2022, which is referred to in Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022.

(2) Except as specified by paragraph (h) of this AD: For airplanes on which Aviation Partners Boeing blended or scimitar blended winglets are installed in accordance with Supplemental Type Certificate (STC) ST01518SE, at the applicable times specified

in paragraph 1.E., ''Compliance'' of Aviation Partners Boeing Alert Service Bulletin AP757–53–002, Revision 3, dated August 14, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018.

(3) Except as specified by paragraph (h) of this AD: For Group 1 airplanes that have been converted from a passenger to freighter configuration using VT Mobile Aerospace Engineering (MAE) Inc. STC ST03562AT, at the applicable times specified for Group 2 airplanes in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022, do all applicable Group 2 actions, as identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022.

(4) Except as specified by paragraph (h) of this AD: For Group 4 airplanes that have been converted from a passenger to freighter configuration using VT MAE Inc. STC ST03562AT, at the applicable times specified for Group 5 airplanes in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022, do all applicable Group 5 actions as identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Condition and Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022, use the phrase ''the original issue date of Requirements Bulletin 757–53A0112 RB,'' this AD requires using ''January 13, 2020 (the effective date of AD 2019–23–06).''

(2) Where the Condition and Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022, use the phrase ''the Revision 1 date of Requirements Bulletin 757–53A0112 RB,'' this AD requires using ''the effective date of this AD.''

(3) Where Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(4) Where the Condition and Compliance Time columns of the tables in the ''Compliance'' paragraph of Aviation Partners Boeing Alert Service Bulletin AP757–53–002, Revision 3, dated August 14, 2019, use the phrase ''the original issue date of this service bulletin,'' this AD requires using ''January 13, 2020 (the effective date of AD 2019–23–06).''

(5) Where Aviation Partners Boeing Alert Service Bulletin AP757–53–002, Revision 3, dated August 14, 2019, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(6) For Group 1 airplanes, as identified in Aviation Partners Boeing Alert Service Bulletin AP757–53–002, Revision 3, dated August 14, 2019, with less than 34,500 total flight cycles as of the effective date of this AD that have accomplished any eddy current inspection specified in Revision 1 or Revision 2 of Aviation Partners Boeing Alert Service Bulletin AP757–53–001 with no cracking found and have not accomplished any inspection specified in Revision 2 or Revision 3 of Aviation Partners Boeing Alert Service Bulletin AP757–53–002: The compliance time for the initial open hole high frequency eddy current (HFEC) inspection of the STA 1640 fuselage frame web fastener holes common to the S–14L and S–14R intercostal tee clip for any crack is at the applicable time specified in paragraph (h)(6)(i) or (ii) of this AD, whichever occurs later.

(i) Within 1,200 flight cycles after the most recent inspection was done in accordance with Revision 1 or Revision 2 of Aviation Partners Boeing Alert Service Bulletin AP757–53–001.

(ii) Within 500 flight cycles after the effective date of this AD not to exceed 5,600 flight cycles after the most recent inspection was done in accordance with Revision 1 or Revision 2 of Aviation Partners Boeing Alert Service Bulletin AP757–53–001.

(7) For Group 1 airplanes, as identified in Aviation Partners Boeing Alert Service Bulletin AP757–53–002, Revision 3, dated August 14, 2019, with 34,500 total flight cycles or more as of the effective date of this AD that have accomplished any eddy current inspection in accordance with Revision 1 or Revision 2 of Aviation Partners Boeing Alert Service Bulletin AP757–53–001 with no cracking found and have not accomplished any inspection specified in Revision 2 or Revision 3 of Aviation Partners Boeing Alert Service Bulletin AP757–53–002: The compliance time for the initial open hole HFEC inspection of the STA 1640 fuselage frame web fastener holes common to the S–14L and S–14R intercostal tee clip for any crack is at the applicable time specified in paragraph (h)(7)(i) or (ii) of this AD, whichever occurs later:

(i) Within 1,200 flight cycles after the most recent eddy current inspection was done in accordance with Revision 1 or Revision 2 of Aviation Partners Boeing Alert Service Bulletin AP757–53–001.

(ii) Prior to the accumulation of 35,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later.

(8) For Group 3 airplanes, as identified in Aviation Partners Boeing Alert Service Bulletin AP757–53–002, Revision 3, dated August 14, 2019, that as of the effective date of this AD have accomplished any eddy current inspection in accordance with Revision 1 or Revision 2 of Aviation Partners Boeing Alert Service Bulletin AP757 53–001, with no cracking found: The compliance time for the initial open hole HFEC inspection of the STA 1640 fuselage frame web fastener holes common to the S–14L and S–14R intercostal tee clip for any crack is at the applicable time specified in paragraph (h)(8)(i) or (ii) of this AD, whichever occurs later.

(i) Within 1,350 flight cycles after the most recent eddy current inspection was done as specified in Revision 1 or Revision 2 of Aviation Partners Boeing Alert Service Bulletin AP757–53–001.

(ii) Within 500 flight cycles after the effective date of this AD not to exceed 3,250 flight cycles after the most recent inspection was done in accordance with Revision 1 or Revision 2 of Aviation Partners Boeing Alert Service Bulletin AP757–53–001.

(i) Credit for Previous Actions

(1) This paragraph provides credit for actions specified in paragraphs (g)(1), (3), and (4) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018.

(2) This paragraph provides credit for the actions specified in paragraph (g)(2) of this AD, if those actions were performed before the effective date of this AD using Aviation Partners Boeing Alert Service Bulletin AP757–53–002, Revision 2, dated April 11, 2019.

(j) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2019–23–06 are approved as AMOCs for the corresponding provisions of Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018; and Aviation Partners Boeing Alert Service Bulletin AP757–53–002, Revision 3, dated August 14, 2019; that are required by paragraph (g)(2) of this AD.

(5) AMOCs approved for AD 2019–23–06 are approved as AMOCs for the

corresponding provisions of Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022, that are required by paragraphs (g)(1), (3), and (4) of this AD, except AMOCs for airplanes converted to the special freighter (SF) configuration by Boeing STC ST00916WI–D or from a passenger to freighter configuration using VT MAE Inc. STC ST03562AT are not approved as AMOCs for this AD.

(k) Related Information

(1) For more information about this AD, contact Peter Jarzomb, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5234; email: *peter.jarzomb@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(5), (6), and (7) of this AD.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) 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.

(3) The following service information was approved for IBR on August 17, 2022.

(i) Boeing Alert Requirements Bulletin 757–53A0112 RB, Revision 1, dated June 17, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on January 13, 2020 (84 FR 67179, December 9, 2019).

(i) Aviation Partners Boeing Alert Service Bulletin AP757–53–002, Revision 3 dated August 14, 2019.

(ii) Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018.

(5) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(6) For Aviation Partners Boeing service information identified in this AD, contact Aviation Partners Boeing, 2811 South 102nd St., Suite 200, Seattle, WA 98168; phone: 206–830–7699; fax: 206–767–0535; email: *leng@aviationpartners.com;* internet: *https://www.aviationpartnersboeing.com.*

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

(8) 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 July 15, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–16605 Filed 7–29–22; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0473; Airspace Docket No. 22–ASW–9]

RIN 2120–AA66

Revocation of Class E Airspace; Rocksprings Four Square Ranch Airport and Sonora Canyon Ranch, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class E airspace at Rocksprings Four Square Ranch Airport, TX, and Sonora Canyon Ranch, TX. This action is due to the cancellation of the instrument procedures at the associated airports, and the airspace no longer being required.

DATES: Effective 0901 UTC, November 3, 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 *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.

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 removes the Class E airspace extending upward from 700 feet above the surface at Four Square Ranch, Rocksprings, TX, and Canyon Ranch Airport, Sonora, TX, due to the cancellation of the instrument procedures at these airports, and the airspace no longer being required.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 27539; May 9, 2022) for Docket No. FAA–2022–0473 to remove the Class E airspace at Rocksprings Four Square Ranch Airport, TX, and Sonora Canyon Ranch, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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 7400.11F.

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:

Removes the Class E airspace extending upward from 700 feet above

the surface at Four Square Ranch Airport, Rocksprings, TX;

And removes the Class E airspace extending upward from 700 feet above the surface at Canyon Ranch Airport, Sonora, TX.

This action is the result of the instrument procedures at these airports being cancelled, and the airspace no longer being required.

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 TX E5 Rocksprings Four Square Ranch Airport, TX [Remove]

* * * * *

ASW TX E5 Sonora Canyon Ranch, TX [Remove]

Issued in Fort Worth, Texas, on July 27, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–16379 Filed 8–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0474; Airspace Docket No. 22–ACE–11]

RIN 2120–AA66

Amendment of Class E Airspace; Independence, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Independence, IA. This action as the result of an airspace review conducted as part of the decommissioning of the Wapsie non-directional beacon (NDB). The name and geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, November 3, 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 *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.

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 James H. Connell Field at Independence Municipal Airport, Independence, IA, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 27537; May 9, 2022) for Docket No. FAA–2022–0474 to amend the Class E airspace at Independence, IA. 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 within a 6.5-mile (increased from a 6.4-mile) radius of James H. Connell Field at Independence Municipal Airport, Independence, IA; removes the Wapsie NDB and associated extension from the airspace legal description; and updates the name (previously Independence Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review conducted as part of the decommissioning of the Wapsie NDB which provided navigation information for the instrument procedures this airport.

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.

* * * * *

ACE IA E5 Independence, IA [Amended]

James H. Connell Field at Independence Municipal Airport, IA
(Lat. 42°27′25″ N, long. 91°56′52″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of James H. Connell Field at Independence Municipal Airport.

Issued in Fort Worth, Texas, on July 27, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–16380 Filed 8–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ97

Informed Consent and Advance Directives

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, without changes, an interim final rule, as amended by a second interim final rule, that amended VA's regulation regarding informed consent and advance directives. VA amended the regulation by reorganizing it and amending language where necessary to enhance clarity; and made changes to facilitate the informed consent process, the ability to communicate with patients or surrogates through available modalities of communication, and the execution and witness requirements for a VA Advance Directive. VA has also clarified the roles and responsibilities of the practitioner and other members of the health care team pertaining to the informed consent process.

DATES: This rule is effective August 2, 2022.

FOR FURTHER INFORMATION CONTACT: Lucinda Potter, MSW, LSW, Director of Ethics Policy, National Center for Ethics in Health Care (10ETH), Veterans Health Administration, 810 Vermont Ave. NW, Washington, DC 20420; 484–678–5150. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Interim Final Rule Published at 85 Federal Register (FR) 31690 (May 20, 2020)

In a document published in the FR on May 27, 2020, 85 FR 31690, VA amended its regulation (§ 17.32 of title 38, Code of Federal Regulations (CFR)) concerning informed consent and advance directives by reorganizing § 17.32 and revising language where necessary to enhance clarity; and making changes to facilitate the informed consent process, the ability to communicate with patients or surrogates through available modalities of communication, and the execution and witness requirements for a VA Advance Directive. VA provided a 60-day comment period, which ended on July 27, 2020. One comment was received; however, it did not raise any issues within the scope of the rulemaking. We make no changes based on that comment.

We note that as part of that rule, we invited public comment on whether VA should consider inclusion of emancipated minors among those listed as next-of-kin or with respect to any situations that might arise with respect to an emancipated minor (*e.g.,* a spouse who is an emancipated minor under the age of 18). Currently, next-of-kin must be 18 years of age or older. We received no public comment on this issue and make no changes to 38 CFR 17.32 regarding emancipated minors.

Interim Final Rule Published at 87 FR 6425 (February 4, 2022)

In a document published in the FR on February 4, 2022, 87 FR 6425, VA amended § 17.32(c)(6) to clarify that the practitioner is ultimately responsible for the informed consent process but may

delegate elements of the informed consent process to trained personnel. VA provided a 60-day comment period, which ended on April 5, 2022. One comment was received, which was supportive of the rule. We thank the commenter for their support. We make no changes based on that comment.

Based on the rationale set forth in both interim final rules and in this final rule, VA is adopting, as final without changes, the rule published at 85 FR 31690, as amended by 87 FR 6425.

Administrative Procedure Act

VA has considered all relevant input and information contained in the comments submitted in response to the interim final rules (85 FR 31690 and 87 FR 6425) and, for the reasons set forth in the discussion further above, has concluded that no changes to the interim final rule at 85 FR 31690, as amended by 87 FR 6425, are warranted. Accordingly, based upon the authorities and reasons set forth in the interim final rules (85 FR 31690 and 87 FR 6425), as supplemented by the additional reasons provided in this document in response to comments received, VA is adopting the provisions of the interim final rule at 85 FR 31690, as amended by 87 FR 6425, as a final rule without changes.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, because it affects only the informed consent process and use of advance directives within the VA health care system. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Except for emergency approvals under 44 U.S.C. 3507(j), VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The interim final rule (85 FR 31690) included a provision constituting revisions to an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB) (the provision in the interim final rule is 38 CFR 17.32). Accordingly, under 44 U.S.C. 3507(d), VA submitted a copy of the interim final rule (85 FR 31690) to OMB for review, and VA requested that OMB approve the revised collection of information on an emergency basis. VA did not receive any comments on the collection of information contained in the interim final rule (85 FR 31690). OMB approved the collections of information under control number 2900–0556.

Assistance Listing

The Assistance numbers and titles for the programs affected by this document are 64.008—Veterans Domiciliary Care; 64.011—Veterans Dental Care; 64.012—Veterans Prescription Services; 64.013—Veterans Prosthetic Appliances; 64.014—Veterans State Domiciliary Care; 64.015—Veterans State Nursing Home Care; 64.024—VA Homeless Providers Grant and Per Diem Program; 64.026—Veterans State Adult Day Health Care; 64.029—Purchase Care Program; 64.039—CHAMPVA; 64.040—VHA Inpatient Medicine; 64.041—VHA Outpatient Specialty Care; 64.042—VHA Inpatient Surgery; 64.043—VHA Mental Health Residential; 64.044—VHA Home Care; 64.045—VHA Outpatient Ancillary Services; 64.046—VHA Inpatient Psychiatry; 64.047—VHA Primary Care; 64.048—VHA Mental Health clinics; 64.049—VHA Community Living Center; 64.050—VHA Diagnostic Care; 64.054—Research and Development.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on July 25, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

PART 17—MEDICAL

For the reasons set forth in the preamble, VA adopts as final the interim final rule published at 85 FR 31690 (May 27, 2020), as amended by 87 FR 6425 (February 4, 2022).

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2022–16465 Filed 8–1–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2022–0359; FRL–9886–02–R8]

Air Plan Approval; North Dakota; Removal of Exemptions to Visible Air Emissions Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to North Dakota's State Implementation Plan (SIP) which it received on November 11, 2016. The revision was submitted by the North Dakota Department of Health (NDDH) in response to EPA's finding of substantial inadequacy and SIP call published on June 12, 2015 for a provision in the North Dakota SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is finalizing approval of the SIP revision and finds that the SIP revision corrects the deficiency identified in the June 12, 2015 SIP call.

DATES: This rule is effective on September 1, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2022–0359. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the docket, some information may not be publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6728, email address: *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'' or ''our'' is used, it refers to EPA.

I. Background

On June 2, 2022 (87 FR 33461), EPA proposed to approve a November 11, 2016 SIP revision submitted by the State of North Dakota, through NDDH.[1] In that proposal, we proposed to determine that the SIP revision corrects the deficiency with respect to North Dakota's SIP that we identified in our June 12, 2015 action entitled ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' (80 FR 33839, June 12, 2015), hereafter referred to as the ''2015 SSM SIP Action.'' The reasons for our proposed approval and determination are stated in the proposed action (87 FR 33461, June 2, 2022) and will not be restated here. The public comment period for our proposed approval and determination ended on July 5, 2022, and one comment in support of final approval was received. Therefore, we are finalizing our action as proposed.

II. Final Action

EPA is approving North Dakota's SIP revision which we received on November 11, 2016. The revision removes provision 33.1–15–03–04.3 from North Dakota's SIP.[2] EPA has also determined that this SIP revision corrects the deficiency identified in the 2015 SSM SIP Action.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of ''33.1–15–03–04.3'' in 40 CFR 52.1820. As described in Section II of this preamble, EPA's finalization of the revision of ''33.1–15–03–04'' incorporates the removal of provision ''33.1–15–03–04.3''. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves removal of state law not meeting Federal requirements and does not impose additional requirements beyond those already imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an

[1] In 2017, the North Dakota state legislature created a new State Department of Environmental Quality (NDDEQ) that assumed all the duties and responsibilities of the NDDH's Environmental Health Section. To accommodate the new NDDEQ, the North Dakota Air Pollution Control Law was recodified in the North Dakota Century Code (NDCC) as NDCC 23.1–06 and the Air Pollution Rules were recodified in the North Dakota Administrative Code (NDAC) as NDAC 33.1–15.

[2] In North Dakota's November 11, 2016 SIP submission, the State refers to provision 33–15–03.04.3. However, shortly after North Dakota submitted the SIP revision to EPA, the State created a new environmental agency and North Dakota's Air Pollution rules were recodified as 33.1–15 instead of 33–15. Therefore, the current and correct codification of the provision which is being removed under this action is 33.1–15–03–04.3.

Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 25, 2022.

KC Becker,

Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart JJ—North Dakota

■ 2. In § 52.1820, the table in paragraph (c) is amended by revising the entry ''33.1–15–03–04'' under the heading ''33.1–15–03. Restriction of Emission of Visible Air Contaminants'' to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
33.1–15–03. Restriction of Emission of Visible Air Contaminants					
*	*	*	*	*	* *
33.1–15–03–04	Exceptions	7/1/16	9/1/22	[insert **Federal Register** citation], 8/2/22.	This revision removes provision ''33.1–15–03–04.3''.
*	*	*	*	*	* *

* * * * *

[FR Doc. 2022–16276 Filed 8–1–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2022–0453; FRL–9427–02–OCSPP]

RIN 2070–AL04

Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory Beginning With Reporting Years 2021 and 2022; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is issuing a correction to a final rule that published in the **Federal Register** on Monday, July 18, 2022. The document updated the list of chemicals subject to toxic chemical release reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). Specifically, the action updated the regulations to identify five per- and polyfluoroalkyl substances (PFAS) that must be reported pursuant to the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) enacted on December 20, 2019. This document corrects inadvertent errors in the preamble and the amendatory instructions that appeared in the regulatory text portion of the final rule.

DATES: This correction is effective on August 17, 2022.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–TRI–2022–0453, is available at *https://www.regulations.gov.* Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Daniel R. Ruedy, Data Gathering and Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–7974; email address: *ruedy.daniel@epa.gov.*

For general information contact: The Emergency Planning and Community Right-to-Know Act Hotline; telephone numbers: toll free at (800) 424–9346 (select menu option 3) or (703) 348–5070 in the Washington, DC Area and International; or go to *https://www.epa.gov/home/epa-hotlines.*

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 2022–15268, appearing on page 42651 in the **Federal Register** of Monday, July 18, 2022 (87 FR 42651; FRL–9427–01–OCSPP), the following corrections are made:

1. On page 42653, in the first column of the table, in the fifth entry, the

chemical name ''2-Propenoic acid, 2-methyl-, hexadecyl ester, polymers with 2-hydroxyethyl methacrylate, gamma-omega-perfluoro-C10-6-alkyl acrylate and stearyl methacrylate (203743–03–7)'' is corrected to read ''2-Propenoic acid, 2-methyl-, hexadecyl ester, polymers with 2-hydroxyethyl methacrylate, .gamma.-.omega.-perfluoro-C10-16-alkyl acrylate and stearyl methacrylate (203743–03–7)''.

§ 372.65 [Corrected]

■ 2. On page 42655, in § 372.65(d), in Table 4 to Paragraph (d):

■ a. In the first column, the chemical name corresponding to CAS No. 29420–49–3 is corrected to read ''Potassium perfluorobutane sulfonate''; and

■ b. in the first column, the chemical name corresponding to CAS No. 203743–03–7 is corrected to read ''2-Propenoic acid, 2-methyl-, hexadecyl ester, polymers with 2-hydroxyethyl methacrylate, .gamma.-.omega.-perfluoro-C10-16-alkyl acrylate and stearyl methacrylate.''

■ 3. On page 42655, in § 372.65(e), in Table 5 to Paragraph (e):

■ a. In the second entry, ''Potassium perfluorobutane'' is corrected to read ''Potassium perfluorobutane sulfonate''; and

■ b. In the fifth entry, ''2-Propenoic acid, 2-methyl-, hexadecyl ester, polymers with 2-hydroxyethyl methacrylate, .gamma.-.omega.-perfluoro-C10-6-alkyl acrylate and stearyl ethacrylate'' is corrected to read ''2-Propenoic acid, 2-methyl-, hexadecyl ester, polymers with 2-hydroxyethyl methacrylate, .gamma.-.omega.-perfluoro-C10-16-alkyl acrylate and stearyl methacrylate''.

Dated: July 27, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2022–16495 Filed 8–1–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721 and 723

[EPA–HQ–OPPT–2014–0650; FRL–5605–04–OCSPP]

RIN 2070–AJ94

Significant New Uses of Chemical Substances; Updates to the Hazard Communication Program and Regulatory Framework; Minor Amendments to Reporting Requirements for Premanufacture Notices; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is issuing a correction to a final rule that published in the **Federal Register** of Tuesday, July 5, 2022. The document revised the regulations governing significant new uses of chemical substances under the Toxic Substances Control Act (TSCA) to align with revisions that were made to the Occupational Safety and Health Administration (OSHA) Hazard Communications Standard (HCS) and changes to the OSHA Respiratory Protection Standard and the National Institute for Occupational Safety and Health (NIOSH) respirator certification requirements for the respiratory protection of workers from exposure to chemicals. EPA also amended the regulations governing Significant New Use Rules (SNURs) to address issues that have been identified by EPA and raised by stakeholders through public comments and made a minor change to reporting requirements for premanufacture notices (PMNs) and other TSCA notifications. This document corrects inadvertent errors in three of the amendatory instructions that appeared in the regulatory text potion of the final rule.

DATES: This correction is effective on September 6, 2022.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0650, is available at *https://www.regulations.gov* or in-person at the EPA Docket Center (EPA/DC). Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Tyler Lloyd, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4016; email address: *lloyd.tyler@epa.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2022–13324 appearing on page 39756 in the **Federal Register** of Tuesday, July 5, 2022 (87 FR 39756; FRL–5605–02–OCSPP), the following corrections are made:

§ 721.11 [Corrected]

■ 1. On page 39764, in the third column, in the amendatory instructions identified as number 20.a., the phrase ''manufacturer, importer, or processor'' is corrected to read ''manufacture (including import) or process.''

■ 2. On page 39764, in the third column, in the amendatory instructions identified as 20.b., the phrase ''manufacture, import, or process'' is corrected to read ''manufacture (including import) or process.''

§ 721.80 [Corrected]

■ 3. On page 39769, in the first column, in the amendatory instructions identified as number 28.b., the instructions ''In paragraphs (p), (r), (s), (t) and (u) removing the word ''manufacture'' and adding in its place the word ''manufacturing'' is corrected to read ''In paragraphs (p), (q), (r), (s), (t) and (u) removing the word ''manufacture'' and adding in its place the word ''manufacturing''.''

§ 723.50 [Corrected]

■ 4. On page 39769, in the third column, in the amendatory instructions identified as number 35., the instruction ''Amend § 723.'' is corrected to read ''Amend § 723.50.''

Dated: July 27, 2022.

Denise Keehner,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2022–16464 Filed 8–1–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375, DA 22–676; FR ID 94957]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Final order; revision of annual reporting requirements.

SUMMARY: In this document, the Wireline Competition Bureau (WCB) of

the Federal Communications Commission (Commission) adopts an Order revising the instructions, reporting template, and certification form for the annual reports submitted by providers of calling services to incarcerated people.

DATES: The Order was adopted June 24, 2022. The effective date of the Order is delayed indefinitely. The Federal Communications Commission will publish a document in the **Federal Register** announcing the date the revisions to the annual reporting requirements will be effective once the Office of Management and Budget (OMB) has provided the approval required by the Paperwork Reduction Act (PRA).

FOR FURTHER INFORMATION CONTACT: Lee McFarland, Pricing Policy Division, Wireline Competition Bureau, (202) 418–1787, or email *lee.mcfarland@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, WC Docket No. 12–375, DA 22–676, adopted and released on June 24, 2022. The full text of this document is available at *https://docs.fcc.gov/public/attachments/DA-22-676A1.pdf.*

I. Introduction

1. By this Order, the Wireline Competition Bureau (Bureau) revises the instructions, reporting template, and certification form for the annual reports submitted by providers of calling services to incarcerated people. The revisions the Bureau implements today largely adopt the proposals contained in the Bureau's December 2021 request for comments, with certain minor refinements and reevaluations responsive to comments filed in response to that request.

II. Background

2. The Commission requires inmate calling services (ICS) providers to make annual filings to help it monitor and track trends in the ICS marketplace, increase provider transparency, and promote compliance with the Commission's ICS rules. Pursuant to its delegated authority, the Bureau created standardized reporting templates for the annual report (FCC Form 2301(a)) and a related certification of accuracy (FCC Form 2301(b)), as well as instructions to guide providers through the reporting process. In 2020, the Bureau amended the instructions and template for the annual report in order to improve the type and quality of the information collected.

3. In the *2021 ICS Order,* the Commission revised its ICS rules by adopting, *inter alia,* lower interim rate caps for interstate ICS calls, new interim rate caps for international ICS calls, and a rate cap structure that requires ICS providers to differentiate between legally mandated and contractually required site commissions. These rule changes necessitated further changes to the annual reporting and certification templates, which the Bureau proposed in the December 2021 request for comments. In response to the request, the Bureau received comments from ICS providers, public interest advocates, and other interested parties. Several commenters express support for the revisions proposed in that request.

III. Discussion

4. Pursuant to the Bureau's delegated authority, the Bureau adopts the instructions and templates for annual reports and certifications for ICS providers attached hereto as Appendix A. Appendix A provides the instructions as well as links to the templates. The reporting template consists of a Word document and Excel spreadsheets. For simplicity, the Bureau refers to these respective portions of the reporting template as the Word template and the Excel template. These instructions and templates largely follow the proposals in the Bureau's December 2021 request for comments, with a small number of revisions to enhance the value and usefulness of the annual reports, the majority of which reduce existing or proposed reporting burdens. These revisions reflect full consideration of the record received in response to that request for comments, including potential burdens on ICS providers. The Bureau expects the detailed instructions and templates it adopts to result in reports that provide the Commission, its state counterparts, and the public with a clearer, more complete picture of ICS providers' operations than was available under prior annual reports, without unduly increasing burdens on providers. In particular, the changes the Bureau makes to the instructions and templates will make ICS providers' rates, ancillary service charges, and practices more transparent and, through that increased transparency, help ensure compliance with the Commission's ICS rules.

A. Specific Data and Information Inquiries

5. The reporting requirements the Bureau adopts in this Order cover the general categories of information the Bureau proposed in the December 2021 request for comments. These categories include the submission of information on facilities served; interstate, intrastate, and international ICS rates; ancillary service charges; site commissions; and disability access, among other matters. The Bureau finds that these categories strike the appropriate balance between providing clear and useful information about ICS providers, and minimizing the associated reporting burdens. The Bureau notes that the categories of information it requests are generally consistent with, but not identical to, those ICS providers in the state of Colorado are required to address in quarterly reports to the Colorado Commission.

1. Reporting Information on ICS Rates

6. The Bureau adopts the reporting requirements for interstate, international, and intrastate ICS rates as proposed, with minor revisions, as discussed below. In the December 2021 request for comments, the Bureau proposed to require every provider to submit the highest, average, and year-end interstate, international, and intrastate ICS rates charged at each of its facilities, as well as information regarding providers' international termination charges. Given that ''providers may charge one rate for the initial minute of a call and another for each successive minute'' and may ''frequently adjust their rates'' during the course of a year, the Bureau finds that each of these data points is necessary for the Bureau to fully understand providers' rates. Although some commenters contend that the Bureau's proposed collection would be unnecessarily burdensome, the Bureau's revised approach will significantly reduce the burdens on providers, and the Bureau finds that detailed information regarding providers' interstate, international, and intrastate ICS rates is needed to ensure that the annual reports enable the Commission, its state counterparts, and the public to evaluate and effectively monitor interstate, international, and intrastate ICS rates.

7. The Bureau declines to reduce the categories of rate data it collects. Some commenters complain that the rate data the Bureau proposed would be overly burdensome: one argues against collecting the highest and average rates charged for a 15-minute call during the calendar year at each facility; another alleges that the information the Bureau seeks surrounding international termination charges in addition to the rate information the Bureau seeks for international rates—including the highest per-minute rate, first minute rate, and additional minute rate—will especially burden those providers that serve facilities with average daily

populations of less than 1,000. These arguments fail to recognize that implementation of the Bureau's proposals will significantly reduce the existing rate reporting burdens on providers, and the Bureau's decision accounts for the benefit of collecting this rate information and the reduced burden on providers. Under the current requirements, providers must report *every* rate they charged during the calendar year, a significantly broader undertaking than simply reporting highest, average, and year-end rates. Limiting the required reported rates to only the highest, average, and year-end rates thus constitutes a winnowing of the providers' current rate reporting responsibilities. Given the Bureau's decision to no longer collect data on every single rate which providers have charged over the course of a year, information on each of these three measures is essential to understand how providers' rates vary over the course of a year and the impact of those variations on consumers.

8. In the December 2021 request for comments, the Bureau also proposed to require providers to report international rate information separately for each facility served. One commenter points out, however, that providers typically charge the same international rates for all facilities covered under the same contract and that it is unnecessary to require providers to report identical international rate information for each of several facilities covered under the same contract. The Bureau agrees and therefore allows providers to report international rate information at the contract level, as opposed to the facility level, in most situations. This approach should further reduce the reporting burden on providers. Where, however, a provider charges different international rates for calls from facilities covered by the same contract, it must report its international rate data on a facility-by-facility basis to ensure such differences are captured.

9. The Bureau also revises the instructions and reporting template to require that detailed international rate information be reported only for countries to which calls were actually placed from a given facility during the reporting period, and to report the web address at which international rate information can be found for other countries to which no calls were placed. To ensure that the annual reports provide complete information regarding the rates at which providers offered international ICS, the Bureau requires providers to provide links to the publicly available web pages that capture their international ICS offerings for service to other counties as of the end of the reporting period. These changes provide clarity as to how the Bureau expects providers to list their international rates. They also significantly reduce the burdens below those providers faced under the Bureau's prior requirements.

10. The Bureau declines to limit the collection of information surrounding international rates to only the rate that was charged for the domestic portion of international calls. In the December 2021 request for comments, the Bureau proposed to require providers to report any charges they assessed on consumers to terminate international calls as well as the amounts they paid to their underlying international service providers for such termination. One commenter claims providers lack control over third-party termination rates and therefore should not be required to report them. The Bureau does not agree. The rules adopted by the Commission in the *2021 ICS Order* permit each provider to include, in its charges for an international call, the average per-minute amount the provider paid its underlying providers to terminate international calls to an international destination during the preceding calendar quarter. The rules also require these charges to be itemized on a customer's bill. Consequently, information on both the amounts passed through and the amounts paid to third parties is essential to evaluate whether providers' international rates comply with the Commission's rules.

2. Reporting Ancillary Service Charges Information

11. The Bureau adopts the reporting requirements for ancillary service charges assessed by ICS providers as proposed, with certain revisions, as discussed below. In the December 2021 request for comments, the Bureau proposed to require every provider to report, on a facility-by-facility basis, certain information about any ancillary services charges it assesses and to include a narrative explanation concerning any methodologies it uses to allocate those charges among multiple facilities served under a single contract. The Bureau finds that the requested information is necessary to evaluate whether providers' ancillary services charges comply with the Commission's ancillary services charge rules and that submitting this information will not place an undue burden on providers.

12. The Bureau agrees that the submission of additional information related to specific third-party ancillary service charges that providers are permitted to pass-through to consumers under the Commission's current rules is warranted. To that end, the Bureau requires providers to identify whether their ancillary service charges are fixed or variable. The Bureau also requires providers to identify each third party whose fees for single-call and related service charges or third-party financial transactions were passed through to ICS consumers, and to state the number of times such charges were assessed, and the total amounts of such charges passed through to consumers. Although PPI focuses on the pass through of third-party financial transaction fees, the Bureau finds that PPI's arguments apply with equal force to the pass through of third party single-call and related services fees. To be clear, where a contract involves pass-through charges from multiple third parties, the Bureau requires providers to identify each third party and to itemize the corresponding charges separately. These changes will help ensure that ICS providers are not using third-party contracts to circumvent the Commission's limits on ancillary services charges or improperly pass through third-party fees in violation of the *2021 ICS Order.* In addition, these changes will add clarity as to how the different ancillary service charges are structured and assessed.

13. Similarly, the Bureau agrees with the commenter who argues it will be useful to require providers to provide a narrative explanation of how they calculate variable service charges. This narrative will provide the Commission and consumers valuable information about third-party transaction fees. Further, the Bureau expects that providing this information should impose only a minimal, if any, additional burden on providers because the Bureau understands relatively few ancillary services fees are variable. The benefits of obtaining more detailed information about how ancillary service charges are assessed outweighs any minor increase in burden.

3. Reporting Site Commission Information

14. The Bureau adopts the reporting requirements it proposed concerning site commissions, with minor revisions. In the December 2021 request for comments, the Bureau proposed to require providers to report their average total monthly site commission payments on a facility-by-facility basis and to separate those payments between legally mandated and contractually prescribed site commission payments, consistent with the Commission's rules. The Bureau declines to implement one commenter's request that the Bureau essentially modify the definition of

''legally mandated'' site commissions as beyond the scope of this Order. This Bureau-level order is limited to revising the instructions and reporting template for ICS providers' annual reports and certifications and not appropriate for modifying Commission-adopted definitions. The Bureau also proposed to require providers to subdivide both types of payments between monetary and in-kind payments and, within those subdivisions, to report the portions of the payments that were either fixed or variable. The Bureau disagrees with those commenters that contend that this level of disaggregated reporting would impose onerous burdens on providers and would not ''serve the public interest.'' The Bureau finds that its disaggregated site commission reporting requirements will provide benefits—allowing the Bureau to collect more complete and detailed information for analysis regarding the providers' site commission payments—that far outweigh any increased burden on providers. Moreover, the argument that the Commission has not previously required providers to report in-kind site commission payments is incorrect. The existing instructions require providers to report both fixed and variable site commission payments, and defines ''site commissions'' as ''any form of monetary payment, exchange of services or goods, fee, technology allowance, or product that a provider of ICS may pay, give, donate, or otherwise provide to an entity with which the provider of ICS enters into an agreement to provide ICS, a governmental agency that oversees a correctional facility, the city, county, or state where a facility is located, or an agent of any such facility.''

15. In December, 2021, the Bureau proposed to require each provider to submit a narrative response regarding certain aspects of its in-kind site commission payments. The Bureaurevise this instruction to also specify that the provider describe the valuation methodology it used to determine the value of its in-kind site commissions reported. The Bureau finds this additional requirement necessary because in-kind site commission payments encompass a wide variety of goods or services, such as items developed through in-house labor, which may lack easily ascertainable monetary values.

16. However, the Bureau declines to adopt other suggestions that would either increase the burden on reporting providers without any offsetting benefit or unduly limit the information collected on in-kind site commissions. For example, it is not clear how a specific requirement that providers report in-kind site commissions on both the adjusted basis (*i.e.,* book value) and the fair market value of the transferred property would produce sufficiently useful information to justify the additional burden on providers. On the other hand, simply requiring providers to ''identify any in-kind site commissions and describe how those payments are valued'' could allow providers to avoid imputing an actual dollar value for their in-kind site commissions, resulting in insufficient visibility into those transactions. On balance, the Bureau finds that its adopted approach, requiring providers to report the value of in-kind site commissions and to describe the valuation methodology they used, will provide the most useful information without unduly burdening providers.

4. Disability Access and Related Considerations

17. The Bureau next revises the proposed instructions and reporting template to more precisely target the most necessary information related to providers' disability access services. In December, 2021, the Bureau proposed to require every provider to report certain information regarding any ancillary services charges imposed for, or in connection with, TTY-based calls at each facility the provider served during the reporting period. According to the record, this proposal should be narrowed slightly to track only the ancillary service fees a provider charges specifically in connection with the access and use of TTY equipment or other disability-related technologies. The Bureau agrees, and therefore revises the instructions to require that providers report, on a facility-by-facility basis, any ancillary service charges they impose specifically for accessing and using TTY equipment and other disability-related ICS technologies. This instruction should not be construed to imply that any such charges are permitted by the Commission's rules. This change will provide the Commission and the public with a more accurate view of providers' ancillary service charges specifically in connection with disabilities access than would have been available under the Bureau's original proposal.

5. Miscellaneous

18. The Bureau declines at this time to use the annual reporting process to obtain information about ICS providers' bundled contract offerings (*i.e.,* contracts including voice, video, text, emails, or other services), as two parties urge. The Bureau finds that the proposed additional categories of information would not advance the purposes of the annual reporting requirement enough to outweigh the potential added burdens on ICS providers.

19. The Bureau also declines to adopt a request to remove questions about the geographic coordinates of facilities. The Bureau finds geographic location data to be useful, and in some cases necessary, to accurately identify the location of certain facilities. And, because each provider's response to the Third Mandatory Data Collection must include the geographic coordinates of each facility it serves, reporting that previously-determined information in the annual reports can hardly be characterized as imposing a burden on providers.

6. Confidential Information

20. The Bureau also declines to implement one commenter's suggestion that the Bureau specifically require providers to submit a detailed motion if they redact information from the public version of their annual reports. Any such action would constitute a departure from the Commission's long-established procedure under which provider ''[f]ilings containing legitimate confidential information can be appropriately redacted and filed pursuant to the guidance and limitations set forth in the [*ICS*] *Protective Order* and the standard set forth in section 0.459 of the Commission's rules.'' The Bureau has previously explained that ''any request for confidential treatment must adhere to the standard set forth in section 0.459(b) of the Commission's rules, as applied in the *ICS Annual Report Transparency Order.*'' The Bureau finds no reason to disturb these existing procedures based on the record before it.

B. Effective Date and Implementation Date

21. Because this Order imposes new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), its effective date will be delayed indefinitely pending approval by the Office of Management and Budget (OMB). In the event of such approval, the Commission will publish a document in the **Federal Register** announcing OMB approval and establishing the date of such publication as the effective date of this Order.

22. The Bureau expects that this effective date will be established long before the April 2023 due date for providers' next annual reports and certifications for calendar year 2022. An expected April 2023 implementation

date moots commenter concerns premised on the assumption that the revisions would become effective before providers had to submit their 2022 annual reports. When the Bureauproposed the revisions to the instructions and templates for the annual reports in the December 2021 request for comments, the Bureau expected that such changes would receive OMB approval under the PRA and take effect in time for their use in the April 2022 filings. This did not occur. Consequently, the Bureau no longer needs separate instructions for the period between January 1, 2021 and October 26, 2021 when certain of the rules adopted in the *2021 ICS Order* became effective. The Bureau has therefore revised the instructions and templates accordingly. Thus, providers should expect that, absent further Bureau direction, the revisions adopted in this Order will apply to all subsequent annual report and certification filings. Providers will have ample time to collect the information needed for the revised annual reports due in April 2023.

IV. Procedural Matters

23. *Supplemental Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Bureau has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA). The Supplemental FRFA is set forth in Appendix B.

24. *Final Paperwork Reduction Act Analysis.* The Order contains new or modified information collection requirements subject to the PRA. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Bureau notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198; *see* 44 U.S.C. 3506(c)(4), the Bureau previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Bureau has assessed the effects of the requirements for annual reports and certifications on small business concerns, including those having fewer than 25 employees, and find that to the extent such entities are subject to those requirements, any further reduction in the burden of the collection would be inconsistent with the objectives behind the collection.

25. Congressional Review Act. The Commission will not send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A), because it does not adopt any rule as defined in the CRA, 5 U.S.C. 804(3).

V. Supplemental Final Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *2021 ICS Order,* released in May 2021. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission sought written public comment on the proposals in that Order, including comments on the Supplemental IFRA. The comments received are addressed below. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Order

27. In this Order, the Commission's Wireline Competition Bureau (the Bureau) adopts revisions to the instructions and templates for the annual reports and certifications submitted by providers of ICS. In the *2021 ICS Order,* the Commission revised its ICS rules by adopting, *inter alia,* lower interim rate caps for interstate ICS calls, new interim rate caps for international ICS calls, and a rate cap structure that requires ICS providers to differentiate between legally mandated and contractually required site commissions. The rules implemented by the *2021 ICS Order* necessitate further changes to the annual reporting and certification templates, which the Bureau proposed in the December 2021 request for comments.

28. Pursuant to its delegated authority, the Bureau has prepared updates to the annual reporting and certification templates and is issuing the Order to adopt all aspects of these documents.

B. Summary of Significant Issues Raised by Public Comments in Response to the Supplemental IRFA

29. There were no comments filed that specifically addressed the proposed rules and policies in the Supplemental IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

30. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

31. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Annual Report and Certification Requirements Will Apply

32. 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 annual report and certification requirements. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

33. Regulatory Flexibility Analyses were incorporated in the *2020 ICS Order* and *2021 ICS Order.* In those analyses, the Commission described in detail the small entities that might be affected. Accordingly, in this Order, for the Supplemental FRFA, the Bureau hereby incorporates by reference the descriptions and estimates of the number of small entities from these previous Regulatory Flexibility Analyses.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

34. The annual report and certification requirements direct ICS providers to submit, among other things, data and other information on calls, demand, operations, company and contract information, information about facilities served, revenues, site commission payments, and ancillary fees and to certify as to their compliance with relevant Commission rules. The Bureau estimates that approximately 20

ICS providers will be subject to this reporting requirement. In the aggregate, the Bureau estimates that responses will take approximately 3,740 hours.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

35. The RFA requires an agency to describe any significant 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 rules 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.''

36. The annual report and certification requirements impose a recurring obligation on providers. Because the Commission's *2021 ICS Order* requires all ICS providers to submit annual reports and certifications, the collection will affect smaller as well as larger ICS providers. The Bureau has taken steps to ensure that the reporting template is competitively neutral and not unduly burdensome for any set of providers and has considered the economic impact on small entities, as identified in comments filed in response to the December 2021 request for comments, in finalizing the instructions and reporting templates for the annual reports and certifications. In response to the comments, the Bureau has refined certain aspects of the instructions and reporting templates. These modifications avoid unduly burdening responding providers while ensuring that providers have sufficiently detailed and specific instructions to respond to the data collection.

G. Report to Congress

37. The Commission will send a copy of the Order, including this Supplemental FRFA, in a report a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order, and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

38. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 155(c), 201(b), 218, 220, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 276, and 403, and the authority delegated pursuant to sections 0.91, 0.201(d), and 0.291 of the Commission's rules, 47 CFR 0.91, 0.201(d), 0.291, this Order *is adopted*.

39. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Lynne Engledow,

Deputy Chief, Pricing Policy Division, Wireline Competition Bureau.

Note: The following appendix, Annual Reporting and Certifications Instructions and Template, will not appear in the Code of Federal Regulations.

I. Overview

In the *2015 ICS Order,* the Federal Communications Commission (Commission or FCC) charged the Wireline Competition Bureau (Bureau) with implementing requirements designed to help the Commission monitor the rates, fees, and practices of Providers of Calling Services to incarcerated people (Inmate Calling Services or ICS). Specifically, the Commission directed the Bureau to develop an Annual Report that each ICS Provider must file regarding its Inmate Calling Services operations during the preceding calendar year. The Commission also directed the Bureau to develop related instructions and a template to gather this information, and required each ICS Provider to file an Annual Certification declaring its compliance with the Commission's Inmate Calling Services rules during the preceding calendar year. These Annual Reporting and Annual Certification requirements are designed to help ensure transparency in ICS rates, fees, and practices, and to ensure that ICS Providers comply with the Commission's rules.

These instructions and the accompanying templates and certification form are designed to implement the Commission's directives. These instructions and the associated template and certification form consolidate and supplant the instructions and template for earlier iterations of the ICS annual reporting and certification requirements. As discussed below, the template consists of a Word document and Excel spreadsheets. For simplicity, we refer to these respective portions of the template as the Word template and the Excel template.

II. General Instructions and Filing Requirements

A. Who must file?

Each Inmate Calling Services Provider must submit a complete and accurate Annual Reporting Form (FCC Form 2301(a)) and Annual Certification Form (FCC Form 2301(b)) (collectively, FCC Form 2301) annually. Each group of affiliated Providers shall respond as a single entity, regardless of the number of separately incorporated companies or other entities within that group that provide ICS.

A Subcontractor is classified as an ICS Provider if it partners with or serves an ICS Provider that holds a direct contractual relationship with a correctional authority, and the Subcontractor also provides ICS services to incarcerated people, for example, by completing calls for ICS Customers. A Subcontractor is not exempted from the definition of an ICS Provider on the grounds that it lacks a direct contractual relationship with a correctional authority. Therefore, where a Subcontractor completes calls but the ICS Provider bills Customers for those calls and then pays the Subcontractor, that Subcontractor will also meet the definition of an ICS Provider. By contrast, an entity that only provides billing and collection for inmate calling services provided by a separate entity and remits those revenues to that entity may not meet the definition of an ICS Provider.

Providers (including all Subcontractors that meet the definition of Provider set forth below) must complete and file all sections of FCC Form 2301 unless otherwise indicated.

Throughout these instructions, the terms ''you'' and ''your'' refer to any entities that must submit the FCC Form 2301. Part III, below, defines other terms used in these instructions and in the Annual Reporting and Annual Certification Forms.

B. What To File

You must fully and completely respond to each request for information in these instructions using the attached Word and Excel templates and certification form. Once finalized, these templates and form will be available at *https://www.fcc.gov/general/ics-data-collections*. You must submit each template in a machine-readable and manipulatable format.

1. Annual Reporting Form

Your Annual Reporting Form shall consist of: (1) a Word document containing responses that require a narrative explanation (see Appendix A to these instructions); and (2) an Excel spreadsheet containing responses that indicate specific numbers, percentages, and/or information (see Appendix B to these instructions).

As a general matter, these instructions direct you to enter your responses to requests for certain information or numbers at specific places in these templates. Provide your narrative responses in the Word template (Appendix A). You must also use the Word template to provide any additional information needed to ensure that your response is full and complete, and to identify and explain any caveats associated with your response.

Unless otherwise stated, provide your responses for the Annual Reporting Form using the Excel template (Appendix B). As a general matter, your entries on the Excel template will require input of specific numbers or percentages (*e.g.,* a Facility's Average Daily Population) or discrete information (*e.g.,* a Facility's geographical coordinates). The Excel template uses ''N/A'' or ''0'' as specifically instructed to identify cells in which no data are to be reported. Following the same format, you should add additional rows or columns to this template as necessary to complete your responses.

2. Annual Certification Form

You must complete the Annual Certification Form (see Appendix C to these instructions) regarding the truthfulness, accuracy, and completeness of the Provider's Annual Reporting Form and the Provider's compliance with the Commission's ICS rules.

Submissions will be rejected and returned for correction and resubmission if made without a completed certification form by an officer of the Provider that, based on information and belief formed after reasonable inquiry, the statements and information contained in the Report are accurate and complete.

C. Filing Deadline and Submission

The Annual Reporting and Annual Certification Forms for the preceding calendar year must be submitted by April 1 of each year.

You must submit public versions of your Annual Reporting and Annual Certification Forms by filing the completed forms electronically through the Commission's Electronic Comment Filing System (ECFS), by accessing the ECFS at *https://www.fcc.gov/ecfs/.*

You may file any information that you believe should be afforded confidential treatment pursuant to the guidance and limitations in the Protective Order in this proceeding and by adhering to the standard set forth in section 0.459(b) of the Commission's rules, the *ICS Annual Report Transparency Order,* and other applicable precedent. As the Bureau explained with regard to the 2019 Annual Reports, information regarding ''facility names, inmate calling services rates, [and] the amounts of ancillary service charges'' is not entitled to confidential treatment, given the ''strong public interest in transparency surrounding rates, charges, terms, and fees for inmate calling services.'' Similarly, information on a Facility's average daily population was not protected from public disclosure. Absent a compelling showing to the contrary, these determinations will apply to future annual report filings.

Confidential versions of the reports must be submitted to the Secretary's office using the Excel template provided by the Commission and in a machine-readable and manipulatable format. You must also provide courtesy copies of the confidential filing to the Bureau via email at *icsannualreport@fcc.gov.*

D. Compliance

We caution Providers that they must proceed in good faith and with absolute candor in preparing and filing their Annual Reporting and Annual Certification Forms. Persons willfully making false statements in an Annual Reporting Form or Annual Certification Form can be punished by fine or forfeiture, under the Communications Act of 1934, 47 U.S.C. 502, 503(b), or by fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. 1001.

III. Definitions

Affiliates means any two or more companies, partnerships, or other legal entities where (a) one entity directly or indirectly owns or controls the other or others, (b) a Third Party controls or has the power to control both or all, (c) the entities share common ownership or have interlocking directorates, or (d) the entities share employees, equipment, and/or facilities. For purposes of this definition, the term ''own'' means to own an equity interest (or the equivalent thereof) of more than 10%.

Alternative Method for Calculating Average Daily Population means any method other than dividing the sum of all inmates in a facility for each day of a Year by the number of days in the Year.

Ancillary Services means Permissible Ancillary Services and Other Ancillary Services.

Ancillary Service Charge means any charge Consumers may be assessed for, or in connection with, the interstate or international use of Inmate Calling Services that is not included in the per-minute charges assessed for such individual calls. Ancillary Service Charges that may be assessed are limited only to those listed in 47 CFR 64.6000(a)(1)–(5) and consist of Automated Payment Fees, Live Agent Fees, Paper Bill/Statement Fees, Fees for Single-Call and Related Services, and Third-Party Financial Transaction Fees. All other Ancillary Service Charges are prohibited in connection with interstate and international Inmate Calling Services. For purposes of this definition, ''interstate'' includes any jurisdictionally mixed charge, as defined in 47 CFR 64.6000(u).

Ancillary Services Charge Rules means the FCC rules setting the maximum amounts Providers may charge for Ancillary Services. The Ancillary Service Charge Rules are set forth in 47 CFR 64.6020, as may be subsequently amended by the Commission.

Annual Certification Form means FCC Form 2301(b).

Annual Reporting Form means FCC Form 2301(a). This form consists of (1) the Word template, FCC Form 2301(a)(1), and (2) the Excel template, FCC Form 2301(a)(2).

Automated Payment Fees means credit card payment fees, debit card payment fees, and bill processing fees, including fees for payments made by interactive voice response (IVR), web, or Incarcerated Person Kiosk.

Automated Payment Service means any service providing Customers of Inmate Calling Services with credit card payment, debit card payment, and bill processing services, including enabling payments by interactive voice response (IVR), web, or Incarcerated Person Kiosk.

Average Daily Population and *ADP* mean the sum of all Incarcerated Persons in a facility for each day of a Year, divided by the number of days in the Year.

Billed Minutes means the number of Inmate Calling Services minutes supplied during a Year for which payment is demanded.

Billed Revenues means gross sales, without adjustment for uncollectable accounts or expenses related to producing these sales, derived from the number of units of a service supplied during a Year for which payment is demanded.

Consumer means the party paying a Provider of Inmate Calling Services.

Contractually Prescribed Facility Rate Component means the Facility-Related Rate Component set forth in 47 CFR 64.6030(d)(2).

Contractually Prescribed Site Commission means a Site Commission payment required pursuant to a contract negotiated between a Facility and a Provider.

Customer means the Incarcerated Person or the person who pays for ICS if that person is not the Incarcerated Person.

Facility means a Prison or Jail as those terms are defined elsewhere in this document.

Facility-Related Rate Component means either the Legally Mandated Facility Rate Component or the Contractually Prescribed Facility Rate Component as set forth in 47 CFR 64.6030(d).

Fees for Single-Call and Related Services means billing arrangements whereby an Incarcerated Person's collect calls are billed through a Third Party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services or does not want to establish an account.

Fixed Site Commission means a Site Commission that is assessed or paid without regard to ICS usage or revenues. Fixed Site Commissions include, but are not limited to, minimum annual guarantee payments, other lump-sum payments, and payments in-kind that Providers make pursuant to ICS contracts.

Incarcerated Person means a person detained in a Prison or Jail, regardless of the duration of the detention.

Inmate Calling Services and *ICS* mean a service that allows Incarcerated Persons to make calls to individuals outside the Facility where the Incarcerated Person is being held, regardless of the technology used to deliver the service.

ICS-Related Operations means the actions or tasks performed by the Provider or authorized personnel to deliver Inmate Calling Services and related Ancillary Services to Incarcerated Persons and those they call, including but not limited to billing, customer service, and other requirements as determined by contract or by law. It excludes all Site Commission payments, including actions or tasks that are part of In-Kind Site Commission payments.

In-Kind Site Commission means a Site Commission that does not take the form of a Monetary Site Commission.

Intrastate Communication means any communication that originates and terminates in the same state, territory, or possession of the United States (other than the Canal Zone), or the District of Columbia.

International Communication means a communication or transmission from any state, territory, or possession of the United States, or the District of Columbia to points outside the United States.

International Destination means the rate zone in which an international call terminates. For countries that have a single rate zone, International Destination means the country in which an international call terminates.

Interstate Communication means, pursuant to 47 U.S.C. 153(28), communication or transmission (a) from any state, territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other state, territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (b) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (c) between points within the United States but through a foreign country. Interstate Communication shall not, for purposes of these instructions, include wire or radio communication between points in the same state, territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a state commission.

Jail means a facility of a local, state, or federal law enforcement agency that is used primarily to hold individuals who are: (a) awaiting adjudication of criminal charges; (b) post-conviction and committed to confinement for sentences of one year or less; or (c) post-conviction and awaiting transfer to another facility. The term also includes city, county or regional facilities that have contracted with a private company to manage day-to-day operations; privately owned and operated facilities primarily engaged in housing city, county or regional Incarcerated Persons; facilities used to detain individuals operated directly by the Federal Bureau of Prisons or U.S. Immigration and Customs Enforcement, or pursuant to a contract with those agencies; juvenile detention centers; and secure mental health facilities.

Legally Mandated Facility Rate Component means a rate component set forth in 47 CFR 64.6030(d)(1).

Legally Mandated Site Commission means a Site Commission payment required by state statutes or laws and regulations that are adopted pursuant to state administrative procedure statutes where there is an opportunity for public comment, such as by a state public utility commission or similar regulatory body with jurisdiction to establish Inmate Calling Services rates, terms, and conditions and that operate independently of the contracting process between Facilities and Providers.

Live Agent Fee means a fee associated with the optional use of a live operator to complete Inmate Calling Services Transactions.

Live Agent Service means providing Customers of Inmate Calling Services the optional use of a live operator to complete Inmate Calling Services Transactions.

Monetary Site Commission means a Site Commission that takes the form of a monetary payment.

Other Ancillary Services means an ancillary service that is not a Permissible Ancillary Service.

Paper Bill/Statement Fees means fees associated with providing Customers of Inmate Calling Services an optional paper billing statement.

Paper Bill/Statement Service means providing Customers of Inmate Calling Services an optional paper billing statement.

Permissible Ancillary Services means Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Single-Call and Related Services, and Third-Party Financial Transaction Services, as defined in Part 64 of the Commission's rules and these Instructions.

Prison means a facility operated by a territorial, state, or federal agency that is used primarily to confine individuals convicted of felonies and sentenced to terms in excess of one year. The term also includes public and private facilities that provide outsource housing to other agencies such as the State Departments of Correction and the Federal Bureau of Prisons; and facilities that would otherwise fall under the definition of Jail but in which the majority of Incarcerated Persons are post-conviction or are committed to confinement for sentences of longer than one year.

Provider, ICS Provider, and *Provider of Inmate Calling Services* mean any communications service provider that provides Inmate Calling Services, regardless of the technology used, as defined in 47 CFR 64.6000(s). This definition includes all entities acting as Subcontractors as defined below, to the extent that their activities otherwise include the provision of Inmate Calling Services.

Provider-Related Rate Component means the interim per-minute rate specified in either 47 CFR 64.6030(b) or 47 CFR 64.6030(c) that Providers at Jails with Average Daily Populations of 1,000 or more Inmates, and all Prisons, may charge for interstate Collect Calling, Debit Calling, Prepaid Calling, or Prepaid Collect Calling.

Rate Cap Rules means the FCC rules setting the maximum amounts Providers may charge for Inmate Calling Services subject to the FCC's jurisdiction. The Rate Cap Rules are set forth in 47 CFR 64.6030, as may be subsequently amended by the Commission.

Reporting Period means the Year immediately preceding the Year during which an Annual Report is due. For example, the Reporting Period for the Annual Report due in April 2023 is January 1, 2022 through December 31, 2022.

Revenue-Sharing Agreement means any agreement, whether express, implied, written, or oral that is: (a) between a Provider or any Affiliate and a Third Party, such as a financial institution; or (b) between a Provider and any of its Affiliates that, over the course of the agreement, directly or indirectly results in the payment of all or part of the revenue received from the provision of ICS or any Ancillary Service to the other party to the agreement.

Single-Call and Related Services means billing arrangements whereby an Incarcerated Person's collect calls are billed through a Third Party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services.

Site Commissions means any form of monetary payment, in kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Inmate Calling Services or Affiliate of a Provider of Inmate Calling Services may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide ICS, a governmental agency that oversees a Facility, the city, the county, or state where a Facility is located, or an agent of any such Facility.

Subcontractor means an entity that provides ICS to a Facility and has a contract or other arrangement with another Provider for provision of ICS to that Facility. A Subcontractor need not have a contractual relationship with the Facility.

Telecommunications Relay Services and *TRS* mean telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio, as defined in 47 CFR 64.601(a)(42).

Text Telephone and *TTY* mean a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system, as defined in 47 CFR 64.601(a)(43). TTY supersedes the term ''TDD'' or ''telecommunications device for the deaf,'' and ''TT.''

Third Party means an entity that is not a Provider, an Affiliate of a Provider, or a Facility.

Third-Party Financial Transaction Fees means the exact fees, with no markup, that Providers of Inmate Calling Services are charged by Third Parties to transfer money or process financial transactions to facilitate a Customer's ability to make account payments via a Third Party.

Third-Party Financial Transaction Services means the transfer of money or the processing of financial transactions to facilitate a Customer's ability to make account payments via a Third Party.

Variable Site Commissions means Site Commissions that are assessed on a per-unit basis, such as a per-minute basis, percentage of ICS revenue, or number of ICS phones at a Facility.

Year means a calendar year, from January 1 through December 31 of any given year.

IV. Annual Report Requirements

A. Basic Information

40. This section directs you to provide general information and data about your Company and its Affiliates. Enter your responses for items IV.A.(1) through IV.A.(9) in the Excel template and your responses to items IV.A.(10) through IV.A.(14) in the Word template.

(1) Provider Name: Provide the name under which the Provider offers Inmate Calling Services. If the Provider offers Inmate Calling

Services under more than one name, list all relevant names.

(2) Reporting Period: Provide the relevant time period for the information the report covers.

(3) Officer Name, Title: Provide the name and title of the officer completing and certifying FCC Form 2301(a). The officer may be the Chief Executive Officer (CEO), Chief Financial Officer (CFO), or another senior executive with first-hand knowledge of the truthfulness, accuracy, and completeness of the information provided.

(4) Officer Telephone Number: Provide the business telephone number with area code (containing ten digits) for the officer identified in item IV.A.(3).

(5) Officer Email Address: Provide the business email address of the officer identified in item IV.A.(3).

(6) Total Number of Correctional Facilities Served by Provider: Provide the total number of Facilities in which you offered ICS during the Reporting Period. You must include Facilities that you no longer serve if you served them during the Reporting Period.

(7) Number of Prisons Served by Provider: Provide the number of Prisons in which you offered ICS during the Reporting Period. You must include Prisons that you no longer serve, if you served them during the Reporting Period.

(8) Number of Jails Served by Provider With Average Daily Population (ADP) Below 1,000: Provide the number of Jails in which you offered ICS during the Reporting Period that have an ADP below 1,000. You must include Jails that you no longer serve, if you served them during the Reporting Period.

(9) Number of Jails Served by Provider With ADP of 1,000 or more: Provide the number of Jails in which you offered ICS during the Reporting Period that have an ADP of 1,000 or more. You must include Jails that you no longer serve if you served them during the Reporting Period.

(10) Provider Name: In the Word template, provide the name under which the Provider offers Inmate Calling Services. List all relevant names if the Provider offers Inmate Calling Services under more than one name.

(11) Correctional Facilities Served Less Than a Full Year: In the Word template, provide the names of all Facilities that you served for less than a full year during the Reporting Period and the corresponding dates of your service (*e.g.,* [Facility Name], From [Month]/[Date] to [Month]/[Date]). If you served all Facilities reported in item IV.A.(6) during the entirety of the Reporting Period, enter ''N/A: The Provider served each Facility listed in the Excel template throughout the entire Reporting Period.''

(12) Explanation of Alternative Method for Calculating ADP: In the Word template, provide the names of all Facilities for which the ADP reported reflects an alternative method for calculating ADP. Describe in detail the method used to calculate ADP for each of those Facilities.

(13) Narrative Description of a Subcontract To Provide ICS: If a Provider contracts with a Subcontractor to provide any aspect of ICS, the Provider and the Subcontractor shall explain each such arrangement in the Word template of their respective Annual Reports. At a minimum, this explanation shall include:

(a) The name of the Provider with the contractual or other agreement with a Facility or contracting authority for the provision of ICS;

(b) The name of the Subcontractor;

(c) The services provided by the Subcontractor under the agreement;

(d) The unique identifier and address for the Facilities at which the Subcontractor provides services under the agreement;

(e) A description of the ICS-Related Operations provided by the Provider;

(f) A description of the ICS-Related Operations provided by the Subcontractor;

(g) A list of the types of ICS calls and Ancillary Services billed by the Provider;

(h) A detailed description of any Revenue-Sharing Agreement between the Provider and the Subcontractor, including any such Agreement with regard to proceeds from those calls and services; and

(i) A list of the types of ICS calls and Ancillary Services billed by the Subcontractor and a description of any Revenue-Sharing Agreement between the Provider and the Subcontractor, including any such Agreement with regard to proceeds from those calls and services.

(14) Additional Information: In the Word template, provide any additional information needed to ensure that your entries for Basic Information are full and complete.

B. ICS Rates

41. This section directs you to report Intrastate, Interstate, and International ICS rates you charged at each Facility you served during the Reporting Period. Enter your responses to items IV.B.(1) through IV.B.(9) in the Excel template and your responses to items IV.B.(7)(d), IV.B.(7)(e), IV.B.(8)(e), IV.B.(9)(e), IV.B.(9)(f), IV.B.(9)(g), and IV.B.(9)(h) in the Word template.

(1) Contracting Party: In this column, enter the name the counterparty to each contract for the provision of ICS that the Provider held during the Reporting Period. Identify the specific party with whom the Provider executed the contract (*e.g.,* ''[State's] Department of Corrections'').

(2) Contract Identifier: In this column, provide a unique identifier for each contract for the Provider's provision of ICS that was in effect during the Reporting Period.

(3) Name of Facilities Covered by Contract: In this column, for each individual contract listed in response to item IV.B.(2), enter the name of every Facility served under that contract during the Reporting Period.

(4) Location of Facilities: In these two columns, enter the complete address and geographical coordinates for each Facility listed in response to item IV.B.(3).

(4)(a) Facility Address: Enter the complete address (street address, city, state, and ZIP Code) of the physical location of each listed Facility.

(4)(b) Geographical Coordinates: Enter the geographical coordinates of each listed Facility.

(5) Facility Type: In this column, indicate whether the relevant Facility is a Prison or a Jail. You may not enter any terms other than either Prison or Jail in this column.

(6) ADP: In this column, provide the ADP that corresponds to each Facility that the Provider listed in response to item IV.B.(3). You may enter only an integer in this column.

(7) Intrastate Rates: In these columns, provide information pertaining to rates you charged for Intrastate ICS calls from each Facility you served during the Reporting Period. For the first two categories listed below—Highest and Year-End—provide, for each Facility: (a) the total amount charged for a 15-minute call; (b) the amount charged for the first minute of that call; and (c) the amount charged per minute for each subsequent minute of that call. If your per-minute rate at a Facility did not vary, then enter the same rate in the relevant sub-columns.

For example, if you provided Intrastate ICS at $0.11 for the first minute and $0.10 per minute for each subsequent minute during the first six months of the Reporting Period and at $0.09 for the first minute and $0.11 per minute during the remainder of the Reporting Period, your former rate combination would result in total charges of $1.51 (0.11 + 0.10 * 14) for a 15-minute call and your latter rate combination would result in total charges of $1.63 (0.09 + 0.11 * 14) for a 15-minute call. You therefore would report $1.63 in sub-column (7)(a)(i), $0.09 in sub-column (7)(a)(ii), and $0.11 in sub-column (7)(a)(iii).

(7)(a) Highest 15-Minute Rate:

(7)(a)(i) 15-Minute Rate: Report the highest amount you charged for a 15-minute Intrastate call from each Facility during the Reporting Period in sub-column (7)(a)(i). If you offered different Intrastate rate plans within the Reporting Period or changed Intrastate rates during the Reporting Period, you must report the rate combination that resulted in the highest 15-minute rate even if a lower 15-minute rate was also available to Consumers at some point during the Reporting Period.

(7)(a)(ii) First Minute Rate: You must break down the highest 15-minute rate you entered in sub-column (7)(a)(i) into two individual per-minute rates and enter the rate for the first minute in sub-column (7)(a)(ii).

(7)(a)(iii) Additional Minute Rate: You must break down the highest 15-minute rate you entered in sub-column (7)(a)(i) into two individual rates and enter the rate for each subsequent minute in sub-column (7)(a)(iii).

(7)(b) Highest Year-End 15-Minute Rate:

(7)(b)(i) 15-Minute Rate: Report the highest amount you charged for a 15-minute Intrastate call from each Facility on December 31 in sub-column (7)(b)(i). If you offered different Intrastate rate plans on December 31, you must report the rate combination that resulted in the highest 15-minute rate even if a lower 15-minute Intrastate rate was also available to Consumers on December 31. For Facilities that you no longer served as of December 31, enter ''0.''

(7)(b)(ii) First Minute Rate: You must break down the highest year-end 15-minute rate you entered in (7)(b)(i) into two individual rates and enter the first minute rate in sub-column (7)(b)(ii). For Facilities that you no longer served as of December 31, enter ''0.''

(7)(b)(iii) Additional Minute Rate: You must break down the highest year-end 15-minute rate you entered in sub-column (7)(b)(i) into two individual rates and enter the rate for each subsequent minute in sub-column (7)(b)(iii). For Facilities that you no longer served as of December 31, enter ''0.''

(7)(c) Average Per-Minute Rate: Report the average per-minute rate you charged for Intrastate ICS calls from each Facility during the Reporting Period. This average shall equal the total Billed Revenues from charges for intrastate ICS calls from the Facility during the Reporting Period (excluding any revenues from Ancillary Services) divided by the total Billed Minutes of Intrastate ICS from that Facility during the Reporting Period.

(7)(d) Alternative Rate Structures: If you have implemented any rate structure other than per-minute rates for Intrastate ICS calls from any Facility, explain in detail in the Word template.

(7)(e) Additional Information: In the Word template, provide any additional information needed to ensure that your entries for Intrastate Rates are full and complete.

(8) Interstate Rates: In these columns, provide information pertaining to rates you charged for Interstate ICS calls from each Facility you served during the Reporting Period. For the first two categories listed below—Highest and Year-End—provide, for each Facility: (a) the total amount charged for a 15-minute call including both the Provider-Related Component and any Facility-Related Component; (b) the amount charged for the first minute of that call; (c) the amount charged per minute for each subsequent minute of that call; and (d) any Facility-Related Rate Component of the amount charged per minute of that call. If your per-minute rate at a Facility did not vary, then enter the same rate in the relevant sub-columns.

For example, if you provided Interstate ICS at $0.11 for the first minute and $0.10 per minute for each subsequent minute during the first six months of the Reporting Period and at $0.09 for the first minute and $0.11 per minute during the remainder of the Reporting Period, your former rate combination would result in total charges of $1.51 for a 15-minute call and your latter rate combination would result in total charges of $1.63 for a 15-minute call. You therefore would report $1.63 in sub-column (8)(a)(i). If you charged $0.02 per-minute as your Facility-Related Rate Component, then you must report $0.09 in sub-column (8)(a)(ii), which asks for the total first minute rate including the Facility-Related Rate Component; $0.11 in sub-column (8)(a)(iii), which asks for the total additional minute rate including the Facility-Related Rate Component; and $0.02 in sub-column (8)(a)(iv), which asks for the per-minute Facility-Related Rate Component alone.

(8)(a) Highest 15-Minute Rate:

(8)(a)(i) Highest 15-Minute Rate: Report the highest amount you charged for a 15-minute Interstate call from each Facility during the Reporting Period in sub-column (8)(a)(i). If you offered different Interstate rate plans within the Reporting Period or changed Interstate rates during the Reporting Period, you must report the rate combination that resulted in the highest 15-minute rate even if a lower 15-minute rate was also available to Consumers at some point during the Reporting Period. You must calculate the highest 15-minute rate by including both the Provider-Related Rate Component and any Facility-Related Component of your per-minute interstate rates.

(8)(a)(ii) First Minute Rate: You must break down the highest 15-minute rate you entered in sub-column (8)(a)(i) into two individual per-minute rates and enter the first minute rate in sub-column (8)(a)(ii). This total first minute rate should include both the Provider-Related Rate Component and any Facility-Related Rate Component.

(8)(a)(iii) Additional Minute Rate: You must break down the highest 15-minute rate you entered in sub-column (8)(a)(i) into two individual rates and enter the rate for each subsequent minute in sub-column (8)(a)(iii). This total additional minute rate should include both the Provider-Related Rate Component and any Facility-Related Rate Component.

(8)(a)(iv) Per-Minute Facility-Related Rate: Report your Facility-Related Rate Component of your per-minute Interstate rates applied in calculating the Highest 15-Minute Rate you entered in (8)(a)(i).

(8)(b) Highest Year-End 15-Minute Rate:

(8)(b)(i) Highest 15-Minute Rate: Report the highest amount you charged for a 15-minute Interstate call from each Facility on December 31 in sub-column (8)(b)(i). If you offered different Interstate rate plans on December 31, you must report the rate combination that resulted in the highest 15-minute rate even if a lower 15-minute Interstate rate was also available to the Consumers on December 31. You must calculate the highest 15-minute rate by including both the Provider-Related Rate Component and any Facility-Related Component of your per-minute Interstate rates. For Facilities that you no longer served as of December 31, enter ''0.''

(8)(b)(ii) First Minute Rate: You must break down the highest year-end 15-minute rate you entered in (8)(b)(i) into two individual rates and enter the first minute rate in sub-column (8)(b)(ii). This total first minute rate should include both the Provider-Related Rate Component and any Facility-Related Rate Component. For Facilities that you no longer served as of December 31, enter ''0.''

(8)(b)(iii) Additional Minute Rate: You must break down the highest year-end 15-minute rate you entered in sub-column (8)(b)(i) into two individual rates and enter the rate for each subsequent minute in sub-column (8)(b)(iii). This total additional minute rate should include both the Provider-Related Rate Component and any Facility-Related Rate Component. For Facilities that you no longer served as of December 31, enter ''0.''

(8)(b)(iv) Per-Minute Facility-Related Rate: Report your Facility-Related Rate Component of your per-minute interstate rates applied in calculating the Highest 15-Minute Rate you entered in (8)(b)(i). For Facilities that you no longer served as of December 31, enter ''0.''

(8)(c) Average Per-Minute Rate: Report the average per-minute rate you charged for Interstate ICS calls from each Facility during the Reporting Period. This average shall equal the total Billed Revenues from charges for interstate ICS calls from the Facility during the Reporting Period (excluding any revenues from Ancillary Services) divided by the total number of Billed Minutes of interstate ICS from that Facility during the Reporting Period.

(8)(d) Above Rate Caps: In this column, enter ''Yes'' if you charged an Interstate rate above the maximum rate permitted under the Commission's Rate Cap Rules for any minute of an Interstate ICS call from the Facility during the Reporting Period.

Enter ''No'' in this column if you only charged Interstate rates at or below the maximum rate permitted under the Commission's Rate Cap Rules for ICS calls from the given Facility during the Reporting Period.

Please note that the Commission's Rate Cap Rules can change during a Reporting Period and you must enter ''Yes'' or ''No'' for each Facility by comparing your rates to the relevant rate caps that were in effect when you charged those rates to the Consumers.

(8)(e) Additional Information: In the Word template, provide any additional information needed to ensure that your entries for Interstate Rates are full and complete.

(9) International Rates: In these columns, provide information pertaining to your highest per-minute rates and any termination charges you assessed on Consumers for International ICS calls from each Facility you served during the Reporting Period. You must calculate termination charges in accordance with 47 CFR 64.6030(e) and complete all subsections below.

42. If you charged the same international rates for all facilities governed by the same contract during the reporting period, you may report your ICS international rate information on a contract-level basis, using the separate tab ''B.(9) International Rates'' within the Excel template.

(9)(a) Domestic Portion of International Rates: Select ''Yes'' if the domestic portion of your International ICS rates from the Facility (*i.e.,* your International ICS rate minus any International termination charges) was the same as the Interstate rates you charged for Interstate calls from the Facility. Select ''No'' if the domestic portion of your International ICS rates differed from the Interstate rates you charged for Interstate calls from the Facility. If you select ''No,'' you must explain how they differed in the Word template, as further described in item IV.B.(9)(e) below.

(9)(b) Rates By International Destination: Report, for each calendar quarter, the maximum amount and the average amount that you paid your underlying International service provider for calls to each International Destination on a per-minute basis calculated in accordance with 47 CFR 64.6030(e) at each Facility you served during the Reporting Period.

(9)(b)(i) Destination: Enter every International Destination at which calls from each Facility you served were terminated during the Reporting Period.

(9)(b)(ii) Highest Per-Minute Rate: Enter the highest per-minute rate you charged for International ICS calls from each Facility during the Reporting Period.

(9)(b)(ii)(1) First Minute Rate: Enter the highest first minute rate you charged for International ICS calls from each Facility during the Reporting Period.

(9)(b)(ii)(2) Additional Minute Rate: Enter the highest additional minute rate you charged for International ICS calls from each Facility during the Reporting Period.

(9)(b)(iii) Maximum Termination Charges: Report the maximum amount that you paid your underlying International service provider for calls to each International Destination on a per-minute basis.

(9)(b)(iii)(1) Q1: Enter the maximum termination charge for the first quarter of the Reporting Period.

(9)(b)(iii)(2) Q2: Enter the maximum termination charge for the second quarter of the Reporting Period.

(9)(b)(iii)(3) Q3: Enter the maximum termination charge for the third quarter of the Reporting Period.

(9)(b)(iii)(4) Q4: Enter the maximum termination charge for the fourth quarter of the Reporting Period.

(9)(b)(iv) Average Termination Charges: Report the average amount that you paid your underlying International service provider for calls to each International Destination on a per-minute basis calculated in accordance with 47 CFR 64.6030(e).

(9)(b)(iv)(1) Q1: Enter the average termination charge for the first quarter of the Reporting Period.

(9)(b)(iv)(2) Q2: Enter the average termination charge for the second quarter of the Reporting Period.

(9)(b)(iv)(3) Q3: Enter the average termination charge for the third quarter of the Reporting Period.

(9)(b)(iv)(4) Q4: Enter the average termination charge for the fourth quarter of the Reporting Period.

(9)(c) Above Cap International Rates: In this column, enter ''Yes'' if you assessed any rate above the maximum amount permitted under the Commission's Rate Cap Rules for any minute of an International ICS call from the Facility during the Reporting Period.

Enter ''No'' in this column if your International rates were at or below the maximum amount permitted under the Commission's Rate Cap Rules for each International ICS call from the given Facility during the Reporting Period.

(9)(d) Above Cap Termination Charges: In this column, enter ''Yes'' if you assessed any termination charge above the maximum amount permitted under the Commission's Rate Cap Rules for any minute of an International ICS call from the Facility during the Reporting Period.

Enter ''No'' in this column if your termination charges were at or below the maximum amount permitted under the Commission's Rate Cap Rules for ICS calls from the given Facility during the Reporting Period.

(9)(e) Domestic Portion of International Rates: If any of your answers for item IV.B.(9)(a) is ''No,'' explain in the Word template how the domestic portion of your International ICS rates differed from the Interstate rates you charged for Interstate calls from the Facility.

(9)(f) Above Cap Termination Charges: If any of your answers for item IV.B.(9)(b) is ''Yes,'' explain in detail in the Word template the circumstances surrounding your assessing a termination charge above the maximum amount permitted under the Commission's Rate Cap Rules. This explanation shall include, among other relevant information, the circumstances leading to the above cap assessments; the total amount of above cap assessments; the number of Consumers affected; the number of calls affected; a breakdown of the above cap assessments by Facility and International Destination; and a statement as to whether the above cap assessments have been refunded to Consumers.

(9)(g) Other International Rate Offerings: Your responses to Parts IV.B.(9)(a) through IV.B.(9)(f) will provide, either on a Facility-by-Facility basis or, if certain conditions are met, a contract-level basis, detailed international rate information for each international rate destination that to which ICS calls were placed from a particular Facility during the Reporting Period. In the Word template, provide link(s) to publicly available web page(s) setting forth the rates at which you offered international ICS during the Reporting Period for International Destinations that were not called from a particular Facility during the Reporting Period.

(9)(h) Additional Information: In the Word template, provide any additional information needed to ensure that your entries for International Rates are full and complete.

C. ICS Rates Above the Maximum Rates Permitted Under the Commission's Rate Cap Rules

This section requires you to provide additional information regarding the Interstate and International rates charged for ICS calls from each Facility for which you entered ''Yes'' in response to items IV.B.(8)(d) and IV.B.(9)(d). Enter ''N/A: No Charges Above the FCC Rate Caps'' at the top of the sheet C. of the Excel template if you entered ''No'' for every Facility you served during the Reporting Period in response to items IV.B.(8)(d) and IV.B.(9)(d). Enter your responses for items IV.C.(1) through IV.C.(3) in the Excel template, and items IV.C.(4) through IV.C.(6) in the Word template.

(1) Contract Identifier: In this column, provide a unique identifier for each contract for the Provider's provision of ICS that was in effect during the Reporting Period.

(2) Name of Facilities Covered by Contract: In this column, for each individual contract listed in response to item IV.C.(1), enter the name of every Facility served under that contract during the Reporting Period.

(3) Rate Information: In these columns, provide additional information regarding the Interstate and International rates charged for ICS calls from each Facility for which you entered ''Yes'' in response to items IV.B.(8)(d) and IV.B.(9)(d).

(3)(a) Applicable Period: Provide the relevant period during which you charged each reported rate in a MM/DD/YYYY format (*e.g.,* ''03/22/2022 to 07/15/2022'').

(3)(b) Interstate Rates: Complete all items below for your Interstate ICS rates charged during the Reporting Period.

(3)(b)(i) Total Rate: If your total combined Interstate rate (*i.e.,* the sum of Provider-Related Rate Component and Facility-Related Rate Component) and/or a component thereof exceeded the maximum rate permitted under the Rate Cap Rules, report the total per-minute rate that your charged.

(3)(b)(ii) Provider Rate: If your total combined Interstate rate and/or a component thereof exceeded the maximum rate permitted under the Rate Cap Rules, report the Provider-Related Rate Component of the rate that you charged.

(3)(b)(iii) Facility Rate: If your total combined Interstate rate and/or a component thereof exceeded the maximum rate permitted under the Rate Cap Rules, report the Facility-Related Rate Component of the rate that you charged.

(3)(b)(iv) Facility Rate Type: Indicate the nature of the rate that you reported in (3)(b)(iii). Select ''Contract'' if the facility rate component is required by your contract with the Facility. Select ''State Law'' if the facility rate component is required by a state statute, law, or regulation applicable to your rate.

(3)(c) International Rates: Complete all items below for your International ICS rates charged during the Reporting Period.

(3)(c)(i) Total Rate: If your total per-minute International ICS rate (*i.e.,* the sum of the domestic portion and any termination charge) and/or a component thereof exceeded the maximum rate permitted under the Rate Cap Rules, report the total per-minute rate that your charged.

(3)(c)(ii) Termination Charge: If your total per-minute International ICS rate or your termination charge exceeded the maximum amount permitted under the Rate Cap Rules, report the termination charge that you charged.

(4) Explanation of Above Cap Interstate Rates: In the Word template, explain in detail the circumstances surrounding each Interstate ICS rate you charged that exceeded the maximum amount permissible under the Commission's Rate Cap Rules. This explanation shall include, among other relevant information, the circumstances leading to the above cap charges; the total amount of above cap charges; the number of Consumers affected; the number of calls affected; a breakdown of the above cap charges by Facility; and a statement as to the extent to which the above cap assessments have been refunded to Consumers.

(5) Explanation of Above Cap International Rates: In the Word template, explain in detail the circumstances surrounding each International ICS rate you charged that exceeded the maximum amount permissible under the Commission's Rate Cap Rules. This explanation shall include, among other relevant information, the circumstances leading to the above cap charges; the total amount of above cap charges; the number of Consumers affected; the number of calls affected; a breakdown of the above cap charges by Facility; and a statement as to the extent to which the above cap assessments have been refunded to Consumers.

(6) Additional Information: In the Word template, provide any additional information needed to ensure that your entries for ICS Rates Above the Maximum Rates Permitted Under the Commission's Rate Cap Rules are full and complete.

D. Ancillary Service Charges

This section requires you to provide, on a Facility-by-Facility basis, information regarding any Ancillary Services you offered during the Reporting Period. Enter your responses for items IV.D.(1) through IV.D.(3) in the Excel template, and items IV.D.(4) through IV.D.(8) in the Word template.

(1) Contract Identifier: In this column, provide a unique identifier for each contract for the Provider's provision of ICS that was in effect during the Reporting Period.

(2) Name of Facilities Covered by Contract: In this column, for each individual contract listed in response to item IV.D.(1), enter the name of every Facility served under that contract during the Reporting Period.

(3) Ancillary Service Charges: The Excel template contains columns for Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Single-Call and Related Services, and Third-Party Financial Transaction Services, and a placeholder column for Other Ancillary Services. Each Ancillary Service column contains up to eleven sub-columns, (3)(a)–(g), as described below. Using these sub-columns, you must indicate whether you assessed an Ancillary Service Charge at the relevant Facility during the Reporting Period, and report the jurisdictional nature of the charge, the amount you billed to Consumers per transaction, whether the Ancillary Service Charge is fixed or variable, the total number of times each charge was assessed, and information regarding Single-Call and Related Services fees and Third-Party Financial Transaction Fees. For any Ancillary Service Charges you assessed on Consumers that are not listed, use the placeholder column for Other Ancillary Services and change the column name (*e.g.,* Other-Connection Fee) and repeat this column as needed.

(3)(a) Billed (Yes/No): In this column, enter ''Yes'' if you assessed an Ancillary Service Charge to Consumers.

(3)(b) Jurisdiction: In this column, enter ''Intrastate only,'' ''Interstate/International only,'' or ''Both,'' depending on the jurisdictional nature of the Ancillary Service Charge.

(3)(c) Amounts Billed for Ancillary Service Charges: In this column, report the maximum amount per transaction billed to Consumers for each type of Ancillary Service Charge that you assessed.

(3)(d) Fixed or Variable Fees: In this column, report whether the Ancillary Service Charge is fixed or varied based on the transaction amount or other factors.

(3)(e) Number of Times Each Charge Has Been Assessed: In this column, report the total number of times you assessed each Ancillary Service Charge to Consumers from each Facility during the Reporting Period. The number must be reported by Facility, not by Consumer, and must be for any amounts billed, not just the maximum amount billed, to Consumers.

(3)(f) Third-Party Single Call and Related Services Fees: In this column, provide the name of each Third Party for which you passed through to Consumers a transaction fee for Single Call and Related Services Fees during the Reporting Period. Enter N/A if you did not pass through any such transaction fees during the reporting period.

(3)(f)(1): For each third party identified in response to item IV.D(3)(f), state the number of times you passed through to Consumers a transaction fee for Single Call and Related Services during the Reporting Period. Enter N/A if you did not pass through any such transaction fees during the reporting period.

(3)(f)(2): For each third party identified in response to item IV.D(3)(f), provide the total amount of transaction fees for Single Call and Related Services that you passed through to Consumers during the Reporting Period. Enter N/A if you did not pass through any such transaction fees during the reporting period.

(3)(g) Third Party Financial Transaction Fees: In this column, provide the name of each Third Party for which you passed through to Consumers Third Party Financial Transaction Fees during the Reporting Period. Enter N/A if you did not pass through any such transaction fees during the reporting period.

(3)(g)(1): For each third party identified in response to item IV.D(3)(g), state the number of times you passed through to Consumers a Third Party Financial Transaction Fees during the Reporting Period. Enter N/A if you did not pass through any such transaction fees during the reporting period.

(3)(g)(2): For each third party identified in response to item IV.D(3)(g), provide the total amount of Third Party Financial Transaction Fees that you passed through to Consumers during the Reporting Period. Enter N/A if you did not pass through any such transaction fees during the reporting period.

(4) Above Cap Ancillary Service Charges: If any of your answers for item IV.D.(3)(c), Amounts Billed for Ancillary Service Charges, exceeds the maximum charges permitted under the Commission's Ancillary Service Charge Rules, explain in detail in the Word template the circumstances surrounding the above cap charges. This explanation shall include, among other relevant information, the circumstances leading to the above cap charges; the total amount of above cap charges; the number of Consumers affected; a breakdown of the above cap charges by type of charge and frequency for each relevant Facility; and a statement as to the extent to which the above cap charges have been refunded to Consumers.

(5) Variable Ancillary Service Charges: If any of your answers for item IV.D.(3)(d), Fixed or Variable Fees, is variable, explain in the Word template how the variable fee is calculated, and provide the allocation and/or methodology for the variable fee, if applicable.

(6) Allocation of Reported Number: If any of your answers for item IV.D.(3)(e), Number of Times Each Charge Has Been Assessed, reflects an allocation of Ancillary Service Charge payments among Facilities, explain in the Word template why an allocation is necessary and provide the methodology used to perform the allocation.

(7) Calculating Variable Service Fees: In the Word template, explain in detail how you calculated variable service fees charged to consumers for using ancillary services.

(8) Additional Information: In the Word template, provide any additional information needed to ensure that your entries for Ancillary Service Charges are full and complete.

E. Site Commissions

This section requires you to report, for each Facility you served during the Reporting Period, your total average monthly Site Commission payments and to divide those payments into certain specified categories. Enter your responses for items IV.E.(1) through IV.E.(4) in the Excel template, and items IV.E.(5) through IV.E.(8) in the Word template.

Each category's monthly average shall be calculated by dividing the total Site Commission payments for that category during the Reporting Period by number of months during which you provided ICS during the Reporting Period. Each of your entries shall be a dollar amount, except that you shall enter ''N/A'' for categories for which you had no Site Commission payments during the Reporting Period.

(1) Contract Identifier: In this column, provide a unique identifier for each contract for the Provider's provision of ICS that was in effect during the Reporting Period.

(2) Name of Facilities Covered by Contract: In this column, for each individual contract listed in response to item IV.E.(1), enter the name of every Facility served under that contract during the Reporting Period.

(3) Monthly Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Site Commission payments during the Reporting Period. Enter ''N/A'' for the sub-columns if you did not pay the applicable Site Commission.

(3)(a) Legally Mandated Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Legally Mandated Site Commission payments during the Reporting Period.

(3)(a)(i) Monetary Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Legally Mandated Site Commission payments that were Monetary Site Commission payments.

(3)(a)(i)(1) Fixed Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Legally Mandated, Monetary Site Commission payments that were Fixed Site Commission payments.

(3)(a)(i)(2) Variable Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Legally Mandated, Monetary Site Commission payments that were Variable Site Commission payments.

(3)(a)(ii) In-Kind Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Legally Mandated Site Commission payments that were In-Kind Site Commission payments.

(3)(a)(ii)(1) Fixed Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Legally Mandated, In-Kind Site Commission payments that were Fixed Site Commission payments.

(3)(a)(ii)(2) Variable Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Legally Mandated, In-Kind Site Commission payments that were Variable Site Commission payments.

(3)(b) Contractually Prescribed Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Contractually Prescribed Site Commission payments.

(3)(b)(i) Monetary Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Contractually Prescribed Site Commission payments that were Monetary Site Commission payments.

(3)(b)(i)(1) Fixed Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Contractually Prescribed, Monetary Site Commission payments that were Fixed Site Commission payments.

(3)(b)(i)(2) Variable Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Contractually Prescribed, Monetary Site Commission payments that were Variable Site Commission payments.

(3)(b)(ii) In-Kind Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Contractually Prescribed Site Commission payments that were In-Kind Site Commission payments.

(3)(b)(ii)(1) Fixed Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your Legally Mandated, In-Kind Site Commission payments that were Fixed Site Commission payments.

(3)(b)(ii)(2) Variable Site Commission Payments: Report, for each Facility you served during the Reporting Period, the dollar amount of your average monthly Contractually Prescribed, In-Kind Site Commission payments that were Variable Site Commission payments.

(4) Total Site Commission Amount Paid: For each Facility you served during the Reporting Period, report the total dollar amount of your Site Commission payments during the Reporting Period.

(4)(a) Total Fixed Site Commissions Amount Paid: In this column, enter the total dollar amount in Fixed Site Commissions you paid to the Facility during the Reporting Period.

(4)(b) Total Variable Site Commissions Amount Paid: In this column, enter the total dollar amount in Variable Site Commissions you paid to the Facility during the Reporting Period.

(5) Allocation of Reported Amount: If any amount reported for items in IV.E.(3)–(4) reflects an allocation of Site Commission payments among Facilities covered by a given contract, explain in the Word template why an allocation is necessary, provide the methodology used to perform the allocation, and explain why you chose the particular allocation method. For each amount reflecting an allocation of Site Commission payments among Facilities covered by a given contract, you must identify each Facility to which that amount has been allocated and include the contract identifier information for each Facility covered by that contract.

(6) In-Kind Site Commission: Describe in the Word template your in-kind Site Commission payments in detail, including the valuation methodology you used for your responses in the Excel Template. Specifically describe each Security Service that you classify as an In-Kind Site Commission payment. Also specifically describe any other payment, gift, exchange of services or goods, fee, technology allowance, or product that you classify as an In-Kind Site Commission payment.

(7) Legal Authority for Legally Mandated Site Commission Payments: For any Legally Mandated Site Commission payments reported in item IV.E.(3)(a) above, provide a citation to the authority requiring the Legally Mandated Site Commission at the Facility.

(8) Additional Information: In the Word template, provide any additional information needed to ensure that your entries for Site Commissions are full and complete.

F. Disability Access

43. This section directs you to provide, on a Facility-by-Facility basis, information regarding any completed calls that utilized the Disability Access services you offer during the Reporting Period. Enter your responses for items IV.F.(1) through IV.F.(10) in the Excel template, and items IV.F.(11) through IV.F.(13) in the Word template.

(1) Contract Identifier: In this column, provide a unique identifier for each contract for the Provider's provision of ICS that was in effect during the Reporting Period.

(2) Name of Facilities Covered by Contract: In this column, for each individual contract listed in response to item IV.F.(1), enter the name of every Facility served under that contract during the Reporting Period.

(3) Number of Disability-Related Calls: In this column, list the number of TTY-based ICS calls made in that Facility during the Reporting Period.

(4) Number of Dropped Disability-Related Calls: In this column, list the number of dropped TTY-based ICS calls made in that Facility during the Reporting Period.

(5) Number of Complaints Regarding Problems Experienced with Disability-Related Calls: In this column, provide the number of complaints received by the Provider related to a problem with TRS or TTY-based ICS calls made in that Facility during the Reporting Period. These problems could include, for example, dropped calls and calls with poor quality connections.

(6) Ancillary Service Charges: In this column, list each type of Ancillary Service Charge you assessed during the Reporting Period for access to or use of TTY equipment or other disability-related ICS technologies at the relevant Facility.

(7) Billed (Yes/No): In this column, enter ''Yes'' if you assessed an Ancillary Service Charge to Consumers of TTY-based calls.

(8) Jurisdiction: In this column, enter ''Intrastate only,'' ''Interstate only,'' or ''Both,'' depending on the jurisdictional nature of the Ancillary Service Charge.

(9) Amounts Billed for Ancillary Service Charges: In this column, report the total amount billed to Consumers of TTY-based calls for each type of Ancillary Service Charge that you assessed. If there was no cost to the Consumer, report the amount billed as zero.

(10) Number of Times Each Charge Has Been Assessed: In this column, report the total number of times you assessed each Ancillary Service Charge to Consumers of TTY-based calls at each Facility during the Reporting Period. The number must be reported by Facility, not by Consumer, and must be for any amounts billed, not just the maximum amount billed, to Consumers.

(11) Above Cap TTY-Based Ancillary Service Charges: If any of your answers for item IV.F.(9), Amounts Billed for Ancillary Service Charges, exceeds the maximum charges permitted under the Commission's Ancillary Service Charge Rules, explain in detail in the Word template the circumstances surrounding the above cap charges. This explanation shall include, among other relevant information, the circumstances leading to the above cap charges; the total amount of above cap charges; the number of Consumers affected; a breakdown of the above cap charges by type of charge and frequency for each relevant Facility; and a statement as to the extent to which the above cap charges have been refunded to Consumers.

(12) Allocation of Reported Number: If a reported number of times each charge has been assessed reflects an allocation of Ancillary Service Charge payments among Facilities, explain in the Word template why an allocation is necessary, provide the methodology used to perform the allocation, and why you chose the particular allocation method.

(13) Additional Information: In the Word template, provide any additional information needed to ensure that your entries for Disability Access are full and complete.

V. Annual Certificate Requirements

Each Provider of Inmate Calling Services must submit a signed certification form as part of Annual Report. The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of the Provider must complete the form and certify that, based the executive's own reasonable inquiry, that all statements and information contained in the Provider's Annual Report are true, accurate, and complete. The Certification Form is Appendix C to these Instructions.

(1) Name of Service Provider: Provide the name under which the provider offers ICS. If the provider offers ICS under more than one name, provide all relevant names.

(2) Reporting Years: Provide the relevant time period for the information the certification covers.

(3) Officer Name, Title: Provide the name and title of the officer completing the certification form. The officer must be the CEO, CFO, or other senior executive who can attest to the truthfulness, accuracy, and completeness of the information provided.

(4) Mailing Address of Officer: Provide the business mailing address of the officer identified in item V.(3).

(5) Telephone Number: Provide the business telephone number, with area code, of the officer identified in item V.(3).

(6) Email Address: Provide the business email address of the officer identified in item V.(3).

(7) Certification: This item requires the person who signs the certification form on behalf of the service provider to declare, under penalty of perjury, that (1) the signatory is an officer of the above-named service provider and is authorized to submit the attached Annual Report on behalf of the service provider; (2) the signatory has examined the attached Annual Report and determined that all requested information has been provided; and (3) based on information known to the signatory, or provided to the signatory by employees responsible for the information being submitted, and on the signatory's own reasonable inquiry, all statements and information contained in the provider's Annual Report are true, accurate, and complete.

(8) Signature of Authorized Officer: The signature of the officer identified in item V.(3) is required in this block.

(9) Date: The date the officer identified in item V.(3) signs the form is required in this block.

(10) Printed Name of Authorized Officer: The printed name of the officer identified in item V.(3) is required in this block.

[FR Doc. 2022–16146 Filed 8–1–22; 8:45 am]

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DEPARTMENT OF JUSTICE

48 CFR Chapter 28

[Docket No. JMD 155]

RIN 1105–AB54

Streamlining DOJ Acquisition Regulations (JAR)

AGENCY: Justice Management Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is revising the Justice Acquisition Regulations (JAR) in its entirety in order to update and streamline agency procurement actions consistent with the Federal Acquisition Reform Act, and the Federal Acquisition Streamlining Act. The JAR supplements the executive branch-wide Federal Acquisition Regulations (FAR) to address matters specific to the Department of Justice relating to its procurement of goods and services. It covers mostly internal policies and procedures, but also includes some rules governing private entities doing business with the Department.

DATES: This rule is effective on September 2, 2022.

FOR FURTHER INFORMATION CONTACT: Tara M. Jamison, Director, Office of Acquisition Management, Justice Management Division, 145 N Street NE, Room 8W.210, Washington, DC 20530, (202) 616–3754 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Summary

This rule codifies changes to the Justice Department's Justice Acquisition Regulations that were proposed in the proposed rule on this subject that was published on October 21, 2021 (86 FR 58526). The public comment period ended on December 20, 2021. The Department received only two comments on proposed rule which are discussed below.

II. Discussion

A. Background—The FAR, the OFPP Act, and the JAR

When Federal agencies acquire supplies or services using appropriated funds, the purchase is governed by the Federal Acquisition Regulations (FAR), set forth at title 48 of the CFR, chapter 1, parts 1 through 53, and any agency regulations that implement or supplement the FAR.

The Office of Federal Procurement Policy Act (OFPP), as codified in 41 U.S.C. 1707, provides the authority for an agency to issue acquisition regulations that implement or supplement the FAR. This authority ensures that Government procurements are handled fairly and consistently, that the Government receives overall best value, and that the Government and contractors both operate under a known set of rules.

The Justice Acquisition Regulations (JAR) are set forth at title 48 CFR, chapter 28, parts 2801 through 2852, and provide procurement regulations that supplement the FAR to address matters specific to the Department of Justice (''the Department'' or ''DOJ'') relating to its acquisition of goods and services. As such, the JAR covers only those areas where agency implementation is required by the FAR, or where DOJ policies and procedures exist that supplement FAR coverage.

B. Purpose of the Regulatory Action

The revisions made by this rule will align internal departmental guidance in the JAR with the FAR and remove outdated and duplicative requirements. The revisions will revise the existing regulation promulgated at 63 FR 16118–01 on April 2, 1998, corrected at 63 FR 26738–01, May 14, 1998, and amended at 64 FR 37044–01, July 9, 1999 (together, the ''current regulation''). Among other things, the revisions will: (1) update definitions and descriptions, (2) streamline certain sections, (3) remove extraneous procedural information that applies only to DOJ's internal operating procedures, (4) delete outdated information, (5) incorporate new regulatory sections to align with internal bureau procedures as appropriately contained in DOJ policy orders and policy instructions, and (6) simplify other parts for efficiency.

This rulemaking effort creates an efficient JAR that is more straightforward and less burdensome. The revised JAR will supersede the current regulation in its entirety.

C. Relation of the FAR to the JAR

The FAR contains many requirements related to agency procedures, which will not be repeated in DOJ's revision of the JAR. If the JAR does not include provisions supplementing the FAR under the corresponding part or subpart, it is because the FAR language is considered sufficient. Where the JAR states ''in accordance with bureau procedures'' or ''in accordance with agency procedures,'' this does not mean that the bureau or the agency must have a procedure. It is intended that the bureau or agency procedures are to be followed if they exist, but does not mean that the bureau or the agency necessarily has a formal written procedure. Where neither the JAR nor bureau procedures address a FAR subject, the FAR guidance is to be followed. The JAR is not a complete system of regulations and must be used in conjunction with the FAR.

D. Summary of Noteworthy Changes

Most of the changes to 48 CFR chapter 28 relate to internal Department policies and procedures that do not impact the public. For example, the revisions identify the individuals within the Department who will exercise particular responsibilities set forth in the FAR, and whether such responsibilities may be delegated. There are, however, two provisions that impact the public. Part 2833 contains revisions to the process for filing and deciding agency protests of procurement decisions. In addition,

the revisions include a new section 2852.212–4, which is a FAR deviation that sets forth certain terms and conditions that will apply to all software licenses.

E. Other Changes and Effect on Non-Department Entities

While most of the changes to the JAR made by this rule relate to internal policies and procedures, some changes govern matters relating to private entities selling goods or services to the Department. In particular, the rule includes changes related to the filing and deciding of procurement protests filed with the Department, and also includes a FAR deviation that establishes certain terms and conditions that will be incorporated in all software licenses with the Department.

Some subparts/sections that are being removed addressed matters that are now addressed in new subparts/sections with different numbering, while some subparts/sections are being removed altogether. The removal of subparts by this rule merely eliminates from the JAR provisions that are either already in the FAR or that only pertain to internal policy guidance. None of the subparts or sections being removed altogether addressed matters affecting persons or entities external to the Department. To the extent matters addressed in such removed subpart/sections are incorporated into internal Department guidance documents, this will not affect persons or entities external to the Department.

Attached to this rule is an Appendix that lists the sections of the JAR that are being removed and/or renamed. The Appendix will not be codified.

III. Discussion of Comments

One comment recommended that the Justice Department should adopt this rule, because it would be good for the Justice Department and provide a good example for other Government agencies to get more in line with Federal regulations and modernize their current regulations when possible.

A second commenter expressed concern about the variance between the current existing regulations and the regulations being proposed. In particular, the commenter suggested that this rule has a direct effect on interstate commerce and raises federalism concerns through the rule's affect on the states through potential taxation of acquisitions. In response, the Department notes that this rule: (1) has no impact on State or local governments in their governmental capacity, (2) imposes no taxes on such governments, (3) imposes no requirements on such governments regarding their own procurement or acquisition policies. State and local governments would only come under the provisions of this rule if they were selling some product or service to the Justice Department pursuant to the normal Justice Department acquisition process. In that case, such governments would be treated by this rule like any other vendor selling to DOJ. Further, this rule imposes no burdens on interstate commerce but, rather, by simplifying and streamlining the JAR should make the process of selling goods and services to DOJ easier to understand.

The Department believes that the comments received on the JAR proposed rule do not require changes to the rule. Accordingly, this final rule finalizes the proposed rule without change.

IV. Regulatory Certifications

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Orders 12866 and 13563. This rule is primarily limited to agency organization, management and personnel as described by Executive Order 12866, section 3(d)(3) and, therefore, is not a ''regulation'' as defined by that Executive order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives. The Justice Management Division (JMD) has examined the economic, budgetary, and policy implications of its regulatory action, and has determined that the impact on the public is minimal. The regulation mainly relates to internal Department policies and procedures that do not impact the public.

Regulatory Flexibility Act

The Attorney General in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities for the following reasons. The rule applies primarily to DOJ internal operating procedures and would generally be business neutral. DOJ estimates that no cost impact would result from this rule update for individual business.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule would have no such effect on State, local, and tribal governments or on the private sector.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

JMD has determined that this action is a rule relating primarily to agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties, and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act. Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule imposes no information collection or recordkeeping requirements.

Signing Authority

In accordance with Paragraph 8 of Attorney General Order 1687–93, the undersigned is authorized to sign and submit this document to the Office of the Federal Register for publication electronically as an official document of the Department of Justice.

List of Subjects

48 CFR Parts 2801, 2802, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2819, 2827, 2834, 2836, 2837, 2845, 2850, and 2852.

Government procurement.

48 CFR Part 2803

Conflict of interest, Government procurement.

48 CFR Part 2804

Classified information, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 2822

Government procurement, Individuals with disabilities.

48 CFR Part 2823

Environmental protection, Government procurement.

48 CFR Part 2825

Foreign currencies, Foreign trade, Government procurement.

48 CFR Part 2828

Government procurement, Insurance, Surety bonds.

48 CFR Part 2829

Government procurement, Taxes.

48 CFR Parts 2830, 2831, and 2832

Accounting, Government procurement.

48 CFR Part 2833

Administrative practice and procedure, Government procurement.

48 CFR Part 2839

Computer technology, Government procurement.

48 CFR Part 2841

Government procurement, Reporting and recordkeeping requirements, Utilities.

48 CFR Part 2842

Accounting, Freight, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 2846

Government procurement, Reporting and recordkeeping requirements, Warranties.

48 CFR Parts 2848 and 2849

Government procurement, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons set out in the preamble, 48 CFR chapter 28 is revised to read as follows:

CHAPTER 28—DEPARTMENT OF JUSTICE

SUBCHAPTER A—GENERAL

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM
PART 2802—DEFINITIONS OF WORDS AND TERMS
PART 2803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST
PART 2804—ADMINISTRATIVE MATTERS

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2805—PUBLICIZING CONTRACT ACTIONS
PART 2806—COMPETITION REQUIREMENTS
PART 2807—ACQUISITION PLANNING
PART 2808—REQUIRED SOURCES OF SUPPLIES AND SERVICES
PART 2809—CONTRACTOR QUALIFICATIONS
PART 2810—MARKET RESEARCH
PART 2811—DESCRIBING AGENCY NEEDS
PART 2812—ACQUISITION OF COMMERCIAL ITEMS

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2813—SIMPLIFIED ACQUISITION PROCEDURES
PART 2814—SEALED BIDDING
PART 2815—CONTRACTING BY NEGOTIATION
PART 2816—TYPES OF CONTRACTS
PART 2817—SPECIAL CONTRACTING METHODS

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2819—SMALL BUSINESS PROGRAMS
PART 2822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
PART 2823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE
PART 2825—FOREIGN ACQUISITION

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2827—PATENTS, DATA, AND COPYRIGHTS
PART 2828—BONDS AND INSURANCE
PART 2829—TAXES
PART 2830—COST ACCOUNTING STANDARDS ADMINISTRATION
PART 2831—CONTRACT COST PRINCIPLES AND PROCEDURES
PART 2832—CONTRACT FINANCING
PART 2833—PROTESTS, DISPUTES, AND APPEALS

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2834—MAJOR SYSTEM ACQUISITION
PART 2836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS
PART 2837—SERVICE CONTRACTING
PART 2839—ACQUISITION OF INFORMATION TECHNOLOGY
PART 2841—ACQUISITION OF UTILITY SERVICES

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2842—CONTRACT ADMINISTRATION AND AUDIT SERVICES
PART 2845—GOVERNMENT PROPERTY
PART 2846—QUALITY ASSURANCE
PART 2848—VALUE ENGINEERING
PART 2849—TERMINATION OF CONTRACTS
PART 2850—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

SUBCHAPTER H—CLAUSES AND FORMS

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBCHAPTER A—GENERAL

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

Subpart 2801.1—Purpose, Authority, Issuance

Sec.
2801.101 Purpose.
2801.105 Issuance.
2801.105–2 Arrangement of regulation.
2801.106 OMB approval under the Paperwork Reduction Act.

Subpart 2801.3—Agency Acquisition Regulations

2801.304 Agency control and compliance procedures.

Subpart 2801.4—Deviations from the FAR and JAR

2801.403 Individual deviations.
2801.404 Class deviations.
2801.404–70 Requests for class deviations.

Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities

2801.601 General.
2801.604 Contracting Officer's Representative (COR).

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2801.1—Purpose, Authority, Issuance

2801.101 Purpose.

(a) The Justice Acquisition Regulation (JAR) provides agency guidance, in accordance with Federal Acquisition Regulation (FAR) 1.301(a)(2), and establishes, in this chapter, procurement regulations that supplement the FAR, 48 Code of Federal Regulations (CFR) chapter 1, and must be utilized conjunction with the FAR.

(b)(1) The JAR contains Department of Justice (DOJ) policies that govern DOJ's acquisition process or otherwise control acquisition relationships between DOJ's contracting activities and contractors. The JAR contains—

(i) Requirements of law;

(ii) Deviations from the FAR requirements; and

(iii) Policies that either have a significant effect beyond the internal procedures of DOJ or a significant cost or administrative impact on contractors or offerors.

(2) Relevant internal DOJ policies, procedures, guidance, and information not meeting the criteria in paragraph (b)(1) of this section are issued by DOJ in other announcements, internal policies, procedures, or guidance.

2801.105 Issuance.

2801.105–2 Arrangement of regulation.

The JAR is subdivided into parts, which correspond to FAR parts. The numbering system permits the discrete identification of every JAR paragraph. This numbering system permits immediate identification of each JAR part with coverage of the same subject matter and same numbering system as in the FAR. Supplementary material for which there is no counterpart in the FAR is identified by a numerical suffix of 70 or higher in the final position of the reference number.

Figure 1 to 2801.105-2: Illustration of numbering system

FAR 1.201 Maintenance of the FAR

JAR 2801.201-70 Maintenance of the JAR

2801.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and the Office of Management and Budget's (OMB) implementing regulations at 5 CFR part 1320, require that reporting and recordkeeping requirements affecting ten (10) or more members of the public be cleared by OMB. The OMB control number for the collection of information under this chapter is 1103–0018.

Subpart 2801.3—Agency Acquisition Regulations

2801.304 Agency control and compliance procedures.

Pursuant to FAR 1.304, the Senior Procurement Executive (SPE) is responsible for ensuring that bureau acquisition guidance and directives do not restrain the flexibilities found in the FAR. For this reason, bureaus shall forward any bureau acquisition guidance to the SPE upon issuance. The SPE has the authority to revoke any guidance or directive considered restrictive of the regulations found in the FAR.

Subpart 2801.4—Deviations From the FAR and JAR

2801.403 Individual deviations.

Individual deviations from the FAR or the JAR that affect only one contract action shall be approved by the Head of the Contracting Activity (HCA) or designee.

2801.404 Class deviations.

Requests for class deviations from the FAR or JAR shall be submitted to the SPE. The SPE will consult with the chairperson of the Civilian Agency Acquisition Council (CAAC), as appropriate, and send his/her recommendations to the Chief Acquisition Officer (CAO). The CAO will grant or deny requests for such deviations. Requests for deviations involving basic ordering agreements, master type contracts, or situations where multiple awards are made from one solicitation are considered to involve more than one contract and, therefore, are considered class deviation requests.

2801.404–70 Requests for class deviations.

Requests for approval of class deviations from the FAR or the JAR, for any solicitation that will result in multiple awards, shall be forwarded to the SPE. Such requests will be signed by the Bureau Procurement Chief (BPC).

Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities

2801.601 General.

(a) In accordance with Attorney General Order 1687–93, the authority vested in the Attorney General (AG) with respect to contractual actions for goods and services is delegated to the following officials to serve as HCAs:

(1) Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF);

(2) Director, Bureau of Prisons (BOP);

(3) Administrator, Drug Enforcement Administration (DEA);

(4) Director, Federal Bureau of Investigation (FBI);

(5) Director, Federal Prison Industries (FPI/UNICOR);

(6) Inspector General, Office of the Inspector General (OIG);

(7) Assistant Attorney General, Office of Justice Programs (OJP);

(8) Director, U.S. Marshals Service (USMS); and

(9) Assistant Attorney General for Administration (AAG/A) (for the Offices, Boards, and Divisions).

(b) The acquisition authority delegated to the officials in paragraph (a) of this section may be redelegated to subordinate officials as necessary for the efficient and proper administration of the Department's acquisition operations, unless otherwise prohibited by the FAR or JAR. Such redelegated authority shall expressly state whether it carries the power of redelegation of authority.

2801.604 Contracting Officer's Representative (COR).

Contracting officers may appoint individuals to act as authorized representatives in the monitoring and administration of a contract. Such officials shall be designated as a Contracting Officer's Representative (COR). When a COR is to be designated, contracting officers shall include the clause at JAR 2852.201–70 in all contracts. A COR's authority is limited to the authority set forth in the subject clause.

PART 2802—DEFINITIONS OF WORDS AND TERMS

Subpart 2802.1—Definitions

Sec.

2802.101 Definitions.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2802.1—Definitions

2802.101 Definitions.

Throughout this chapter, the following words and terms are used as defined in this subpart unless the context in which they appear clearly requires a different meaning, or a

different definition is prescribed for a particular part or portion of a part.

(a) *Agency* means the Department of Justice.

(b) *Bureau* means contracting activity. (See ''contracting activity'' in this subpart.)

(c) *Bureau Procurement Chief* or *BPC* means the supervisory official who is directly responsible for supervising, managing, and directing all contracting offices of the bureau.

(d) *Cardholder* means an individual entrusted with a Government Purchase Card.

(e) *Chief Acquisition Officer* or *CAO* means the official appointed to assist the head of the agency and other agency officials to ensure the mission of the agency is achieved through the management of the agency's acquisition activities.

(f) *Chief of the Contracting Office* means that supervisory official who is directly responsible for supervising, managing and directing a contracting office.

(g) *Contracting activity* means a component within the Department which has been delegated procurement authority to manage contracting functions associated with its mission (see 2801.601(a)).

(h) *Department* or *DOJ* means the Department of Justice.

(i) *Head of the Contracting Activity* or *HCA* means those officials identified in 2801.601(a) having responsibility for supervising, managing, and directing the operations of the contracting activity.

(j) *JAR* means the Department of Justice Acquisition Regulation in this chapter.

(k) *JMD* means the Justice Management Division.

(l) *OIG* means DOJ's Office of the Inspector General.

(m) *Suspension and Debarment Official* or *SDO* means the employee designated to impose suspension and debarment for the Department of Justice.

(n) *Senior Procurement Executive* or *SPE* means the official designated to be responsible for management direction of the Department of Justice procurement system, including implementation of unique procurement policies, regulations, and standards of the Department of Justice.

PART 2803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2803.1—Safeguards

Sec.

2803.101 Standards of conduct.
2803.101–3 Agency regulations.
2803.104 Procurement integrity.
2803.104–7 Violations or possible violations.

Subpart 2803.2—Contractor Gratuities to Government Personnel

2803.203 Reporting suspected violations of the Gratuities clause.
2803.204 Treatment of violations.

Subpart 2803.3—Reports of Suspected Antitrust Violations

2803.301 General.

Subpart 2803.4—Contingent Fees

2803.405 Misrepresentation or violations of the Covenant Against Contingent Fees.

Subpart 2803.8—Limitations on the Payment of Funds to Influence Federal Transactions

2803.806 Processing suspected violations.

Subpart 2803.9—Whistleblower Protections for Contractor Employees

2803.901 Definitions.
2803.905 Procedures for investigating complaints.
2803.906 Remedies.
2803.908 Pilot program for enhancement of contractor employee whistleblower protections.
2803.908–9 Contract clauses.
2803.908–70 Whistleblower Protection in General Non-Disclosure Agreement.
2803.908–71 Whistleblower Protection in New Intelligence Related Non-Disclosure Agreement.

Subpart 2803.10—Contractor Code of Business Ethics and Conduct

2803.1004 Contract clauses

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2803.1—Safeguards

2803.101 Standards of conduct.

2803.101–3 Agency regulations.

The DOJ regulations governing Standards of Conduct are contained in 5 CFR part 2635.

2803.104 Procurement integrity.

2803.104–7 Violations or possible violations.

(a) Upon receipt of information regarding a violation or possible violation of 41 U.S.C. 2102, 2103, or 2104, the contracting officer must make the determination required by FAR 3.104–7(a) and follow the procedures prescribed therein.

(1) Make the determination required by FAR 3.104–7(a) and follow the procedures prescribed therein.

(2) [Reserved].

(b) The individual referenced in FAR 3.104–7(a)(1) is the BPC.

(c) The HCA or designee must follow the criteria contained in FAR 3.104–7(g) when delegating authority under this subpart.

(d) The HCA or designee shall refer information regarding actual or possible violations of section 41 U.S.C. 2102, 2103, or 2014 to the OIG or other office designated in Attorney General Order 1931–94.

(e) If the HCA or designee, after receiving information relating to a violation, or possible violation, determines that award or extension of a contract potentially affected by the violation is justified by urgent and compelling circumstances, or is otherwise in the interest of the Government, then the HCA may authorize the contracting officer to award or extend the contract after notification to the OIG or other office designated in Attorney General Order 1931–94.

(f) The HCA will advise the contracting officer as to the action to be taken. Criminal and civil penalties, and administrative remedies, may apply to conduct that violates 41 U.S.C. chapter 21, see FAR 3.104–8.

(g) The contracting officer shall advise the SPE in writing of all allegations of violations. The contracting officer must describe the alleged violation as well as actions taken.

Subpart 2803.2—Contractor Gratuities to Government Personnel

2803.203 Reporting suspected violations of the Gratuities clause.

DOJ personnel shall report suspected violations of the gratuities clause, FAR 52.203–3, to the contracting officer or chief of the contracting office in writing. The report shall clearly state the circumstances surrounding the incident, including the nature of the gratuity, the time period in which it occurred, the behavior or action the gratuity was intended to influence, and the persons involved. The contracting officer or chief of the contracting office, after review, shall forward the report along with his or her recommendations regarding the treatment of the violation in accordance with FAR 3.204(c) to the HCA, or designee.

2803.204 Treatment of violations.

(a) The HCA or designee shall determine whether adverse action against the contractor in accordance with FAR 3.204(c) may be taken. In reaching a decision, the HCA or designee shall consult with the contracting activity's legal advisor and the OIG or other office designated in Attorney General Order 1931–94.

(b) The SPE shall be advised of all instances where violations have been determined to have occurred and any action taken as a result.

(c) Prior to taking any action against the contractor, the HCA or designee shall allow the contractor the opportunity to present opposing arguments in accordance with FAR 3.204(b).

Subpart 2803.3—Reports of Suspected Antitrust Violations

2803.301 General.

DOJ personnel shall report suspected antitrust violations to the Attorney General (AG) through the Assistant Attorney General (AAG) for the Antitrust Division (ATR).

(a) The report for the AG shall be addressed to: Attorney General, Attention: AAG/ATR, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530.

(b) The report shall include:

(1) A brief statement describing the suspected practice and the reason for the suspicion; and

(2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

Subpart 2803.4—Contingent Fees

2803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Employees who suspect, or have evidence of, violations by a contractor of the Covenant Against Contingent Fees, see FAR subpart 3.4, must report the matter to the contracting officer or appropriate higher authority, in accordance with agency procedures. Employees who suspect or have evidence of fraudulent or criminal activities must report the matter to the SPE and the OIG.

Subpart 2803.8—Limitations on the Payment of Funds to Influence Federal Transactions

2803.806 Processing suspected violations.

Evidence of suspected violations of 31 U.S.C. 1352, Limitation on the Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, may be submitted in accordance with agency procedures to the SPE and the OIG or other office designated in Attorney General Order 1931–94.

Subpart 2803.9—Whistleblower Protections for Contractor Employees

2803.901 Definitions.

As used in this subpart—

Covered Individual is defined as an employee of a contractor at any tier required by the Department to sign a Non-Disclosure Agreement (NDA), whether the NDA is directly between the Covered Individual and the Department or between the Covered Individual and a contractor, and whether the NDA is required by a contract or otherwise (*e.g.,* pursuant to a vendor demonstration, product trial, market research effort, or other non-contract efforts).

General NDA means an NDA, other than an Intelligence-Related NDA, required by the Department to be signed by a Covered Individual.

Intelligence-Related NDA means any NDA required by the Department to be signed by a Covered Individual who is connected with the conduct of an intelligence or intelligence-related activity.

Non-Disclosure Agreement means any nondisclosure or confidentiality agreement, policy, or form, including the agreements in Standard Forms 312 (Classified Information Nondisclosure Agreement) and 4414 (Sensitive Compartmented Information Nondisclosure Agreement).

2803.905 Procedures for investigating complaints.

(a) Upon receipt of a complaint filed pursuant to FAR 3.904, the Inspector General shall conduct an investigation and provide a written report of findings to the HCA, or designee.

(b) The HCA or designee will ensure that the Inspector General provides the report of finding to the individuals and entities specified in FAR 3.905(c).

(c) The complainant and contractor shall be afforded the opportunity to submit to the HCA or designee a written response to the report of findings within 30 days of receipt of the report. The HCA or designee may grant extensions of time to file a written response.

(d) The HCA or designee may request that the Inspector General conduct additional investigative work on the complaint at any time.

2803.906 Remedies.

(a) Upon determination that a contractor has subjected one of its employees to a reprisal for providing information as set forth in FAR 3.906(a), the HCA or designee may take one or more actions specified in that section.

(b) Whenever a contractor fails to comply with an order issued pursuant to FAR 3.906(a), the HCA or designee shall notify the Attorney General and request that DOJ file an action for enforcement of such order in the United States District Court.

2803.908 Enhancement of contractor employee whistleblower protections.

2803.908–9 Contract clauses.

2803.908–70 Whistleblower Protection in General Non-Disclosure Agreement.

The contracting officer shall ensure that any General NDA that DOJ requires a Covered Individual to sign contains the required Whistleblower Protection Provision at JAR 2852.203–70.

2803.908–71 Whistleblower Protection in Intelligence-Related Non-Disclosure Agreement.

The contracting officer shall ensure that any Intelligence-Related NDA that DOJ requires a Covered Individual to sign contains the required Whistleblower Protection Provision at JAR 2852.203–71.

Subpart 2803.10—Contractor Code of Business Ethics and Conduct

2803.1004 Contract clauses.

The information required to be inserted in the clause at FAR 52.203–14, Display of Hotline Poster(s), is the following: Office of the Inspector General, Fraud Detection Office, Attn: Poster Request, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530.

PART 2804—ADMINISTRATIVE MATTERS

Subpart 2804.4—Safeguarding Classified Information Within Industry

Sec.
2804.402 General.
2804.402–70 Contractor personnel security program.

Subpart 2804.9—Taxpayer Identification Number Information

2804.901 Definitions.
2804.903 Reporting contract information to the IRS.
2804.903–70 Reporting contract information.
2804.903–71 Special reporting exceptions.

Subpart 2804.13—Personal Identity Verification

2804.1301 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2804.4—Safeguarding Classified Information Within Industry

2804.402 General.

Classified acquisitions or contracts, which require access to classified material, as defined in FAR 4.402, for their performance shall be subject to the policies, procedures, and instructions contained in departmental regulations and shall be processed in a manner consistent with those regulations.

Contractors at all tiers are required to comply with all such policies, procedures, and instructions.

2804.402–70 Contractor personnel security program.

It is DOJ policy that all acquisitions which allow unescorted contractor access to Government facilities or sensitive information contain, as appropriate, requirements for appropriate personnel security screening by the contractor. To the maximum extent practicable, contractors shall be made responsible for the performance of personnel security screening. The personnel security screening may vary from one acquisition to another, depending upon the type, context, duration and location of the work to be performed. Classified contracts are exempted from the requirements of this section because they are governed by the requirements of Executive Order 12829 (January 6, 1993).

Subpart 2804.9—Taxpayer Identification Number Information

2804.901 Definitions.

Classified contract, as used in this subpart, means a contract whose existence or subject matter has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive order, as requiring protection against unauthorized disclosure for reasons of national security.

Confidential contract, as used in this subpart, means a contract, the reporting of which to the Internal Revenue Service (IRS) as required under 26 U.S.C. 6050M, would interfere with the effective conduct of a confidential law enforcement activity, such as contracts for sites for undercover operations or contracts with informants, or foreign counterintelligence activity.

2804.903 Reporting contract information to IRS.

2804.903–70 Reporting contract information.

(a) Pursuant to FAR 4.903, the HCA or designee shall certify to the SPE, in the format specified in this section, that such official has examined the information submitted by that bureau as its Federal Procurement Data System (FPDS) data, that the data has been prepared pursuant to the requirements of 26 U.S.C. 6050M, and that, to the best of such official's knowledge and belief, it is compiled from bureau records maintained in the normal course of business for the purpose of making a true, correct, and complete return as required by 26 U.S.C. 6050M.

(b) The following certification will be signed and dated by the HCA or designee and submitted with each bureau's annual FPDS report.

Certification

I,_____(Name),_____(Title) have examined the information to be submitted by_____(Bureau) to the DOJ Senior Procurement Executive, for making information returns on behalf of the Department of Justice to the Internal Revenue Service, and certify that this information has been prepared pursuant to the requirements of 26 U.S.C. 6050M and that, to the best of my knowledge and belief, it is a compilation of bureau records maintained in the normal course of business for the purpose of providing true, correct, and complete returns as required by 26 U.S.C. 6050M.

Signature _____ Date _____

(c) The SPE will certify the consolidated FPDS data for the Department, transmit the data to the Federal Procurement Data Center (FPDC), and authorize the FPDC to make returns to the IRS on behalf of the agency.

2804.903–71 Special reporting exceptions.

(a) The Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647, amended 26 U.S.C. 6050M to allow exceptions to the reporting requirements for certain classified or confidential contracts.

(b) The head of the agency has determined that the filing of information returns, as required by 26 U.S.C. 6050M, on confidential contracts, which involve law enforcement or foreign counterintelligence activities, would interfere with the effective conduct of those confidential law enforcement or foreign counterintelligence activities, and that the special reporting exceptions added to 26 U.S.C. 6050M by the Technical and Miscellaneous Revenue Act of 1988 apply to these types of contracts.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2805—PUBLICIZING CONTRACT ACTIONS

Subpart 2805.2—Synopses of Proposed Contract Actions

Sec.
2805.202 Exceptions.

Subpart 2805.4—Release of Information

2805.403 Requests from Members of Congress.
2805.404 Release of long-range acquisition estimates.
2805.404–1 Release procedures.

Subpart 2805.5—Paid Advertisements

2805.502 Authority.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2805.2—Synopses of Proposed Contract Actions

2805.202 Exceptions.

The HCA or designee is the agency head for the purposes of the determination required by FAR 5.202(b).

Subpart 2805.4—Release of Information

2805.403 Requests from Members of Congress.

The SPE is the agency head for the purposes of FAR 5.403.

2805.404 Release of long-range acquisition estimates.

2805.404–1 Release procedures.

The SPE is the agency head for the purposes of FAR 5.404–1(a) and (b).

Subpart 2805.5—Paid Advertisements

This subpart provides policies and procedures for the procurement of paid advertising as covered by 44 U.S.C. 3702 and 3703 and 5 U.S.C. 302(b).

2805.502 Authority.

(a) The HCA or designee is the agency head for approving the publication of paid advertisements in newspapers under FAR 5.502(a).

(b) Authority to place advertisements in media other than newspapers must be granted in writing in advance by the HCA, or designee. No advertisement, notice, or proposal should be published prior to receipt of advance written approval for such publication by the HCA or designee, and no voucher or invoice for any such advertisement or publication will be paid unless there is presented, with the voucher or invoice, a copy of the written approval. Approval shall not be granted retroactively.

PART 2806—COMPETITION REQUIREMENTS

Subpart 2806.2—Full and Open Competition After Exclusion of Sources

Sec.
2806.202 Establishing or maintaining alternative sources.

Subpart 2806.3—Other Than Full and Open Competition

2806.304 Approval of the justification.

Subpart 2806.5—Advocates for Competition

2806.501 Requirement.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2806.2—Full and Open Competition After Exclusion of Sources

2806.202 Establishing or maintaining alternative sources.

The HCA or designee is the agency head for the purposes of FAR 6.202.

Subpart 2806.3—Other Than Full and Open Competition

2806.304 Approval of the justification.

(a) Justifications for contract actions over the contracting officer's approval dollar threshold shall be submitted to the BPC for concurrence before being forwarded to the bureau Competition Advocate for approval.

(b) Justifications requiring approval by the HCA, or a designee, shall be submitted to the {i} BPC and {ii} bureau Competition Advocate for concurrence before being forwarded to the HCA or designee.

(c) Justifications requiring approval by the SPE shall be submitted to the {i} BPC, {ii} the bureau Competition Advocate, and {iii} the HCA for concurrence before being forwarded to the SPE for approval.

(d) A class justification shall be approved in accordance with established bureau procedures and FAR 6.304(c).

Subpart 2806.5—Advocates for Competition

2806.501 Requirement.

(a) The Director, Office of Acquisition Management (OAM), Justice Management Division (JMD), is designated as the DOJ Competition Advocate.

(b) The HCA or designee for each bureau will appoint an official to be the bureau Competition Advocate. The bureau Competition Advocate shall be vested with the overall responsibility for competition activities within his or her bureau. The delegated bureau Competition Advocate must be at or above the level of the BPC organizationally.

PART 2807—ACQUISITION PLANNING

Subpart 2807.1—Acquisition Plans

Sec.
2807.103 Agency-head responsibilities.
2807.104 General procedures.
2807.104–70 Bundled requirements.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2807.1—Acquisition Plans

2807.103 Agency-head responsibilities.

(a) The HCA is the agency head's designee for the purposes of FAR 7.103.

(b) The CAO may establish acquisition planning criteria and dollar approval thresholds for those bureaus that:

(1) Fail to allow ample time for conducting competitive acquisitions;

(2) Develop a pattern of awarding urgent requirements that generally restrict competition;

(3) Fail to identify identical or like requirements that, where appropriate, can be combined under one solicitation, and thereby miss opportunities to obtain lower costs through volume purchasing, reduced administrative costs in processing one contract action versus multiple actions, and standardizing goods and services.

2807.104 General procedures.

2807.104–70 Bundled requirements.

In the case of bundled requirements, as defined in FAR 7.104(d)(2) and 7.107, the contracting officer shall consult with the bureau Small Business Technical Advisor (SBTA). After receiving concurrence from the bureau SBTA, the contracting officer will provide a copy of the proposed acquisition package to the Small Business Administration (SBA) Procurement Center Representative (PCR) and a copy to the DOJ Director, Office of Small Disadvantaged Business Unit (OSDBU), at least 30 days prior to the solicitation issuance. The SBA PCR is required to make any alternative recommendations to the contracting officer within 15 days after receipt of the package. If the SBA does not respond in this timeframe, the contracting officer may proceed as planned with the procurement.

PART 2808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 2808.4—Federal Supply Schedules

Sec.
2808.405 Ordering procedures for Federal Supply Schedules.
2808.405–3 Blanket purchase agreements (BPAs).

Subpart 2808.6—Acquisition from Federal Prison Industries, Inc.

2808.605 Exceptions.
2808.605–70 Clearances.

Subpart 2808.8—Acquisition of Printing and Related Supplies

2808.802 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2808.4—Federal Supply Schedules

2808.405 Ordering procedures for Federal Supply Schedules.

2808.405–3 Blanket purchase agreements (BPAs).

The SPE is the agency head for purposes of FAR 8.405–3(a)(3)(ii).

Subpart 2808.6—Acquisition from Federal Prison Industries, Inc.

2808.605 Exceptions.

2808.605–70 Clearances.

Include the Federal Prison Industries (FPI) clearance numbers in solicitations and award documents.

Subpart 2808.8—Acquisition of Printing and Related Supplies

2808.802 Policy.

The Director, Facilities and Administrative Services Staff (FASS), JMD, has been designated to serve as the central printing authority for the DOJ, for purposes of FAR 8.802(b).

PART 2809—CONTRACTOR QUALIFICATIONS

Subpart 2809.2—Qualifications Requirements

Sec.
2809.202 Policy.

Subpart 2809.4—Debarment, Suspension, and Ineligibility

2809.402 Policy.

2809.404 System for Award Management Exclusions.
2809.405 Effect of listing.
2809.405–1 Continuation of current contracts.
2809.405–2 Restrictions on subcontracting.

Subpart 2809.5—Organizational and Consultant Conflicts of Interest

2809.503 Waiver.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2809.2—Qualifications Requirements

2809.202 Policy.

The HCA or designee is the agency head for the purposes of FAR 9.202(a)(1).

Subpart 2809.4—Debarment, Suspension, and Ineligibility

2809.402 Policy.

(a) The SPE is the agency head for purposes of suspension and debarment under FAR subpart 9.4, and serves as the Suspension and Debarment Official (SDO) for both procurement and non-procurement matters.

(b) Contracting activities shall consider recommending suspension or debarment of a contractor when cause is shown as listed under FAR 9.406–2 and 9.407–2.

(1) If a determination is made that available facts do not justify debarment or suspension, the file should be documented accordingly and no additional action is required.

(2) If the decision is made to recommend suspension or debarment of a contractor, in coordination with the activity's BPC and legal counsel, the bureau shall submit a memorandum to the SDO containing all relevant facts and analysis on which the recommendation is based. The submission also should include copies of all relevant documents.

2809.404 System for Award Management Exclusions.

(a) The SDO shall ensure the discharge of all agency responsibilities prescribed in FAR 9.404(c)(1) through (6), (8), and (9).

(b) The authority to establish procedures prescribed in FAR 9.404(c)(7) is delegated to the HCA, or designee.

2809.405 Effect of listing.

The HCA or designee is the agency head for the purposes of FAR 9.405.

2809.405–1 Continuation of current contracts.

The HCA or designee is the agency head for the purposes of FAR 9.405–1.

2809.405–2 Restrictions on subcontracting.

The HCA or designee is the agency head for the purposes of FAR 9.405–2.

Subpart 2809.5—Organizational and Consultant Conflicts of Interest

2809.503 Waiver.

The HCA is the agency head for the purpose of waiving any general rule or procedure prescribed in FAR subpart 9.5. As prescribed in FAR 9.503, the authority delegated to the HCA to waive any general rule or procedure prescribed in FAR subpart 9.5 may not be delegated below the level of the HCA.

PART 2810—MARKET RESEARCH

Sec.
2810.002 Procedures.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

2810.002 Procedures.

(a) Market research must be conducted in accordance with DOJ sustainability policies and procedures in order to determine whether there are any sustainable acquisition standards applicable to the desired product or service.

(b) Ensure the statement of work includes sustainability requirements in accordance with JAR 2823.103, when applicable.

PART 2811—DESCRIBING AGENCY NEEDS

Sec.
2811.002 Policy.

Subpart 2811.1—Selecting and Developing Requirements Documents

2811.103 Market acceptance.

Subpart 2811.5—Liquidated Damages

2811.501 Policy.

Subpart 2811.6—Priorities and Allocations

2811.603 Procedures.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

PART 2811—DESCRIBING AGENCY NEEDS

2811.002 Policy.

(a) Consistent with the policy expressed in FAR 11.002(b), the metric system is the preferred system of weights and measures and shall be used in DOJ solicitations and contracts.

(b) When acquiring products or services, the requirements of FAR 11.002(d)(1) and DOJ sustainability policies and procedures are to be followed.

Subpart 2811.1—Selecting and Developing Requirements Documents

2811.103 Market acceptance.

The HCA is the agency head for the purposes of FAR 11.103(a).

Subpart 2811.5—Liquidated Damages

2811.501 Policy.

The HCA or designee is the agency head for the purposes of FAR 11.501(d).

Subpart 2811.6—Priorities and Allocations

2811.603 Procedures.

The HCA or designee is the agency head for the purposes of FAR 11.603.

PART 2812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 2812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.
2812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
2812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

2812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

Contracting officers shall include the provisions and clauses at JAR 2852.212–4 in all solicitations and contracts for the acquisition of commercial items that require FAR 52.212–4, Contract Terms and Conditions—Commercial Items.

2812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

The HCA, or designee at a level at or above the BPC, is authorized to approve the contracting officer's request for waiver for an individual contract action submitted under FAR 12.302(c). The SPE is authorized to approve the contracting officer's request for wavier for a class of contracts submitted under FAR 12.302(c).

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2813—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 2813.2—Actions at or Below the Micro-Purchase Threshold

Sec.
2813.201 General.

Subpart 2813.3—Simplified Acquisition Methods

2813.305 Imprest funds and third party drafts.
2813.307 Forms.

Subpart 2813.4—Fast Payment Procedure

2813.401 General.

Subpart 2813.70—Certified Invoice Procedure

2813.70–1 Policy.
2813.70–2 Procedures.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2813.2—Actions at or Below the Micro-Purchase Threshold

2813.201 General.

The SPE is the agency head for the purposes of FAR 13.201(g)(1).

Subpart 2813.3—Simplified Acquisition Methods

2813.305 Imprest funds and third party drafts.

The HCA or designee is the agency head for the purposes of FAR 13.305–3(a).

2813.307 Forms.

Bureaus may use order forms other than the Standard Forms (SF) and Optional Forms (OF) identified in FAR 13.307. They may also include on those forms clauses suitable for the specific purchase, including tailored clauses, provided that proper procedures and all relevant limitations, documentation instructions, and required maintenance are followed.

Subpart 2813.4—Fast Payment Procedure

2813.401 General.

DOJ contracting activities are authorized to use the fast payment procedures prescribed in FAR subpart 13.4 solely for utility service payments.

Subpart 2813.70—Certified Invoice Procedure

2813.70–1 Policy.

Supplies or services may be acquired on the open market from local suppliers at the site of the work or usage point. Using the vendor's invoice, instead of issuing a Government purchase order, is authorized under the certified invoice procedure. Certified invoice procedures may not be used to place orders under established contracts.

2813.70–2 Procedures.

(a) The certified invoice procedure for purchases may be used only under FAR part 13 and this part, subject to the following:

(1) The individual transaction amount does not exceed the micro-purchase threshold;

(2) Availability of sufficient funds is verified;

(3) A purchase order is not required by either the supplier or the Government;

(4) The vendor submits approved and appropriate invoices; and,

(5) The items purchased are domestic source end products, except as provided in FAR subpart 25.1.

(b) Using the certified invoice procedures does not eliminate the requirements in FAR part 13 that apply to purchases at or below the micro-purchase threshold.

(c) The chief of the contracting office, as defined in JAR 2802.101, may delegate the authority to use the certified invoice procedure. Each delegation must specify any limitations placed on the individual's use of these procedures, such as limits on the amount of each purchase, or limits on the commodities, or services being procured.

(d) Individuals using this purchasing technique shall require the supplier to immediately submit properly prepared invoices that itemize property or services furnished. Upon receiving the invoice, the individual making the purchase shall annotate the invoice with the date of receipt, verify the accuracy of the invoiced amount and verify on the invoice that the supplies and/or services have been received and accepted. If the invoice is valid and correct, the individual making the purchase shall sign the invoice indicating acceptance and immediately forward it to the appropriate administrative office.

(e) The administrative office must approve the invoice and, if approved, forward it to the Finance Office for payment. Before forwarding the invoice to the Finance Office, the administrative office shall place the following statement on the invoice, along with the accounting and appropriation data:

I certify that these goods and /or services were received on _____(date) and accepted on _____(date). Oral purchase was authorized and no confirming order has been issued.

Signature_____

Date_____

_____

Printed name or Typed Name and Title

PART 2814—SEALED BIDDING

Subpart 2814.4—Opening of Bids and Award of Contract

Sec.
2814.404 Rejection of bids.
2814.404–1 Cancellation of invitations after opening.
2814.407 Mistakes in bids.
2814.407–3 Other mistakes disclosed before award.
2814.407–4 Mistakes after awards.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2814.4—Opening of Bids and Award of Contract

2814.404 Rejection of bids.

2814.404–1 Cancellation of invitations after opening.

The HCA or designee is the agency head for the purposes of FAR 14.404–1(c), (e)(1), and (f).

2814.407 Mistakes in bids.

2814.407–3 Other mistakes disclosed before award.

(a) The authority to make determinations under paragraphs (a), (b), (c), and (d) of FAR 14.407–3 is delegated to the HCA, or designee at a level at or above the chief of the contracting office. The HCA or designee shall seek the advice of legal counsel before making any determinations.

(b) The following procedures shall be followed when submitting cases of

mistakes in bids to the Comptroller General for an advance decision.

(1) Requests for advance decisions submitted to the Comptroller General in cases of mistakes in bids shall be made by the HCA, or designee.

(2) Requests for advance decisions shall be in writing, dated, signed by the requestor, addressed to the Comptroller General of the United States, General Accounting Office, Washington, DC 20548, and contain the following:

(i) The name and address of the party requesting the decision;

(ii) A statement of the question to be decided, a presentation of all relevant facts, and a statement of the requesting party's position with respect to the question; and,

(iii) Copies of all pertinent records and supporting documentation.

2814.407–4 Mistakes after award.

The authority to make determinations under FAR 14.407–4 is delegated to the HCA. The HCA may re-delegate this authority at a level at or above the chief of the contracting office. The determination must be coordinated with the contracting activity's legal counsel.

PART 2815—CONTRACTING BY NEGOTIATION

Subpart 2815.2—Solicitation and Receipt of Proposals and Information

Sec.
2815.204 Contract format.

Subpart 2815.3—Source Selection

2815.303 Responsibilities.

Subpart 2815.4—Contract Pricing

2815.404 Proposal analysis.
2815.404–2 Data to support proposal analysis.

Subpart 2815.6—Unsolicited Proposals

2815.604 Agency points of contact.
2815.605 Content of unsolicited proposals.
2815.606 Agency procedures.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2815.2—Solicitation and Receipt of Proposals and Information

2815.204 Contract format.

The HCA or designee is the agency head for the purposes of FAR 15.204(e).

Subpart 2815.3—Source Selection

2815.303 Responsibilities.

The HCA or designee is the agency head for the purposes of FAR 15.303(a).

Subpart 2815.4—Contract Pricing

2815.404 Proposal analysis.

2815.404–2 Data to support proposal analysis.

All requests for field pricing support shall be made by the contracting officer directly to the cognizant audit agency. In accordance with Attorney General Order 1931–94, a copy of the request for such services shall be sent to the OIG at the time it is mailed to the cognizant audit agency. A copy of each report received shall also be sent to the OIG. Requests for other audit assistance may be made to the Assistant Inspector General for Audits.

Subpart 2815.6—Unsolicited Proposals

2815.604 Agency points of contact.

Each contracting activity shall designate a point of contact for the receipt and handling of unsolicited proposals. Generally, the official designated shall be the BPC or immediate subordinate.

2815.605 Content of unsolicited proposals.

To ensure against contracts between DOJ and prospective offers that would exceed the limits of advance guidance set forth in FAR 15.604 and potentially result in an unfair advantage to an offeror, the offeror of an unsolicited proposal must include the following warranty in any unsolicited proposal. Contracting officers receiving an unsolicited proposal without this warranty shall not process the proposal until the offeror is notified and given an opportunity to submit a proper warranty. If no warranty is provided in a reasonable time, the contracting officer shall reject the unsolicited proposal and notify the offeror of the rejection and the reason therefore. The warranty must be signed by a responsible management official of the proposing organization authorized to contractually obligate the organization.

UNSOLICITED PROPOSAL WARRANTY BY OFFEROR

This is to warrant that—

(a) This proposal has not been prepared under Government supervision;

(b) The methods and approaches stated in the proposal were developed by this offeror;

(c) Any contact with DOJ personnel has been with the limits of appropriate advance guidance set forth in FAR 15.604; and,

(d) No prior commitments were received from DOJ personnel regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

2815.606 Agency procedures.

The designated point of contact for each contracting activity shall provide for and coordinate receipt, review, evaluation, safeguarding, and final disposition of unsolicited proposals in accordance with FAR subpart 15.6.

PART 2816—TYPES OF CONTRACTS

Subpart 2816.2—Fixed-Price Contracts

Sec.
2816.207 Firm-fixed-price, level-of-effort term contracts.
2816.207–3 Limitations.

Subpart 2816.5—Indefinite-Delivery Contracts

2816.505 Ordering.

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2816.601 Time-and-materials contracts.
2816.602 Labor-hour contracts.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2816.2—Fixed-Price Contracts

2816.207 Firm-fixed-price, level-of-effort term contracts.

2816.207–3 Limitations.

The BPC or designee is the chief of the contracting office for the purposes of FAR 16.207–3(d).

Subpart 2816.5—Indefinite-Delivery Contracts

2816.505 Ordering.

(a) Justifications for exceptions to the fair opportunity process specified in FAR 16.505(b)(2) shall be approved in accordance with JAR 2806.304.

(b) In accordance with FAR 16.505(b)(8), the DOJ task order and delivery order ombudsman is the DOJ Competition Advocate.

(c) HCAs shall designate a bureau task order and delivery order ombudsman. This person may be the bureau Competition Advocate.

(d) Bureau ombudsmen shall review and resolve complaints from contractors concerning task or delivery orders placed by the bureau.

(e) Contractors not satisfied with the resolution of a complaint by a bureau ombudsman may request the DOJ ombudsman to review the complaint.

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2816.601 Time-and-materials contracts.

The BPC, or designee at a level at or above the chief of the contracting office, is the agency official authorized to approve a determination and finding prescribed in FAR 16.601(d)(1)(ii).

2816.602 Labor-hour contracts.

The limitations set forth in 2816.601 for time-and-materials contracts also applies to labor hour contracts.

PART 2817—SPECIAL CONTRACTING METHODS

Subpart 2817.1—Multiyear Contracting

Sec.
2817.104 General.

Subpart 2817.2—Options

2817.204 Contracts.

Subpart 2817.6—Management and Operating Contracts

2817.602 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j); and 28 CFR 0.76(j).

Subpart 2817.1—Multiyear Contracting

2817.104 General.

The SPE is the agency head for the purposes of FAR 17.104(b).

Subpart 2817.2—Options

2817.204 Contracts.

Deviation requests to exceed the 5-year limitations specified in FAR 17.204(e) require advance approval from—

(a) The HCA or designee for individual contracts; and

(b) The SPE for classes of contracts.

Subpart 2817.6—Management and Operating Contracts

2817.602 Policy.

The HCA or designee is the agency head for the purposes of FAR 17.602(a).

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2819—SMALL BUSINESS PROGRAMS

Subpart 2819.5—Set-Asides for Small Business

Sec.
2819.505 Rejecting Small Business Administration recommendations.

Subpart 2819.8—Contracting With the Small Business Administration (the 8(a) Program)

2819.810 SBA appeals.
2819.812 Contract administration.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2819.5—Set-Asides for Small Business

2819.505 Rejecting Small Business Administration recommendations.

The SPE is the agency head for the purposes of FAR 19.505.

Subpart 2819.8—Contracting With the Small Business Administration (the 8(a) Program)

2819.810 SBA appeals.

The SPE is the agency head for the purposes of FAR 19.810(c).

2819.812 Contract administration.

The HCA or designee is the agency head for the purposes of FAR 19.812(d).

PART 2822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2822.1—Basic Labor Policies

Sec.
2822.101 Labor relations.
2822.101–70 Domestic violence, sexual assault, and stalking.
2822.101–3 Reporting labor disputes.
2822.103 Overtime.
2822.103–4 Approvals.

Subpart 2822.3—Contract Work Hours and Safety Standards Act

2822.302 Liquidated damages and overtime pay.

Subpart 2822.4—Labor Standards for Contracts Involving Construction

2822.406 Administration and enforcement.
2822.406–8 Investigations.
2822.406–12 Cooperation with the Department of Labor.

Subpart 2822.6—Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000

2822.604 Exemptions.
2822.604–2 Regulatory exemptions.

Subpart 2822.8—Equal Employment Opportunity

2822.803 Responsibilities.
2822.807 Exemptions.
2822.807–70 Cooperation in equal employment opportunity investigations.

Subpart 2822.13—Equal Opportunity for Veterans

2822.1305 Waivers.
2822.1310 Solicitation provisions and contract clauses.

Subpart 2822.14—Employment of Workers With Disabilities

2822.1403 Waivers.
2822.1408 Contract clause.

Subpart 2822.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

2822.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2822.1—Basic Labor Policies

2822.101 Labor relations.

2822.101–70 Domestic violence, sexual assault, and stalking.

Contracting officers shall insert the clause, JAR 2852.222–70 Domestic Violence, Sexual Assault, and Stalking, in every written solicitation when services will be performed in whole or in part on DOJ premises.

2822.103 Overtime.

2822.103–4 Approvals.

During contract performance, contractor requests for overtime exceeding the amount authorized in paragraph (a) of the clause at FAR 52.222–2, Payment for Overtime Premiums, must be approved at a level above the contracting officer. Such approval should be reflected by the signature of the approving official on the contracting officer's written determination made in accordance with FAR 22.103–4.

Subpart 2822.3—Contract Work Hours and Safety Standards Act

2822.302 Liquidated damages and overtime pay.

The authority to make the determination prescribed in FAR 22.302(c) is delegated to the HCA, or designee.

Subpart 2822.4—Labor Standards for Contracts Involving Construction

2822.406 Administration and enforcement.

2822.406–8 Investigations.

The contracting officer shall prepare and forward reports of violations under FAR 22.406–8(d)(1) to the HCA or designee at a level at or above the BPC. That official shall be responsible for processing the report in accordance with FAR 22.406–8(d)(2).

2822.406–12 Cooperation with the Department of Labor.

Any information furnished to the Department of Labor, as required by FAR 22.406–12(a), shall be submitted through the HCA, or designee.

Subpart 2822.6—Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000

2822.604 Exemptions.

2822.604–2 Regulatory exemptions.

The SPE is the agency head for the purposes of FAR 22.604–2(b)(1).

Subpart 2822.8—Equal Employment Opportunity

2822.803 Responsibilities.

The SPE is the agency head for the purposes of FAR 22.803(c).

2822.807 Exemptions.

The SPE is the agency head for the purposes of FAR 22.807(a)(1).

2822.807–70 Cooperation in equal employment opportunity investigations.

The contracting officer shall insert the clause at FAR 52.222–70, Contractor Cooperation in Equal Employment Opportunity Investigations, in solicitations, contracts, and orders that include the clause at FAR 52.222–26, Equal Opportunity.

Subpart 2822.13—Equal Opportunity for Veterans

2822.1305 Waivers.

All requests for waiver of the terms of FAR 52.222–35 pursuant to FAR 22.1310(a)(1)(ii) or (a)(2) shall be forwarded from the HCA or designee to OAM, JMD, for review and approval by the AG.

2822.1310 Solicitation provisions and contract clauses.

The SPE is the agency head for the purposes of FAR 22.1310(a)(1)(ii) and (a)(2).

Subpart 2822.14—Employment of Workers With Disabilities

2822.1403 Waivers.

The SPE is the agency head for the purposes of FAR 22.1403(b).

2822.1408 Contract clause.

The SPE is the agency head for the purposes of FAR 22.1408(a)(2).

Subpart 2822.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

2822.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

The contracting officer shall refer to the DOJ Inspector General for investigation, under FAR 22.1503(e), any matters relating to that section.

PART 2823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG–FREE WORKPLACE

Subpart 2823.2—Energy and Water Efficiency and Renewable Energy

Sec.

2823.204 Procurement exemptions.

Subpart 2823.3—Hazardous Material Identification and Material Safety Data

2823.303 Contract clause.
2823.303–70 Unsafe conditions due to hazardous material.

Subpart 2823.4—Use of Recovered Materials and Biobased Products

2823.404 Agency affirmative procurement programs.
2823.404–70 Affirmative procurement program for recycled materials.
2823.405 Procedures.

Subpart 2823.7—Contracting for Environmentally Preferable Products and Services

2823.704 Electronic products environmental assessment tool.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2823.2—Energy and Water Efficiency and Renewable Energy

2823.204 Procurement exemptions.

The HCA or designee is the agency head for the purposes of executing the written determination not to purchase ENERGY STAR® or Federal Energy Management Program (FEMP)-designated products.

Subpart 2823.3—Hazardous Material Identification and Material Safety Data

2823.303 Contract clause.

2823.303–70 Unsafe conditions due to hazardous material.

The clause at FAR 52.223–3 shall be included in solicitations and contracts that will require delivery of hazardous material as defined in FAR 23.301. In addition, the contracting officer shall insert the clause at JAR 2852.223–70, Unsafe Conditions Due to the Presence of Hazardous Material, in all such solicitations and contracts, where the contract will require the performance of services on Government-owned or Government-leased facilities.

Subpart 2823.4—Use of Recovered Materials and Biobased Products

2823.404 Agency affirmative procurement programs.

2823.404–70 Affirmative procurement program for recycled materials.

(a) *Recovered materials preference program.* Preference will be given to procuring and using products containing recovered materials rather than products made with virgin materials when adequate competition exists, and when price, performance, and availability are equal.

(b) *Promotion program.* The Department of Justice Environmental Executive (DOJEE) has primary responsibility for actively promoting the acquisition of products containing recycled materials throughout DOJ. Technical and procurement personnel will cooperate with the DOJEE to actively promote DOJ's Affirmative Procurement Program.

(c) *Procedures for vendor estimation, verification, and certification*—(1) *Estimation.* The contractor shall provide estimates of the total percentage(s) of recovered materials for Environmental Protection Agency (EPA) designated items used in products or services provided.

(2) *Certification.* Contracting officers shall provide copies of all vendor and subcontractor certifications required by FAR 23.404 to the DOJEE.

(3) *Verification.* The DOJEE is responsible for periodically reviewing vendor certification documents and waivers as part of the annual review and monitoring process to determine if DOJ is in compliance with EOs 13101 and 13693 and any subsequent amendments.

2823.405 Procedures.

The contracting officer is the approving official for justifications made pursuant to FAR 23.405(b)(2).

Subpart 2823.7—Contracting for Environmentally Preferable Products and Services

2823.704 Electronic products environmental assessment tool.

The HCA or designee is the agency head for the purposes of executing the written determination not to purchase EPEAT®-registered products.

PART 2825—FOREIGN ACQUISITION

Subpart 2825.1—Buy American—Supplies

Sec.

2825.103 Exceptions.
2825.105 Determining reasonableness of cost.

Subpart 2825.2—Buy American—Construction Materials

2825.202 Exceptions.
2825.204 Evaluating offers of foreign construction material.
2825.206 Noncompliance.

Subpart 2825.10—Additional Foreign Acquisition Regulations

2825.1001 Waiver of right to examination of records.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2825.1—Buy American—Supplies

2825.103 Exceptions.

The authority to make the determination prescribed in FAR

25.103(a) is delegated to the HCA, or designee.

2825.105 Determining reasonableness of cost.

The authority to make the determinations prescribed in FAR 25.105(a)(1) is delegated to the HCA, or designee.

Subpart 2825.2—Buy American—Construction Materials

2825.202 Exceptions.

The authority to make the determinations prescribed in FAR 25.202(a)(1) is delegated to the HCA, or designee.

2825.204 Evaluating offers of foreign construction material.

The HCA, or designee at a level at or above the BPC, is the agency official authorized to make the determination in accordance with FAR 25.204(b) that using a particular domestic construction material would unreasonably increase the cost of the acquisition or would be impracticable.

2825.206 Noncompliance.

Potentially fraudulent noncompliance under FAR 25.206(c)(4) shall be referred to the OIG for investigation.

Subpart 2825.10—Additional Foreign Acquisition Regulations

2825.1001 Waiver of right to examination of records.

The HCA, or designee at a level at or above the BPC, is the agency official authorized to make determinations under FAR 25.1001(a)(2)(iii).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2827—PATENTS, DATA, AND COPYRIGHTS

Subpart 2827.3—Patent Rights Under Government Contracts

2827.303 Contract clauses.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2827.3—Patent Rights Under Government Contracts

2827.303 Contract clauses.

The SPE is the agency head for the purposes of FAR 27.303(e)(4).

PART 2828—BONDS AND INSURANCE

Subpart 2828.1—Bonds and Other Financial Protections

Sec.
2828.101 Bid guarantees.
2828.101–1 Policy on use.
2828.106 Administration.
2828.106–6 Furnishing information.

Subpart 2828.2—Sureties and Other Security for Bonds

2828.203 Acceptability of individual sureties.
2828.203–7 Exclusion of individual sureties.
2828.204 Alternatives in lieu of corporate or individual sureties.

Subpart 2828.3—Insurance

2828.307 Insurance under cost-reimbursements contracts.
2828.307–1 Group insurance plans.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2828.1—Bonds and Other Financial Protections

2828.101 Bid guarantees.

2828.101–1 Policy on use.

The HCA or designee is the agency head for the purposes of authorizing class waivers in accordance with FAR 28.101–1(c).

2828.106 Administration.

2828.106–6 Furnishing information.

In accordance with FAR 28.106–6(c), the HCA, or designee at a level at or above the BPC, is the agency official authorized to furnish the certified copy of the bond and the contract.

Subpart 2828.2—Sureties and Other Security for Bonds

2828.203 Acceptability of individual sureties.

All assets pledged by individual sureties must be eligible obligations as defined in 31 CFR part 225, ''Acceptable Collateral for Pledging to Federal Agencies.'' This collateral will be placed in the custody of the U.S. Treasury, with a Federal Reserve Bank acting as the depositary until the completion of the obligation.

2828.203–7 Exclusion of individual sureties.

The SDO is the agency head for the purposes of FAR 28.203–7(a).

Subpart 2828.3—Insurance

2828.307 Insurance under cost-reimbursements contracts.

2828.307–1 Group insurance plans.

Under cost-reimbursement contracts, the contractor, before buying insurance under a group insurance plan, shall submit the plan to the contracting officer for review and approval. During review, the contracting officer may utilize all sources of information available such as audit, industry practices, etc., to determine if acceptance of the group insurance plan is in the Government's best interest.

PART 2829—TAXES

Subpart 2829.3—State and Local Taxes

Sec.
2829.302 Application of State and local taxes to the Government.
2829.303 Application of State and local taxes to Government contractors and subcontractors.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2829.3—State and Local Taxes

2829.302 Application of State and local taxes to the Government.

Generally, purchases and leases made by the Federal Government are immune from State and local taxation.

2829.303 Application of State and local taxes to Government contractors and subcontractors.

(a) It is DOJ policy that DOJ contracts shall not contain clauses expressly designating prime contractors as agents of the Government for the purpose of avoiding State and local taxes.

(b) A DOJ contracting activity may request to the CAO, through the HCA, that a contractor be considered an agent of the Government for the purpose of claiming immunity from State and local sales and use taxes. The CAO will review such requests to ensure compliance with DOJ policy and applicable law. Each case forwarded will be reviewed by the HCA or designee for approval before referral to the CAO.

PART 2830—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 2830.2—CAS Program Requirements

Sec.
2830.201 Contract requirements.
2830.201–5 Waiver.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2830.2—CAS Program Requirements

2830.201 Contract requirements.

2830.201–5 Waiver.

The SPE is the agency head for the purposes of FAR 30.201–5. Pursuant to FAR 30.201–5, this authority may not be delegated to any official in the agency below the senior contract policymaking level.

PART 2831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2831.1—Applicability

Sec.
2831.101 Objectives.

2831.109 Advance agreements.

Subpart 2831.2—Contracts With Commercial Organizations

2831.205 Selected costs.
2831.205–6 Compensation for personal services.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2831.1—Applicability

2831.101 Objectives.

(a) The SPE is the official authorized to grant individual deviations from the cost principles of FAR part 31.

(b) Requests for class deviations from the cost principles set forth in FAR part 31 will be forwarded through the SPE prior to submission to the CAAC.

2831.109 Advance agreements.

(a) DOJ and bureau contracting officers are encouraged to negotiate advance agreements concerning the treatment of special or unusual costs to avoid possible subsequent disputes or disallowance of costs based upon unreasonableness or nonallowability. All such agreements shall be negotiated in accordance with FAR 31.109, prior to the contractor incurring such costs.

(b) All determinations required by this subpart shall be reviewed and approved at a level above the contracting officer prior to negotiation of the proposed agreement. The approved determination shall be placed in the contract file.

(c) Advance agreements will be signed by both the contractor and the contracting officer, and made a part of the contract file. Copies of executed advance agreements will be distributed to the cognizant audit office, when applicable.

Subpart 2831.2—Contracts With Commercial Organizations

2831.205 Selected costs.

2831.205–6 Compensation for personal services.

The HCA or designee is the agency head for the purposes FAR 31.205–6(g)(6).

PART 2832—CONTRACT FINANCING

Sec.
2832.006 Reduction or suspension of contract payments upon finding of fraud.
2832.006–1 General.
2832.006–2 Definition.
2832.006–3 Responsibilities.
2832.006–4 Procedures.

Subpart 2832.1—Non-Commercial Item Purchase Financing

2832.114 Unusual contract financing.

Subpart 2832.2—Commercial Item Purchase Financing

2832.201 Statutory authority.

Subpart 2832.4—Advance Payments for Non-Commercial Items

2832.402 General.
2832.407 Interest.

Subpart 2832.5—Progress Payments Based on Costs

2832.502 Preaward matters.
2832.502–2 Contract finance office clearance.
2832.503 Postaward matters.
2832.503–6 Suspension or reduction of payments.

Subpart 2832.7—Contract Funding

2832.703 Contract funding requirements.
2832.703–3 Contracts crossing fiscal years.

Subpart 2832.9—Prompt Payment

2832.903 Responsibilities.

Subpart 2832.11—Electronic Funds Transfer

2832.1110 Solicitation provision and contract clauses.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

2832.006 Reduction or suspension of contract payments upon finding of fraud.

2832.006–1 General.

The SPE is the agency head for the purposes of FAR 32.006–1.

2832.006–2 Definition.

The SPE is the ''Remedy coordination official'' for the purposes of FAR 32.006–2.

2832.006–3 Responsibilities.

DOJ personnel shall immediately report, in writing, to the contracting officer and the OIG any apparent or suspected contractor request for advance, partial, or progress payments based on fraud.

2832.006–4 Procedures.

The SPE is the agency head for the purposes of FAR 32.006–4.

Subpart 2832.1—Non-Commercial Item Purchase Financing

2832.114 Unusual contract financing.

The HCA, or designee at a level at or above the BPC, is the official authorized to approve unusual contract financing as set forth in FAR 32.114.

Subpart 2832.2—Commercial Item Purchase Financing

2832.201 Statutory authority.

The HCA or designee is the agency head for the purposes of FAR 32.201.

Subpart 2832.4—Advance Payments for Non-Commercial Items

2832.402 General.

(a) The authority to make the determinations prescribed in FAR 32.402 and sign written determinations and findings with respect to making advance payments is vested in the HCA or designee.

(b) Prior to awarding a contract which contains provisions for making advanced payments, the contract terms and conditions concerning advance payments shall be approved at a level above the contracting officer.

(c) In ensuring that all FAR and agency requirements are met, the contracting officer shall coordinate with the activity that is to provide contract financing for advance payments, the bureau's disbursing or finance office, or the Treasury Department, as appropriate.

2832.407 Interest.

In accordance with FAR 32.407(d), advance payments may be made on an interest free basis. A determination to make such interest free advance payments, and the circumstance permitting interest free advance payments, shall be set forth in the original determination and findings and be approved in accordance with JAR 2832.402.

Subpart 2832.5—Progress Payments Based on Costs

2832.502 Preaward matters.

2832.502–2 Contract finance office clearance.

Before taking any of the actions prescribed in FAR 32.502–2, the contracting officer shall obtain advice and assistance from the bureau's Chief Financial Officer.

2832.503 Postaward matters.

2832.503–6 Suspension or reduction of payments.

The HCA or designee is the approving official for any action recommended under FAR 32.503–6. Upon approval, the contracting officer shall request the finance office to suspend or reduce payments.

Subpart 2832.7—Contract Funding

2832.703 Contract funding requirements.

2832.703–3 Contracts crossing fiscal years.

The HCA or designee is the agency head for the purposes of FAR 32.703–3(b).

Subpart 2832.9—Prompt Payment

2832.903 Responsibilities.

The HCA or designee is responsible for promulgating policies and procedures to implement FAR subpart 32.9.

Subpart 2832.11—Electronic Funds Transfer

2832.1110 Solicitation provision and contract clauses.

When the clause at FAR 52.232–34, Payment by Electronic Funds Transfer (EFT)—Other than System for Award Management, is required, the contracting officer may insert in paragraph (b)(1) of the clause a particular time after award, such as a fixed number of days, or an event such as the submission of the first request for payment, to establish the point at which contractors' EFT information shall be provided.

PART 2833—PROTESTS, DISPUTES, AND APPEALS

Subpart 2833.1—Protests

Sec.

2833.101 Definitions.
2833.102 General.
2833.103 Protests to the agency.

Subpart 2833.2—Disputes and Appeals

2833.203 Applicability.
2833.209 Suspected fraudulent claims.
2833.211 Contracting officer's decision.
2833.214 Alternative dispute resolution (ADR).
2833.214–70 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2833.1—Protests

2833.101 Definitions.

(a) *Agency Protest Official (APO)* means the Deciding Official for a procurement protest filed with a contracting activity of DOJ when the contracting officer will not be the Deciding Official because of the protestor's election under JAR 22833.103(b). The HCA will designate the individual who will serve as the APO for a given protest subject to the following:

(1) The APO will be at an organizational level above that of the contracting officer, will be knowledgeable about the acquisition process in general, and will not have had any previous personal involvement or programmatic interest in the procurement that is the subject of the protest.

(2) The departmental or bureau Competition Advocate may serve as the APO.

(b) *Deciding Official* means the official who will review and decide a procurement protest filed with the agency. The Deciding Official will be the contracting officer unless the protestor requests pursuant to JAR 2833.103(b) that the protest be decided by an individual above the level of the contracting officer, in which case the HCA will designate an APO to serve as the Deciding Official.

(c) *Interested party* means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

2833.102 General.

(a) This part prescribes policies and procedures for processing protests to DOJ in accordance with with FAR 33.103 and Executive Order 12979, Agency Procurement Protests, dated October 25, 1995.

(b) Contracting officers and contractors are encouraged to use their best efforts to resolve concerns outside of the protest process through frank and open discussion as required by FAR 33.103(b) or through alternative dispute resolution techniques where appropriate.

(c) Responsibilities are as follows:

(1) *Contracting officers.* (i) Include the provision at JAR 2852.233–70 in all solicitations that are expected to exceed the simplified acquisition threshold.

(ii) When serving as the Deciding Official, decide the protest using the procedures in this subpart and FAR 33.103(d)(2).

(iii) If the protestor requests that the protest be decided at a level above the contracting officer, the contracting officer shall ensure that the Agency Protest Official, once designated, receives a copy of the protest and any other materials the protestor has provided to the contracting officer in support of the protest.

(2) *Agency Protest Official.* The APO shall use the procedures in this subpart and FAR 33.103 to provide an independent review of and decision on the issues raised in the protest.

2833.103 Protests to the agency.

(a) The filing time frames in FAR 33.103(e) apply. An agency protest is filed when the protest is received at the location the solicitation designates for serving protests.

(b) Only interested parties may file a protest.

(c) An interested party filing an agency protest has the choice of requesting either that the contracting officer or an individual above the level of the contracting officer decide the protest.

(d) In addition to the information required by FAR 33.103(d)(2), the protest shall:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the contracting officer or other official designated to receive protests.

(3) State whether the protestor chooses to have the contracting officer or an individual above the level of the contracting officer decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the Deciding Official.

(e) Upon receipt of a protest by the agency, the contracting officer, even when not serving as the Deciding Official, will notify other vendors competing in the procurement of the protest, any stay of award or suspension of performance, and/or any determination under FAR 33.103(f)(1) or (3) if and when made.

(f) Intervenors to the protest are not permitted.

(g) The decision by the Agency Protest Official is an alternative to a decision by the contracting officer on a protest. The Agency Protest Official will not consider appeals from a contracting officer's decision on an agency protest and a decision by the Agency Protest Official is final and not appealable.

(h) The protestor has only one opportunity to support or explain the substance of its protest. DOJ procedures do not provide for any discovery. The Deciding Official has discretion to request additional information from the agency or the protestor.

(i) A protestor may represent itself or be represented by legal counsel. DOJ will not reimburse the protester for any legal fees or costs related to the agency protest.

(j) If an agency protest is received before contract award, the contracting officer shall not make award unless the HCA or designee makes a determination to proceed under FAR 33.103(f)(1). Similarly, if an agency protest is filed within ten (10) days after award or within 5 days after a debriefing date has been offered to the protester under a timely debriefing request under FAR 15.505 or 15.506, whichever is later, the contracting officer shall suspend contract performance unless the HCA or designee makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the agency protest is decided, dismissed, or withdrawn.

(k) The deciding official's decision may be oral or written. If oral, the deciding official shall send a confirming letter after the decision using a means that allows proof of receipt, including electronic mail. The letter shall:

(1) State whether the protest was denied, sustained, or dismissed;

(2) Indicate the date the decision was provided; and

(3) Provide the rationale for the decision.

(l) If the deciding official sustains the protest, relief may consist of any of the following:

(1) Termination of the contract for convenience or cause.

(2) Recompeting the requirement.

(3) Amending the solicitation.

(4) Refraining from exercising contract options.

(5) Reevaluating the offers or bids and making a new award determination.

(6) Other action that the deciding official determines is appropriate.

(m) Proceedings on an agency protest shall be dismissed if a protest on the same or similar basis is filed with a protest forum outside of DOJ.

Subpart 2833.2—Disputes and Appeals

2833.203 Applicability.

The SPE is the agency head for the purposes of FAR 33.203(b).

2833.209 Suspected fraudulent claims.

Contracting officers shall report suspected fraudulent claims to the OIG for investigation.

2833.211 Contracting officer's decision.

The Civilian Board of Contract Appeals (CBCA) hears and decides contract disputes originating from DOJ.

2833.214 Alternative dispute resolution (ADR).

2833.214–70 Policy.

It is DOJ's goal to resolve contract disputes before the issuance of a contracting officer's final decision under the Contract Disputes Act. Therefore, contracting officers will consider all possible means of reaching a negotiated settlement consistent with the Government's best interest, before issuing a final decision on a contractor claim under the process outlined in FAR 33.206 through 33.211.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2834—MAJOR SYSTEM ACQUISITION

Subpart 2834.0—General

Sec.

2834.002 Policy.
2834.003 Responsibilities.
2834.005 General requirements.
2834.005–6 Full production.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2834.0—General

2834.002 Policy.

The Small Business and Federal Procurement Competition Enhancement Act of 1984 allows an executive agency to establish a dollar threshold for the designation of a major system, in accordance with Public Law 98–577. Dollar thresholds for a major system under OMB Circular A–109 are designated in this section.

(a) *Major automated information system.* Within DOJ, a major automated information system is one whose life-cycle cost is in excess of $100 million.

(b) *Major real property system.* (1) By purchase, when the assessed value of the property exceeds $60 million.

(2) By lease, when the annual rental charges, including basic services (*e.g.,* cleaning, guards, maintenance), exceed $1.8 million.

(3) By transfer from another agency at no cost when the assessed value of the property exceeds $12 million.

(c) *Research and development (R&D) system.* Any R&D activity expected to exceed $500,000 for the R&D phase is subject to OMB Circular A–109, unless exempted by the HCA or designee under paragraph (e) of this section.

(d) *Any other system or activity.* The HCA or designee responsible for the system may designate any system or activity as a Major System under OMB Circular A–109, *e.g.,* selected systems designed to support more than one principal organizational unit.

(e) *Exemption.* The CAO, upon recommendation by the HCA or designee responsible for the system, may determine that, because of the routine nature of the acquisition, the system (*e.g.,* an information system utilizing only off-the-shelf hardware or software) will be exempt from the OMB Circular A–109 process, even where by virtue of the life cycle costs it would otherwise be identified as ''major'' in response to OMB Circular A–109.

2834.003 Responsibilities.

(a) The SPE is the agency head for the purposes of FAR 34.003(a).

(b) The CAO is the agency head for the purposes of FAR 34.003(c).

2834.005 General requirements.

2834.005–6 Full production.

The CAO is the agency head for the purposes of FAR 34.005–6.

PART 2836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2836.2—Special Aspects of Contracting for Construction

Sec.

2836.204 Disclosure of the magnitude of construction projects.

Subpart 2836.6—Architect-Engineer Services

2836.602 Selection of firms for architect-engineer contracts.
2836.602–1 Selection criteria.
2836.602–4 Selection authority.
2836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2836.2—Special Aspects of Contracting for Construction

2836.204 Disclosure in solicitations of the magnitude of construction projects.

For construction projects over $10,000,000, present the magnitude in ranges as follows:

(a) Between $10,000,001 and $25,000,000;

(b) Between $25,000,001 and $100,000,000;

(c) Between $100,000,001 and $250,000,000;

(d) Between $250,000,001 and $500,000,000; and

(e) Over $500,000,000.

Subpart 2836.6—Architect-Engineer Services

2836.602 Selection of firms for architect-engineer contracts.

2836.602–1 Selection criteria.

The HCA or designee is the agency head for purposes of FAR 36.602–1(b).

2836.602–4 Selection authority.

The HCA or designee is the agency head for purposes of FAR 36.602–4(a).

2836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

(a) The short selection process, described in FAR 36.602–5, is authorized for use in DOJ contracts not expected to exceed the simplified acquisition threshold.

(b) The HCA or designee is the agency head for purposes of FAR 36.602–5(b)(2).

PART 2837—SERVICE CONTRACTING

Subpart 2837.1—Service Contracts—General

Sec.

2837.106 Funding and term of service contracts.

Subpart 2837.2—Advisory and Assistance Services

2837.204 Guidelines for determining availability of personnel.

Subpart 2837.5—Management Oversight of Service Contracts

2837.503 Agency-head responsibilities.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2837.1—Service Contracts—General

2837.106 Funding and term of service contracts.

The HCA or designee is the agency head for purposes of FAR 37.106(b).

Subpart 2837.2—Advisory and Assistance Services

2837.204 Guidelines for determining availability of personnel.

The HCA or designee is the agency head for purposes of FAR 37.204.

Subpart 2837.5—Management Oversight of Service Contracts

2837.503 Agency-head responsibilities.

The HCA or designee or designee is the agency head for purposes of FAR 37.503.

PART 2839—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 2839.1—General

Sec.
2839.101 Policy.
2839.102 Management of risk.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2839.1—General

2839.101 Policy.

DOJ's Chief Information Officer (CIO) and SPE are responsible for issuing policies and procedures to manage the agency information technology (IT) acquisition process.

2839.102 Management of risk.

Contracts involving DOJ Information and Information Systems shall comply with the security requirements prescribed in FAR 39.102 and all applicable DOJ security requirements, including without limitation all DOJ Policy Statements and DOJ Policy Instructions established under the DOJ Acquisition Management Order relating to the Management of Risk of DOJ Information and Information Systems.

PART 2841—ACQUISITION OF UTILITY SERVICES

Subpart 2841.2—Acquiring Utility Services

Sec.
2841.201 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2841.2—Acquiring Utility Services

2841.201 Policy.

The HCA or designee is the agency head for the purposes of FAR 41.201(d)(2)(i) and (d)(3).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 2842.6—Corporate Administrative Contracting Officer

Sec.
2842.602 Assignment and location.

Subpart 2842.7—Indirect Cost Rates

2842.703 General.
2842.703–2 Certificate of indirect costs.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2842.6—Corporate Administrative Contracting Officer

2842.602 Assignment and location.

The HCA or designee is the agency head for the purposes of FAR 42.602(a).

Subpart 2842.7—Indirect Cost Rates

2842.703 General.

2842.703–2 Certificate of indirect costs.

The HCA or designee is the agency head for the purposes of FAR 42.703–2(b).

PART 2845—GOVERNMENT PROPERTY

Subpart 2845.1—General

Sec.
2845.105 Contractors' property management system compliance.
2845.105–70 Contractor reporting of Government-furnished property.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2845.1—General

2845.105 Contractors' property management system compliance.

The contractor's records for Government-furnished property may be kept as a separate account in the bureau's internal property management system, in which case the contracting officer or formally designated property administrator shall serve as custodian of the account.

2845.105–70 Contractor reporting of Government-furnished property.

(a) In compliance with FAR 45.105, by January 31 of each year, DOJ contractors shall furnish the cognizant contracting officer an annual report of the DOJ property for which they are accountable as of the end of the calendar year.

(b) By March 1 of each year, bureaus shall submit to the FASS, JMD, a summary report of agency property furnished under each contract as of the end of the calendar year. The report shall include a listing of Government-furnished property for all contracts for which the bureau maintains the official Government records.

PART 2846—QUALITY ASSURANCE

Subpart 2846.6—Material Inspection and Receiving Reports

Sec.
2846.601 General.

Subpart 2846.7—Warranties

2846.704 Authority for use of warranties.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2846.6—Material Inspection and Receiving Reports

2846.601 General.

Bureaus shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports and commercial shipping document/packing lists to evidence Government inspection (FAR 46.401) and acceptance (FAR 46.501).

Subpart 2846.7—Warranties

2846.704 Authority for use of warranties.

The use of a warranty in an acquisition shall be approved at a level above the contracting officer.

PART 2848—VALUE ENGINEERING

Subpart 2848.1—Policies and Procedures

Sec.
2848.102 Policies.

Subpart 2848.2—Contract Clauses

2848.201 Clauses for supply or service contracts.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2848.1—Policies and Procedures

2848.102 Policies.

The HCA is the agency head for purposes of FAR 48.102(a).

Subpart 2848.2—Contract Clauses

2848.201 Clauses for supply or service contracts.

The HCA or designee is the agency head for purposes of FAR 48.201(a)(6).

PART 2849—TERMINATION OF CONTRACTS

Subpart 2849.1—General Principles

Sec.
2849.106 Fraud or other criminal conduct.
2849.111 Review of proposed settlements.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2849.1—General Principles

2849.106 Fraud or other criminal conduct.

If the contracting officer has reason to suspect fraud or other criminal conduct related to the settlement negotiations of a terminated contract, the contracting officer shall discontinue the negotiations and report the facts supporting the suspicion through the HCA or designee to the OIG.

2849.111 Review of proposed settlements.

The HCA or designee may establish procedures for the review and approval of settlement agreements at a level above the contracting officer. In addition, all proposed termination settlements shall be reviewed by legal counsel.

PART 2850—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subpart 2850.1—Extraordinary Contractual Actions

Sec.
2850.100 Definition.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2850.1—Extraordinary Contractual Actions

2850.100 Definition.

Approving authority as used in this part means the Attorney General.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
2852.000 Scope of part.

Subpart 2852.1—Instructions for Using Provisions and Clauses

2852.102 Incorporating provisions and clauses.

Subpart 2852.2—Text of Provisions and Clauses

2852.200 Scope of subpart.
2852.201–70 Contracting Officer's Representative (COR).
2852.203–70 General Non-Disclosure Agreement.
2852.203–71 Intelligence Related Non-Disclosure Agreement.
2852.212–4 Contract Terms and Conditions—Commercial Items (FAR Deviation).
2852.222–70 Domestic Violence, Sexual Assault, and Stalking.
2852.223–70 Unsafe Conditions Due to the Presence of Hazardous Material.
2852.233–70 Protests Filed Directly with the Department of Justice.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

2852.000 Scope of part.

This part provides the text of provisions and clauses which are unique to DOJ or supplement the FAR.

Subpart 2852.1—Instructions for Using Provisions and Clauses

2852.102 Incorporating provisions and clauses.

JAR provisions and clauses may be incorporated in solicitations and contracts by reference.

Subpart 2852.2—Text of Provisions and Clauses

2852.200 Scope of subpart.

This subpart sets forth the text of all DOJ provisions and clauses. It also cross-references to the location in the JAR that prescribes the use of each provision and clause.

2852.201–70 Contracting Officer's Representative (COR).

As prescribed in JAR 2801.604, insert the following clause:

Contracting Officer's Representative (COR) (NOV 2020)

(a) Mr./Ms. (Name) of (Organization), (Address), (Area Code & Telephone No.), is hereby designated to act as Contracting Officer's Representative (COR) under (contract #), for the period of (specify the performance period of the contract that the designation covers).

(b) Performance of work under this contract is subject to the technical direction of the COR identified above, or another representative designated in writing by the Contracting Officer. The term ''technical direction'' includes, without limitation, the following:

(i) Receiving all deliverables;

(ii) Inspecting and accepting the supplies or services provided in accordance with the terms and conditions of this contract;

(iii) Clarifying, directing, or redirecting the contract effort, including shifting work between work areas and locations, filling in details, or otherwise serving to accomplish the contractual statement of work to ensure the work is accomplished satisfactorily;

(iv) Evaluating performance of the Contractor; and

(v) Certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment.

(c) The COR does not have the authority to issue direction that:

(i) Constitutes a change of assignment or work outside the contract specification/work statement/scope of work.

(ii) Constitutes a change as defined in the clause entitled ''Changes'' or other similar contract term.

(iii) Causes, in any manner, an increase or decrease in the contract price or the time required for contract performance;

(iv) Causes, in any manner, any change in a term, condition, or specification or the work statement/ scope of work of the contract;

(v) Causes, in any manner, any change or commitment that affects price, quality, quantity, delivery, or other term or condition of the contract or that, in any way, directs the contractor or its subcontractors to operate in conflict with the contract terms and conditions;

(vi) Interferes with the contractor's right to perform under the terms and conditions of the contract;

(vii) Directs, supervises, or otherwise controls the actions of the Contractor's employees or a Subcontractor's employees.

(d) The Contractor shall proceed promptly with performance resulting from the technical direction of the COR. If, in the opinion of the Contractor, any direction by the COR or the designated representative falls outside the authority of (b) above and/or within the limitations of (c) above, the Contractor shall immediately notify the Contracting Officer.

(e) Failure of the Contractor and Contracting Officer to agree that technical direction is within the scope of the contract is a dispute that shall be subject to the ''Disputes'' clause and/or other similar contract term.

(f) COR authority is not re-delegable.

(End of Clause)

2852.203–70 General Non-Disclosure Agreement.

As prescribed in JAR 2803.908–70, insert the following provision:

General Non-Discloure Agreement (AUG 2016)

The provisions of this Non-Disclosure Agreement (NDA) are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling.

(End of Provision)

2852.203–71 Intelligence Related Non-Disclosure Agreement.

As prescribed in JAR 2803.908–71, insert the following provision:

Intelligence Related Non-Disclosure Agreement (AUG 2016)

(1) The signatory will not disclose any classified information received in the course of such intelligence or intelligence-related activity unless specifically authorized to do so by the United States Government; and

(2) The Non-Disclosure Agreement (NDA) does not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, which are essential to reporting a substantial violation of law.

(End of Provision)

2852.212–4 Contract Terms and Conditions, Commercial Items (FAR Deviation).

As prescribed in JAR 2812.301, insert the following provision:

Terms and Conditions—Commercial Items (NOV 2020)

When a commercial item is contemplated (using FAR part 12 procedures or otherwise) and the contract will include FAR 52.212–4, the following replaces subparagraph (g)(2); paragraph (h); subparagraph (i)(2); paragraph (s); and paragraph (u), Unauthorized Obligations, of the basic FAR clause, and adds paragraph (w), as follows:

(g)(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment act regulations at 5 CFR part 1315, as modified by subparagraph (i)(2), *Prompt payment,* of this clause.

* * * * *

(h) *Patent indemnity.* Contractor shall indemnify and hold harmless the Government and its respective affiliates, officers, directors, employees, agents, successors and assigns (collectively, ''Indemnities'') from and against any and all liability and losses incurred by the Indemnities that are (i) included in any settlement and/or (ii) awarded by a court of competent jurisdiction arising from or in connection with any third party claim of infringement made against Indemnities asserting that any product or service supplied under this contract constitutes infringement of any patent, copyright, trademark, service mark, trade name or other proprietary or intellectual right. This indemnity shall not apply unless Contractor shall have been informed within a reasonable time by the Government of the claim or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. This indemnity also shall not apply to any claim unreasonably settled by the Government which obligates Contractor to make any admission or pay any amount without written consent signed by an authorized officer of Contractor, unless required by final decree of a court of competent jurisdiction.

* * * * *

(i)(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations (5 CFR part 1315), with the following modification regarding the due date: For the sole purpose of computing an interest penalty due the Contractor, the Government agrees to inspect and determine the acceptability of any supply delivered or service performed specified in the invoice within thirty (30) days of receipt of a proper invoice from the Contractor, after which time, if no affirmative action has been taken by the Government to accept such supply or service, the supply or service will be deemed accepted and payment due thirty (30) days from the date of deemed acceptance. If the Government makes the determination that the item delivered or service performed is deficient or otherwise unacceptable, or the invoice is otherwise determined not to be a proper invoice, the terms and conditions of this paragraph regarding prompt payment will apply to the date the Contractor corrects the deficiency in the item delivered or service performed or submits a proper invoice. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

* * * * *

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts provisions of the basic FAR clause at 52.212–4, and the Unauthorized Obligations and Contractor's Commercial Supplier Agreements—Unenforceable Clauses provisions of JAR 2852.212–4.

(3) FAR 52.212–5.

(4) Other paragraphs of the basic FAR clause at 52.212–4, with the exception of paragraph (o), Warranty, and those paragraphs identified in this deviation of 52.212–4.

(5) Addenda to this solicitation, contract, or order, including contractor's Commercial supplier agreements incorporated into the contract.

(6) Solicitation provisions if this is a solicitation.

(7) Paragraph (o), Warranty, of the basic FAR clause at 52.212–4.

(8) The Standard Form 1449.

(9) Other documents, exhibits, and attachments.

(10) The specification.

* * * * *

(u) *Unauthorized obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract or order is subject to any Commercial supplier agreement that includes any language, provision, or clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (see 31 U.S.C. 1341), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an ''I agree'' click box or other similar mechanism (*e.g.,* ''click-wrap'' or ''browse-wrap'' agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement and have no effect.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

* * * * *

(w) *Commercial supplier agreements—unenforceable clauses.* When any supply or service acquired under this contract or order is subject to a contractor's commercial supplier agreement, the following shall be deemed incorporated into such agreement and modifies and replaces any similar language, provision, or clause in such agreement. As used herein, ''this agreement'' means any contractor commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR part 12).

(ii) *End user.* This agreement shall bind the Government as end user but shall not operate to bind the Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language, provision, or clause purporting to subject the U.S. Government to the laws of any U.S. state, territory, district, or municipality, or the laws of a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted and shall have no effect.

(B) Any language, provision, or clause requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted and shall have no effect.

(C) Any language, provision, or clause prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted and shall have no effect.

(iv) *Continued performance.* Notwithstanding any other provision in this agreement, if the Contractor believes the Government to be in breach of this contract, order, or agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d), Disputes, of FAR 52.212–4.

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to the contract, order, or this agreement, (A) binding arbitration shall not be used unless otherwise specifically authorized by agency guidance, and (B) equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the Government only when explicitly provided by statute.

(vi) *Updating terms.*

(A) After award, the contractor may unilaterally revise terms if they are not material. Material terms are defined as:

(1) Terms that change Government rights or obligations;

(2) Terms that increase Government prices;

(3) Terms that decrease the overall level of service; or

(4) Terms that limit any other Government right addressed elsewhere in this contract.

(B) For revisions that materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provisions of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) *Order of precedence.* Any Order of Precedence clause in any commercial supplier agreement is not enforceable against the Government. The applicable Order of Precedence for this contract, order, or agreement is FAR 52.212–4(s), as revised by JAR 2812.302 and 2852.212–4(s).

(viii) *No automatic renewals.* If any license or service tied to period payment is provided under this agreement (*e.g.,* annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by a properly warranted contracting officer, and any provision or term of any license or service purporting to provide for automatic renewal is unenforceable against the Government.

(ix) *Indemnification by the Government or end-user.* Any language, provision, or clause of this commercial supplier agreement requiring the Government or End-user to indemnify the commercial supplier or licensor is not enforceable against the Government.

(x) *Indemnification by the commercial supplier or licensor.* Any clause of this agreement requiring or permitting the commercial supplier or licensor to defend the Government as a condition of indemnifying the Government for any claim of infringement is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(xi) *Audits.* Any language, provision, or clause of this commercial supplier agreement permitting Contractor to audit the end user's compliance with this agreement is not enforceable against the Government. To the extent any language, provision or clause of this agreement permits Contractor to audit the Government's compliance under this contract, order, or agreement, such language, provision, or clause of this agreement is hereby stricken and replaced as follows:

''(A) If Contractor reasonably believes that the Government has violated the terms of this agreement with regard to the restrictions on authorized use and/or the number of authorized users, upon written request from Contractor, including an explanation of the basis for the request, DOJ will provide a redacted version of the Government's most recent Security Assessment and Authorization package (SAA) to Contractor on a confidential basis, so that Contractor may reasonably verify the Government's compliance with its obligations under this agreement. Contractor understands and agrees that the Government will remove or redact any information from the SAA that it reasonably believes may compromise (a) the security of the Government's information technology environment; (b) the confidentiality of any third-party proprietary or confidential information; (c) any confidential, sensitive law enforcement information; and (d) any other information that the Government believes may compromise a past, current, or prospective investigation,

prosecution, or litigation. Notwithstanding the preceding, and subject to the Government's policies and procedures for such review, including but not limited to complying with all Government security requirements prior to being granted access to the Government's facilities, including the execution of appropriate confidentiality and/or non-disclosure agreements, the Government will arrange, upon Contractor's written request, for Contractor to view an un-redacted version of the SAA on Government premises. Contractor understands that Contractor will be provided a copy of the un-redacted SAA on Government premises only and that no un-redacted copy of the SAA, or any medium containing information relating to it, will be permitted to be removed from Government premises.

(B) The Contractor also understands and agrees that the Contractor shall make a request under this paragraph no more than on an annual basis and only during the period of the contract, and that any activities performed by Contractor under this clause will be performed at Contractor's expense, without reimbursement by the Government.

(C) Discrepancies found with regard to the restrictions on authorized use and/or the number of authorized users may result in a charge by Contractor to the Government. Any resulting invoice must comply with the proper invoicing and payment requirements specified in the contract. This charge, if disputed by the Government, will be resolved through the Disputes clause at 52.212–4(d); no payment obligation shall arise on the part of the Government until the conclusion of the dispute process.''

(xii) *Taxes or surcharges.* Any taxes or surcharges which the Contractor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xiii) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under FAR 52.212–4 (b), Assignment.

(xiv) *Confidential information.*

(A) During the term of this contract or order, either party may identify information as ''confidential information,'' and there shall be no disclosure, dissemination, or publication of any such information except to the extent required for the performance of this contract or order and otherwise provided in this clause or by statute or regulation. Specifically, the parties agree that the party receiving confidential information may only disclose such information to its employees and contractors on a ''need-to-know'' basis to carry out the obligations of this contract or order, and that subcontractors performing under this Agreement are subject to the same stipulations provided in this provision. The parties also agree that this provision shall survive the termination of this contract or order, and any confidential information obtained or received which comes within these restrictions shall remain confidential, provided that the obligation to treat information as confidential shall not apply to information which is or becomes publicly available through no improper action of the receiving party; is or comes to be in the receiving party's possession independent of its relationship with the disclosing party; is developed by or becomes known to the receiving party without use of any confidential information of the disclosing party; or is obtained rightfully from a third party not bound by an obligation of confidentiality. Additionally, nothing in this contract or order shall restrict disclosure by the receiving party pursuant to any applicable law, including but not limited to the Freedom of Information Act, 5 U.S.C. 552, *et seq.,* or an order of any court of competent jurisdiction, provided that in either such case the receiving party gives prompt notice to the disclosing party to allow the disclosing party to interpose an objection to such disclosure, take action to assure confidential handling of the confidential information, or take such other action as it deems appropriate to protect its confidential information.

(B) The Government considers and hereby identifies as confidential any and all information related to any inquiries and/or searches performed by the Government or by contractor at the Government's direction under this contract or order, including the subject of any such inquiry or search and any and all search terms, regardless of whether provided in writing or orally to Contractor, and Contractor agrees that it may only disclose such information to its employees and contractors on a ''need-to-know'' basis to carry out the obligations of this contract or order and that it will not share, reveal, divulge, disclose, disseminate, or publicize any such information to any third party except as provided in this provision without the prior written approval of the Contracting Officer. Contractor also understands and agrees that any subcontractors performing under this contract or order are subject to the same stipulations and that Contractor may be held responsible for any violations of confidentiality by a subcontractor.

(C) These provisions are consistent with and do not supersede, conflict with, or otherwise alter an employee's obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by Executive orders and statutory provisions relating to whistleblower protection are incorporated into this contract and are controlling.

(D) The Government may share the terms, conditions and prices set forth in this Order with, and provide a copy of the Order to, other Executive branch agencies of the U.S. Government, provided that the Government shall ensure that other Executive branch agencies to which it provides such information will be required to treat all such information consistent with terms and conditions set forth in this Order.

(E) Notwithstanding anything in this agreement, the Government may retain any confidential information as required by law, regulation, or its internal document retention procedures for legal, regulatory, or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this Order.

(xv) *Authorized users.* Authorized users may include full and part-time employees of the Government, including those working at or from remote locations, and contractors and contractor employees working within the scope of their contract with the Government, including those at or from remote locations.

(xvi) *Authorized use.* Authorized users are authorized to use the product or service acquired under this contract in performing business on behalf of the Government. Any information obtained or acquired by the Government under this contract may be used by the Government in the performance of Government business.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding

paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevails to the extent of such inconsistency.

2852.222–70 Domestic Violence, Sexual Assault, and Stalking.

As prescribed in JAR 2822.101–1–70, insert the following clause:

Domestic Violence, Sexual Assault, and Stalking (DEC 2014)

(a) It is DOJ policy to enhance workplace awareness of and safety for victims of domestic violence, sexual assault, and stalking. This policy is summarized in ''*DOJ Policy Statement 1200.02, Federal Workforce Responses to Domestic Violence, Sexual Assault, and Stalking,*'' available in full for public viewing at: *http://www.justice.gov/sites/default/files/ovw/legacy/2013/12/19/federal-workplacee-responses-to-domesticeviolence-sexual assault-stalking.pdf.*

Vendor agrees, upon contract award, to provide notice of this Policy Statement, including at a minimum the above-listed URL, to all Vendor employees and employees of subcontractors who will be assigned to work on DOJ premises.

(b) Upon contract award, DOJ will provide the Contractor with the name and contact information of the point of contact for victims of domestic violence, sexual assault, and stalking for the component or components where the Contractor will be performing. The Contractor agrees to inform its employees and employees of subcontractors, who will be assigned to work on DOJ premises, with the name and contact information of the point of contact for victims of domestic violence, sexual assault, and stalking.

(End of Clause)

2852.223–70 Unsafe Conditions Due to the Presence of Hazardous Material.

As prescribed in JAR 2823.303–70, insert the following clause:

Unsafe Conditions Due to the Presence of Hazardous Material (NOV 2020)

(a) ''Unsafe condition'' as used in this clause means the actual or potential exposure of Contractor or Government employees to a hazardous material.

(b) ''Hazardous Material'' as used in this clause includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract), any other potentially hazardous material requiring safety controls, or any other material or working condition designated as hazardous by the Contracting Officer's Representative (COR).

(c) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require Contractors to apprise its employees of all hazards to which they may be exposed in the course of their employment; proper conditions and precautions for safe use and exposure; and related symptoms and emergency treatment in the event of exposure.

(d) Prior to commencement of work, Contractors are required to inspect for and report to the Contracting Officer the presence of, or suspected presence of, any unsafe condition including asbestos or other hazardous materials or working conditions in areas in which they will be working.

(e) If during the performance of the work under this contract, the Contractor or any of its employees, or subcontractor employees, discovers the existence of an unsafe condition, the Contractor shall immediately notify the Contracting Officer, or designee (with written notice provided not later than three (3) working days thereafter), of the existence of an unsafe condition. Such notice shall include the Contractor's recommendations for the protection and the safety of Government, Contractor and subcontractor personnel and property that may be exposed to the unsafe condition.

(f) When the Government receives notice of an unsafe condition from the Contractor, the parties will agree on a course of action to mitigate the effects of that condition and, if necessary, the contract will be amended. Failure to agree on a course of action will constitute a dispute under the Disputes clause of this contract.

(g) Nothing contained in this clause shall relieve the Contractor or subcontractors from complying with applicable Federal, State, and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with hazardous material including but not limited to the use, disturbance, or disposal of such material.

(End of Clause)

2852.233–70 Protests Filed Directly with the Department of Justice.

As prescribed in JAR 2833.102(d), insert a clause substantially as follows:

Protests Filed Directly With the Department of Justice (NOV 2020)

(a) The following definitions apply in this provision:

(1) ''Agency Protest Official'' (APO) means the Deciding Official for a procurement protest filed with a contracting activity of DOJ when the contracting officer will not be the Deciding Official because of the protestor's election under JAR 2833.103(b)

(2) ''Deciding Official'' means the official who will review and decide a procurement protest filed with the agency. The Deciding Official will be the contracting officer unless the protestor requests pursuant to JAR 2833.103(b) that the protest be decided by an individual above the level of the contracting officer, in which case the HCA will designate an APO to serve as the Deciding Official.

(3) ''Interested Party'' means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) Only interested parties may file a protest.

(c) An interested party filing a protest with the DOJ has the choice of requesting either that the Contracting Officer or the APO decide the protest.

(d) A protest filed directly with the DOJ shall:

(1) Indicate that it is a protest to DOJ.

(2) Be filed with the Contracting Officer.

(3) State whether the protestor chooses to have the Contracting Officer or the Agency Protest Official decide the protest. If the protestor is silent on this matter, the Contracting Officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the deciding official.

(5) Include the information required by FAR 33.103(d)(2):

(i) Name, address, facsimile number and telephone number of the protestor.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protestor.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protestor is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest.

(e) The decision by the APO is an alternative to a decision by the Contracting Officer. The APO will not consider appeals from the Contracting Officer's decision on an agency protest and a decision by the APO is final and not appealable.

(f) The Deciding Official may conduct a scheduling conference. The

scheduling conference, if conducted, will establish deadlines for oral or written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(g) Oral conferences may take place either by telephone or in person.

(h) The protestor has only one opportunity to support or explain the substance of its protest. DOJ procedures do not provide for any discovery. The deciding official may request additional information from the agency or the protestor. The deciding official will resolve the protest through informal presentations or meetings to the maximum extent practicable.

(i) A protestor may represent itself or be represented by legal counsel. The DOJ will not reimburse the protester for any legal fees related to the agency protest.

(j) The DOJ will stay award or suspend contract performance in accordance with FAR 33.103(f), unless the contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. The justification or determination shall be approved at a level above the Contracting Officer. The stay or suspension, unless over-ridden, remains in effect until the protest is decided, dismissed, or withdrawn.

(k) The deciding official will make a best effort to issue a decision on the protest within thirty-five (35) days after the filing date. The decision shall be written, and provided to the protestor using a method that provides for evidence of receipt.

(l) The DOJ may dismiss or stay proceedings on an agency protest if a protest on the same or similar basis is filed with a forum outside DOJ.

(End of Clause)

Dated: July 18, 2022.

Jolene Ann Lauria,

Acting Assistant Attorney General for Administration.

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

APPENDIX—SECTIONS OF THE JAR THAT ARE BEING PROPOSED FOR REMOVAL AND/OR RENAMING

Current JAR provision	Disposition
2801.2 Administration	Not Replaced. New 2801.1 Purpose, Authority, Issuance.
2801.270–1 Revisions	Not Replaced.
2801.470 Requests for Class Deviations	Now 2801.404.
2801.602 Contracting Officer	Not Replaced.
2801.602–3 Ratification of Unauthorized Commitments	Not Replaced.
2801.603 Selection, Appointment and Termination of Appointment	Not Replaced.
2801.603–1 Department of Justice Acquisition Career Management Program.	Not Replaced.
2801.603–3 Appointment	Not Replaced. [Addressed Contracting Officer's Representative (COR) appointment below Micro Threshold.]
2801.70 Contracting Officer's Technical Representative (COTR)	New Section 2801.604 addresses COR.
2801.7001–701 General	New 2801.604 addresses COR.
2801.7001–702 Selection, Appointment and Limitation of Authority	New 2801.604 addresses COR.
2803.104–10 Violations or Possible Violations	Now 2803.104–7.
2803.104–70 Ethics Program Training Requirements	Not Replaced.
2804.403 Responsibilities of Contracting Officers	Not Replaced.
2804.470 Contractor Personnel Security Program	Now 2804.402–70—Contractor Personal Security Program.
2804.470–1 Policy	See 2804.402–70.
2804.470–2 Responsibilities	See 2804.402–70.
2804.5 Electronic Commerce in Contracting	Not Replaced.
2804.506 Exemptions	Not Replaced.
2804.6 Contract Reporting	Now 2804.903–70.
2804.602 Federal Procurement Data System	Now 2804.903–70.
2804.8 Government Contract Files	Not Replaced.
2804.805 Storage, Handling, and Contract Files	Not Replaced.
2804.902 Contract Information	Now addressed in 2804.903–70.
2804.970 Special Reporting Exceptions	Now addressed in 2804.903–71.
2805.201–70 Departmental Notification	Not Replaced.
2805.3 Synopses of Contract Awards	Now 2805.2 Synopsis of Proposed Contract Actions.
2805.302–70 Departmental Notification	Not Replaced.
2805.503–70 Procedures	Not Replaced.
2806.302 Circumstances Permitting Other Than Full and Open Competition.	Now addressed in 2806.3.
2806.302–7 Public Interest	Not Replaced.
2806.302–70 Determinations and Findings	Now addressed in 2806.304 Approval of the Justification.
2806.303 Justifications	See above.
2806.303–1 Requirements	See above.
2806.303–2 Content	See above.
2806.502 Duties and Responsibilities	Now 2806.5 Advocates for Competition.
2807.102 Policy	Now 2807.1 addresses Acquisition Planning.
2807.102–70 Applicability	Now 2807.1 addresses Acquisition Planning.
2807.103–70 Other Officials' Responsibilities	Now 2807.1 addresses Acquisition Planning.
2807.105 Contents of Written Acquisition Plans	Now 2807.1 addresses Acquisition Planning.
2807.5 Inherently Governmental Functions	Not Replaced.
2807.503 Policy	Not Replaced.
2809.404 List of Parties Excluded From Federal Procurement and Nonprocurement Programs.	Not Replaced.
2811.001 Definitions	[Not replaced, but part 2811 Still "Describing Agency's Needs".]

APPENDIX—SECTIONS OF THE JAR THAT ARE BEING PROPOSED FOR REMOVAL AND/OR RENAMING—Continued

Current JAR provision	Disposition
2811.104–70 Brand-Name or Equal Description	Not Replaced.
2813.7001 Policy	Now 2813.70–1. [Part 2813 addresses Simplified Acquisitions.]
2813.7002 Procedures	Now in 2813.70–2.
2814.409 Information to Bidders	Not Replaced.
2814.409–2 Award of Classified Contracts	Not Replaced.
2815.205 Issuing Solicitations	Not Replaced.
2815.404–2 Information to Support Proposal Analysis	Renamed ''Data to Support Proposal Analysis''.
2815.207 Handling Proposals and Information	Not Replaced.
2815.404–4 Profit	Not Replaced.
2815.407–4 Should-Cost Review	Not Replaced.
2816.6 Time-And-Materials, Labor-Hour, and Letter Contracts	Not Replaced.
2816.601 Time-And-Material Contracts	Not Replaced.
2816.603–2 Application	Not Replaced.
2816.603–3 Limitations	Not Replaced.
2817.108 Congressional Notification	Not Replaced. [But Multi-Year Contracting now at part 2817.]
2817.605 Award, Renewal and Extension	Not Replaced. [Multi-Year Contracting now at part 2817.]
2819.506 Withdrawing or Modifying Set-Asides	Not Replaced.
2819.6 Certificates of Competency and Determinations of Eligibility	Not Replaced.
2819.602 Procedures	Not Replaced.
2819.602–1 Referral	Not Replaced.
2819.70 Forecasts of Expected Contract Opportunities	Not Replaced.
2819.7001 General	Not Replaced.
2819.7002 Procedures	Not Replaced.
2822.13 SERVICE DISABLED AND VIETNAM ERA VETERANS	Renamed Equal Opp. For Veterans.
2822.303 Waivers	Not Replaced.
2823 ENVIRONMENT CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE.	Renamed ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE.
2823.1 Pollution Control and Clean Air and Water	Not Replaced.
2823.107 Compliance Responsibilities	Not Replaced.
2823.303–70 Departmental Contract Clause	Renamed Unsafe Conditions Due to Hazardous Material.
2823.4 USE OF RECOVERED MATERIALS	Now ''USE OF RECOVERED MATERIALS AND BIOBASED PRODUCTS''.
2823.403 Policy	Not Replaced.
2823.404 Procedures	Renamed ''Agency affirmative procurement programs''.
Part 2824 Protection of Privacy and Freedom of Information	Not Replaced.
2824.2 Freedom of Information Act	Not Replaced.
2824.202 Policy	Not Replaced.
2825.203 Evaluating Offers	Now 2825.204.
2825.3 BALANCE OF PAYMENT PROGRAM—	Not Replaced.
2825.3 Policy	[There were two sections labelled 2825.3.] Not Replaced.
2825.9 Additional Foreign Acquisition Clause	Not Replaced.
2825.901 Omission of Audit Clause	Not Replaced.
2828.1 Bonds	Now BONDS AND OTHER FINANCIAL PROTECTIONS.
2828.2 Sureties	Now SURETIES AND OTHER SECURITY FOR BONDS.
2831.205–32 Precontract Costs	Not Replaced.
2832.903 Policy [under PROMPT PAYMENT]	Renamed ''Responsibilities.''
2842.15 Contractor Performance Information	Not Replaced.
2842.1502 Policy	Not Replaced.
2842.1503 Procedures	Not Replaced.
2845.105 Records of Government Property	Renamed, but still at 2845.105.
2845.505–14 Report of Government Property	Renamed, now at 2845.105–70.
2845.6 Reporting, Redistribution, and Disposal of Contactor Inventory	Now part of 2845.105–70.
2845.603 Disposal Methods	Not Replaced.
2852.102–270 Incorporation in Full Text	Not Replaced.
2852.201–70 Contracting Officer's Technical Representative	Renamed Contracting Officer's Representative (COR).
2852.211–70 Brand Name or Equal	Not Replaced.

[FR Doc. 2022–15746 Filed 8–1–22; 8:45 am]

BILLING CODE 4410–AR–P

Proposed Rules

Federal Register
Vol. 87, No. 147
Tuesday, August 2, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0987; Project Identifier MCAI–2021–01416–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. This proposed AD was prompted by an occurrence reported where during an inspection of a tail rotor head (TRH) pitch change spider, excessive play and excessive wear were detected, due to an unwanted rotating motion. This proposed AD would require, for helicopters with certain part-numbered TRH spider pitch change units installed, inspecting for correct installation of the spider pitch change nut (nut); marking a 2 to 5 mm wide black paint index mark and repetitively inspecting the alignment of the marking; and additional inspections and corrective actions if necessary. This proposed AD would allow an affected part to be installed on a helicopter if certain requirements of this proposed AD are met. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 16, 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 *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 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *www.airbus.com/helicopters/services/technical-support.html.* 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.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0987; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Stephanie Sunderbruch, Aerospace Engineer, Safety Risk Management Section, Systems Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4659; email *Stephanie.L.Sunderbruch@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0987; Project Identifier MCAI–2021–01416–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Stephanie Sunderbruch, Aerospace Engineer, Safety Risk Management Section, Systems Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4659; email *Stephanie.L.Sunderbruch@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0282, dated December 17, 2021 (EASA AD 2021–0282), to correct an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter and Aerospatiale, Model AS 350 B, AS 350 BA, AS 350 BB, AS 350 B1, AS 350 B2, AS 350 B3, AS 350 D, AS 355 E, AS 355 F, AS 355 F1, AS 355 F2, AS 355 N, and AS 355

NP helicopters, all serial numbers. EASA advises that an occurrence was reported where, during an inspection of a TRH pitch change spider, excessive play in the assembly and excessive wear on its parts were detected, which was due to an unwanted rotating motion. This condition, if not addressed, could result in loss of the TRH pitch change control and loss of control of the helicopter.

Accordingly, EASA AD 2021–0282 requires a one-time check (inspection) of the nut for correct installation, accomplishing a black paint index marking, 2 to 5 mm wide, on the rotating spider and on the bearing spacer of the TRH spider pitch change unit, repetitive checks (inspections) of the marking alignment, and depending on the findings, accomplishment of additional inspections and corrective actions. The additional inspections include inspecting the TRH spider pitch change unit for corrosion; inspecting for rotation and wear on the faces of the bushes; visually inspecting the rotating plate and the rotating plate threads for damage; and inspecting the TRH spider pitch change unit if the mark is misaligned. The corrective actions include removing parts with corrosion from service; replacing bushes that rotate or have wear; and replacing damaged rotating plates. EASA AD 2021–0282 also specifies certain procedures for installation of the affected TRH spider pitch change unit.

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 has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS350–05.01.03, for Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, and AS350D helicopters and Airbus Helicopters ASB No. AS355–05.00.86, for Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, both Revision 0 and dated December 16, 2021, which include Figure 1 that identifies the position of the TRH pitch change unit and of the bearing spacer to be marked with a 2 to 5 mm wide black paint index mark. The service information also specifies procedures for inspecting the condition and installation of the nut; and inspecting the application and alignment of the black index mark on the TRH pitch change unit and the bearing spacer.

This service information 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 also reviewed, Airbus Helicopters Mechanical Repair Manual AS350 65–20–00–713, dated March 29, 2017, and Airbus Aircraft Maintenance Manual AS350 65–21–00, 4–9b, dated May 16, 2019, which specify disassembly and reassembly information for the TRH pitch change unit.

Proposed AD Requirements in This NPRM

This proposed AD would require, for helicopters with certain part-numbered TRH spider pitch change units installed, inspecting for correct installation of the nut; marking a 2 to 5 mm wide black paint index mark to identify the position of certain parts; and after the initial marking, and thereafter at intervals not to exceed 10 hours time in service, visually inspecting the alignment of the marking; and additional inspections and corrective actions if necessary. Additionally, this proposed AD would allow an affected part to be installed on a helicopter, if certain requirements of this proposed AD are met.

Differences Between This Proposed AD and the EASA AD

EASA AD 2021–0282 applies to Model AS350BB helicopters, whereas this proposed AD would not because that model is not FAA-type certificated. EASA AD 2021–0282 requires accomplishing a certain inspection using a magnifying lens, whereas this proposed AD would require using a 5X or higher power magnifying glass to inspect instead.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 967 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 proposed AD.

Inspecting the nut for correct installation would take about 0.25 work-hour for an estimated cost of $21 per helicopter and up to $20,307 for the U.S. fleet.

Inspecting the alignment of the marking would take about 0.10 work-hour for an estimated cost of $8.50 per helicopter per inspection and up to $8,219.50 for the U.S. fleet per inspection.

Marking the position of the TRH pitch change unit with black paint would take about 0.25 work-hour for an estimated cost of $21 per helicopter and $20,307 for the U.S. fleet.

If required, inspecting the TRH spider pitch change unit for corrosion, inspecting the faces of the bushes for rotation and wear, and inspecting the rotating plate and rotating plate threads for damage would take about 13 work-hours for an estimated cost of $1,105 per helicopter.

If required, replacing the bushes would take about 1 work-hour and parts would cost about $5,918, for an estimated cost of $6,003 per replacement.

If required, replacing the rotating plate would take about 1 work-hour and parts would cost about $27,375 for an estimated cost of $27,460 per replacement.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2022–0987; Project Identifier MCAI–2021–01416–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 16, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6420, Tail Rotor Head.

(e) Unsafe Condition

This AD was prompted by an occurrence reported where, during an inspection of a tail rotor head (TRH) pitch change spider, excessive play and excessive wear were detected, due to an unwanted rotating motion. The FAA is issuing this AD to detect improper installation of the pitch change spider nut (nut) and improper alignment of a black index marking. The unsafe condition, if not addressed, could result in loss of the TRH pitch change control and loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) For helicopters with TRH spider pitch change unit, part number (P/N) 350A33–2030–00, 350A33–2167–00, or 350A33–2167–01 installed, within 50 hours time-in-service (TIS) after the effective date of this AD:

(i) Inspect the nut for correct installation. If the nut is missing or loose, before further flight, remove the bearing from the TRH spider pitch change unit and do the following:

(A) Inspect the TRH spider pitch change unit for corrosion. If there is any corrosion, before further flight, remove the affected part from service and replace with an airworthy part.

(B) Inspect for rotation and wear on the faces of the bushes. For the purposes of this AD, indications of rotation and wear include tearing, peening, metal pick-up, and hammering. If there is any rotation or any wear on the faces of the bushes, before further flight, remove the bushes from service and replace with airworthy bushes.

(C) Using a 5X or higher power magnifying glass visually inspect the rotating plate and the rotating plate threads for damage. For the purposes of this AD, indications of damage include wear, deformation, stripping, galling, and corrosion. If there is any damage on the rotating plate or the rotating plate threads, before further flight, remove the rotating plate from service and replace with an airworthy rotating plate.

Note 1 to paragraph (g)(1)(i): Airbus Helicopters Mechanical Repair Manual (MRM) AS350 65–20–00–713, dated March 29, 2017, also known as Work Card 65–20–00–713 MRM, and Airbus Aircraft Maintenance Manual (AMM) AS350 65–21–00, 4–9b, dated May 16, 2019, also known as Task 65–21–00, 4–9 AMM, specify disassembly and reassembly information for the TRH pitch change unit.

(ii) Identify the position of the TRH pitch change unit (a) and of bearing spacer (b) by marking a 2 to 5 mm wide black paint index mark (C) with black paint as depicted in Figure 1 of Airbus Helicopters Alert Service Bulletin (ASB) No. AS350–05.01.03, Revision 0, dated December 16, 2021 (ASB AS350–05.01.03), or Airbus Helicopters ASB No. AS355–05.00.86, Revision 0, dated December 16, 2021 (ASB AS355–05.00.86), as applicable to your model helicopter.

(iii) Within 10 hours TIS after the initial marking required by paragraph (g)(1)(ii) of this AD, and thereafter at intervals not to exceed 10 hours TIS, visually inspect the alignment of the marking. An example of a properly aligned marking is depicted in Figure 1 of ASB AS350–05.01.03 and ASB AS355–05.00.86, as applicable to your model helicopter. If the black paint index mark (C) is misaligned, before further flight, inspect the TRH spider pitch change unit by accomplishing the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(2) As of the effective date of this AD, do not install TRH spider pitch change unit P/N 350A33–2030–00, 350A33–2167–00, or 350A33–2167–01 on any helicopter, unless you do the actions required by paragraphs (g)(1)(i) and (ii) of this AD before further flight after installation, and thereafter do the actions required by paragraph (g)(1)(iii) of this AD at the times specified in paragraph (g)(1)(iii) of this AD.

(h) 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 (i)(1) 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.

(i) Related Information

(1) For more information about this AD, contact Stephanie Sunderbruch, Aerospace Engineer, Safety Risk Management Section, Systems Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4659; email *Stephanie.L.Sunderbruch@faa.gov.*

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *www.airbus.com/helicopters/services/technical-support.html.* You may view this referenced 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.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2021–0282, dated December 17, 2021. You may view the EASA AD on the internet at *www.regulations.gov* in Docket No. FAA–2022–0987.

Issued on July 27, 2022.

Christina Underwood,

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

[FR Doc. 2022–16396 Filed 8–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0986; Project Identifier MCAI–2021–01440–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2000–20–15, which applies to certain Airbus SAS Model A300 and A300–600 series airplanes. AD 2000–20–15 requires a high frequency eddy current (HFEC) inspection to detect cracking of the rear fittings of fuselage frame FR40 at stringer 27, and repetitive inspections or repair, as applicable. In lieu of accomplishing the repetitive inspections, AD 2000–20–15 provides a modification that would allow the inspection to be deferred for a certain period of time. This AD was prompted by cracking of the rear fittings of fuselage frame FR40 at stringer 27, and a determination that reduced compliance times are necessary. This proposed AD would continue to require the actions in AD 2000–20–15, but at reduced compliance times, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. This proposed AD would also remove airplanes from the applicability. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 16, 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 *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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, 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 material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0986.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0986; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0986; Project Identifier MCAI–2021–01440–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2000–20–15, Amendment 39–11926 (65 FR 60349, October 11, 2000) (AD 2000–20–15), for certain Airbus SAS Model A300 and A300–600 series airplanes. AD 2000–20–15 requires a high frequency eddy current (HFEC) inspection to detect cracking of the rear fittings of fuselage frame FR40 at stringer 27, and repetitive inspections or repair, as applicable. In lieu of accomplishing the repetitive inspections, AD 2000–20–15 specifies a modification that would allow the inspection to be deferred for a certain period of time. The FAA issued AD 2000–20–15 to address fatigue cracking of the rear fittings of fuselage frame FR40 at stringer 27, which could result in reduced structural integrity of the airplane.

Actions Since AD 2000–20–15 Was Issued

Since the FAA issued AD 2000–20–15, the average flight time (AFT) of Model A300–600 airplanes has changed. It was determined that the existing inspection compliance times must be reduced.

EASA, which is the Technical Agent for the Member States of the European Union, has issued AD 2021–0288, dated December 21, 2021 (EASA AD 2021–0288) (also referred to as the MCAI), to correct an unsafe condition for all

Airbus SAS Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, B4–120, B4–203, B4–220, C4–203, and F4–203 airplanes; and certain Airbus SAS Model A300 B4–603, B4–622, and B4–622R airplanes; Model A300 B4–605R series airplanes; Model C4–620 airplanes; and Model F4–605R airplanes. Model A300 B4–120, B4–220, C4–203, C4–620, and F4–203 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by cracking of the rear fittings of fuselage frame FR40 at stringer 27, and a determination that reduced compliance times are necessary. The FAA is proposing this AD to address fatigue cracking of the rear fittings of fuselage frame FR40 at stringer 27, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0288 specifies procedures for repetitive inspections of the rear fittings of fuselage frame FR40 at stringer 27 for cracking, and repair of any cracking. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2000–20–15, but would reduce the compliance times and remove airplanes from the applicability. This proposed AD would require accomplishing the actions specified in EASA AD 2021–0288 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0288 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0288 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0288 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 2021–0288. Service information required by EASA AD 2021–0288 for compliance will be available at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0986 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 67 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	6 work-hours × $85 per hour = $510	$0	$510	$34,170, per inspection cycle.

The FAA estimates the following costs to do any necessary repair that would be required based on the results of any required inspection. The FAA has no way of determining the number of aircraft that might need this repair:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
31 work-hours × $85 per hour = $2,635	$132	$2,767

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2000–20–15, Amendment 39–11926 (65 FR 60349, October 11, 2000); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–0986; Project Identifier MCAI–2021–01440–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 16, 2022.

(b) Affected ADs

This AD replaces AD 2000–20–15, Amendment 39–11926 (65 FR 60349, October 11, 2000) (AD 2000–20–15).

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as specified in European Union Aviation Safety Agency (EASA) AD 2021–0288, dated December 21, 2021 (EASA AD 2021–0288).

(1) Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–603 and B4–622 airplanes.

(3) Model A300 B4–605R and B4–622R airplanes.

(4) Model A300 F4–605R airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by cracking of the rear fittings of fuselage frame FR40 at stringer 27, and a determination that reduced compliance times are necessary. The FAA is issuing this AD to address fatigue cracking of the rear fittings of fuselage frame FR40 at stringer 27, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0288.

(h) Exceptions to EASA AD 2021–0288

(1) Where paragraph (1) of EASA AD 2021–0288 specifies, for certain conditions, using the compliance time and repetitive intervals ''in the applicable SB,'' and where ''the applicable SB'' specifies that the ''1st inspection will be done within [a specified number of flight cycles] after receipt of the Service Bulletin,'' this AD requires compliance within the specified number of flight cycles after the effective date of this AD.

(2) Where EASA AD 2021–0288 refers to its effective date, this AD requires using the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2021–0288 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0288 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

(1) For EASA AD 2021–0288, 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 EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0986.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

Issued on July 27, 2022.

Christina Underwood,

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

[FR Doc. 2022–16451 Filed 8–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0871; Airspace Docket No. 22–AGL–27]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Multiple Indiana Towns

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Indianapolis, IN; Kokomo, IN; Marion, IN; and Sheridan, IN. The FAA is proposing this action due to an airspace review conducted as part of the decommissioning of the Kokomo very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The names and geographic coordinates of various airports would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before September 16, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–0871/Airspace Docket No. 22–AGL–27 at the beginning of your comments. You may also submit comments through the

internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *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.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Indianapolis Executive Airport, Indianapolis, IN; Kokomo Municipal Airport, Kokomo, IN; Logansport/Cass County Airport, Logansport, IN, and Peru Municipal Airport, Peru, IN, both contained within the Kokomo, IN, airspace legal description; McKinney Field, Marion, IN; and Sheridan Airport, Sheridan, IN, to support instrument flight rule operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–0871/Airspace Docket No. 22–AGL–27.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class E airspace extending upward from 700 feet above the surface at Indianapolis Executive Airport, Indianapolis, IN, by updating the header of the airspace legal description from ''Indianapolis Executive Airport, IN'' to ''Indianapolis, IN'' to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; removing the cities from the associated airport and heliports to comply with changes to FAA Order JO 7400.2N; updating the names of Clarion North Medical Center Heliport (previously Clarian North Medical Center Heliport), Carmel, IN, and Methodist Hospital of Indiana Inc. Heliport (previously Methodist Hospital of Indiana), Indianapolis, IN, to coincide with the FAA's aeronautical database; removing the point in space geographic coordinates listed in the airspace legal description as they are listed in the header of the airspace legal description and are redundant; and removing the exclusionary language from the airspace legal description as it is not required;

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (decreased from a 7-mile) radius of Kokomo Municipal Airport, Kokomo, IN; amending the extension northeast of Kokomo Municipal Airport to within 3 (decreased from 4) miles each side of the 045° bearing from the Kokomo Municipal: RWY 23–LOC (previously airport) extending from the 6.7-mile (previously 7-mile) radius of the airport to 11.8 (increased from 10.7) miles northeast of the airport; amending the extension southwest of Kokomo Municipal Airport to within 2 (decreased from 4) miles each side of the 225° bearing from the airport extending from the 6.7-mile (previously 7-mile) radius of the airport to 10.7 (decreased from 10.9) miles southwest of the airport; updating the geographic coordinates of Kokomo Municipal Airport to coincide with the FAA's aeronautical database; within a 6.5-mile (decreased from a 7.7-mile) radius of Logansport/Cass County Airport, Logansport, IN; within a 6.4-mile (increased from a 6.3-mile) radius of Peru Municipal Airport, Peru, IN; and removing the point in space geographic coordinates of the Regional Health System Heliport, Kokomo, IN, from the airspace legal description as they are listed in the header of the airspace legal description and are redundant;

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (decreased from a 7-mile) radius of McKinney Field, Marion, IN; adding an extension within 6.9 miles southwest

and 4 miles northeast of the Marion VOR/DME 323° radial extending from the 6.5-mile radius of the airport to 7 miles northwest of the Marion VOR/DME; and updating the name (previously Marion Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 6.7-mile) radius of Sheridan Airport, Sheridan, IN; removing the exclusionary language as it is not required; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is due to an airspace review conducted as part of the decommissioning of the Kokomo VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

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.

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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, 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.

* * * * *

AGL IN E5 Indianapolis, IN [Amended]

Indianapolis Executive Airport, IN
(Lat. 40°01′50″ N, long. 86°15′05″ W)
Clarion North Medical Center Heliport, IN, Point In Space Coordinates
(Lat. 39°56′53″ N, long. 86°09′20″ W)
Methodist Hospital of Indiana Inc. Heliport, IN, Point In Space Coordinates
(Lat. 39°47′00″ N, long. 86°10′27″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Indianapolis Executive Airport; and within a 6-mile radius of the Clarion North Medical Center Heliport point in space coordinates; and within a 6-mile radius of the Methodist Hospital of Indiana Inc. Heliport point in space coordinates.

* * * * *

AGL IN E5 Kokomo, IN [Amended]

Kokomo Municipal Airport, IN
(Lat. 40°31′40″ N, long. 86°03′35″ W)
Kokomo Municipal: RWY 23–LOC
(Lat. 40°31′09″ N, long. 86°04′19″ W)
Grissom Air Reserve Base, IN
(Lat. 40°38′53″ N, long. 86°09′08″ W)
Grissom Air Reserve Base ILS Localizer Northeast
(Lat. 40°37′59″ N, long. 86°10′18″ W)
Grissom Air Reserve Base ILS Localizer Southwest
(Lat. 40°39′56″ N, long. 86°07′47″ W)
Logansport/Cass County Airport, IN
(Lat. 40°42′41″ N, long. 86°22′22″ W)
Peru Municipal Airport, IN
(Lat. 40°47′09″ N, long. 86°08′47″ W)
Regional Health System Heliport, IN, Point In Space Coordinates
(Lat. 40°26′47″ N, long. 86°08′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Kokomo Municipal Airport; and within 3 miles each side of the 045° bearing from the Kokomo Municipal: RWY 23–LOC extending from the 6.7-mile radius of the Kokomo Municipal Airport to 11.8 miles northeast of the airport; and within 2 miles each side of the 225° bearing from the Kokomo Municipal Airport extending from the 6.7-mile radius of the airport to 10.7 miles southwest of the airport; and within a 7-mile radius of Grissom Air Reserve Base; and within 3.8 miles each side of the Grissom Air Reserve Base ILS Localizer Northeast course extending from the 7-mile radius of Grissom Air Reserve Base to 14.5 miles northeast of Grissom Air Reserve Base; and within 2 miles each side of the Grissom Air Reserve Base ILS Localizer Southwest course extending from the 7-mile radius of Grissom Air Reserve Base to 14.5 miles southwest of Grissom Air Reserve Base; and within a 6.5-mile radius of Logansport/Cass County Airport; and within a 6.4-mile radius of Peru Municipal Airport; and within a 6-mile radius of the Regional Health System Heliport point in space coordinates.

* * * * *

AGL IN E5 Marion, IN [Amended]

McKinney Field, IN
(Lat. 40°29′24″ N, long. 85°40′47″ W)
Marion VOR/DME
(Lat. 40°29′36″ N, long. 85°40′45″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of McKinney Field; and within 6.9 miles southwest and 4 miles northeast of the Marion VOR/DME 323° radial extending from the 6.5-mile radius of the airport to 7 miles northwest of the Marion VOR/DME.

* * * * *

AGL IN E5 Sheridan, IN [Amended]

Sheridan Airport, IN
(Lat. 40°10′41″ N, long. 86°13′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sheridan Airport.

Issued in Fort Worth, Texas, on July 27, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–16381 Filed 8–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0904; Airspace Docket No. 22–AGL–28]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Duluth, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Duluth, MN. The FAA is proposing this action to support new public instrument procedures. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before September 16, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–0904/Airspace Docket No. 22–AGL–28 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–0904/Airspace Docket No. 22–AGL–28.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface at Sky Harbor Airport, Duluth, MN, by updating the header of the airspace legal description from ''Duluth Sky Harbor Airport, MN'' to ''Duluth, MN'' to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removing the exclusionary language from the airspace legal description as it is no longer required.

This action is due to an airspace review to support new public instrument procedures.

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.

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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, 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.

* * * * *

AGL MN E5 Duluth, MN [Amended]

Sky Harbor Airport, MN
(Lat. 46°43′20″ N, long. 92°02′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Sky Harbor Airport.

Issued in Fort Worth, Texas, on July 27, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–16382 Filed 8–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0797; Airspace Docket No. 20–ANM–44]

RIN 2120–AA66

Proposed Amendment of Class D Airspace and Establishment of Class E Airspace; Butts Army Airfield (AAF) (Fort Carson) Airport, CO

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: An airspace review was conducted at Butts AAF (Fort Carson) Airport, CO to support the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR), in addition to fulfilling a biennial review requirement. This action proposes to modify the Class D surface area, and establish Class E airspace extending upward from 700 feet above the surface at Butts AAF (Fort Carson) Airport, CO. Additionally, this action proposes several administrative amendments to update the airport's existing Class D legal description. These actions will ensure the safety and management of instrument flight rules (IFR) and visual flight rules (VFR) operations at the airport.

DATES: Comments must be received on or before September 16, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0797; Airspace Docket No. 20–ANM–44, at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *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.

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–0797; Airspace Docket No. 20–ANM–44''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed

in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class D surface area, and establishing Class E airspace extending upward from 700 feet above the surface at Butts AAF (Fort Carson) Airport, CO.

Class D airspace should be expanded to the northwest to contain runway 31 departures until reaching 700 feet above the surface due to rising terrain in that area.

Class E airspace extending upward from 700 feet above the surface should be established southeast and north of the airport to properly contain departures until reaching 1,200 feet above the surface in those areas.

Finally, this action proposes several administrative modifications to the airspace at Butts AAF (Fort Carson) Airport, CO. The airport name in the text header is incorrect. It should read: ''Butts AAF (Fort Carson) Airport, CO.'' The other airport referenced in the Class D legal description is also incorrect. It should read: ''City of Colorado Springs Municipal Airport, CO.'' The geographic coordinates for both Butts AAF (Fort Carson) Airport, CO and the City of Colorado Springs Municipal Airport, CO should be updated to match the FAA's database. Additionally, the outdated terms ''Notice to Airmen'' and ''Airport/Facility Directory'' should be replaced with the terms ''Notice to Air Missions,'' and ''Chart Supplement,'' respectively, to better match the FAA's current nomenclature. Lastly, the reference to the Iron Horse non-directional beacon (NDB), CO should be removed from the Class D legal description's text header, as it's not required to describe the airspace, and its removal simplifies the legal description.

Class D and E5 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 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, 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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ANM CO D Fort Carson, CO [Amended]

Butts AAF (Fort Carson) Airport, CO
(Lat. 38°40′47″ N, long. 104°45′39″ W)
City of Colorado Springs Municipal Airport, CO
(Lat. 38°48′21″ N, long. 104°42′03″ W)

That airspace extending upward from the surface to but not including 8,400 feet MSL within a 4.3-mile radius of Butts Army Airfield Airport, and within 2.3 miles each side of the 331° bearing from the Butts Army Airfield Airport extending from the 4.3-mile radius to 6.9 miles northwest of the airport, excluding that airspace within the City of Colorado Springs Municipal Airport's Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ANM CO E5 Fort Carson, CO [New]

Butts AAF (Fort Carson) Airport, CO
(Lat. 38°40′47″ N, long. 104°45′39″ W)

That airspace extending upward from 700 feet above the surface within 2.0 miles each side of the 125° bearing from the airport extending from the Butts Army Airfield Airport Class D to 7.7 miles southeast of the airport, and within 2.1 miles each side of the 342° bearing from the airport extending from the Butts Army Airfield Airport Class D to 9 miles north of the airport.

Issued in Des Moines, Washington.

Joseph M. Bert,

Acting Group Manager, Operations Support Group, Western Service Center.

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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2022–OESE–0080]

RIN 1810–AB68

Proposed Priorities, Requirements, and Definitions—School-Based Mental Health Services Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, and definitions.

SUMMARY: The Department of Education (Department) proposes priorities, requirements, and definitions under the School-Based Mental Health Services Grant (SBMH) Program, Assistance Listing Number (ALN) 84.184H. These proposed priorities, requirements, and definitions are designed to direct funds to increase the number of qualified school-based mental health services providers (as defined in section 4102 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) in local educational agencies (LEAs) with demonstrated need (as defined in this document), in order to meet student mental health needs. We may use one or more of these priorities, requirements, and definitions in fiscal year (FY) 2023 and later years.

DATES: We must receive your comments on or before September 1, 2022.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

The Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Format (PDF), the Department strongly encourages you to convert the PDF to ''print-to-PDF'' format, or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

- *Federal eRulemaking Portal:* Please go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under ''FAQ.''

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Amy Banks, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E257, Washington, DC 20202. Telephone: (202) 453–6704. Email: *amy.banks@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, and definitions. To ensure that your comments have maximum effect in developing the final priorities, requirements, and definitions, we urge you to clearly identify the specific section of the proposed priorities, requirements, or definitions that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities. Please also feel free to offer for our consideration any alternative approaches to the subjects addressed by the proposed regulations.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, and definitions by accessing *Regulations.gov*. You may also inspect the comments in person. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** to make arrangements to inspect the comments in person.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities, requirements, and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The SBMH Program provides competitive grants to State educational agencies (SEAs) (as defined in section 8101 of the ESEA), LEAs (as defined in section 8101 of the ESEA), and consortia of LEAs to increase the number of qualified (*i.e.,* licensed, certified, or credentialed, each as defined in this document) mental health services providers providing school-based mental health services to students in LEAs with demonstrated need.

Program Authority: Section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281).

Proposed Priorities

This document contains four proposed priorities.

Background:

Like good physical health, positive mental health promotes success in life. As defined by the Centers for Disease Control and Prevention (CDC), ''[m]ental health includes our emotional, psychological, and social well-being. It affects how we think, feel, and act. It also helps determine how we handle stress, relate to others, and make healthy choices. Mental health is important at every stage of life, from childhood and adolescence through adulthood.'' [1]

The Novel Coronavirus Disease 2019 (COVID–19) pandemic brought on challenges for children and youth that impacted their overall emotional, psychological, and social well-being and their ability to fully engage in learning. The disruptions in routines, relationships, and the learning environment have led to increased stress and trauma, social isolation, and anxiety. More than half of parents express concern over their children's

[1] *https://www.cdc.gov/mentalhealth/learn/index.htm.*

mental well-being.[2] Moreover, survey data suggests that this crisis began long before the arrival of COVID–19. In 2019, one in three high school students and half of female students reported persistent feelings of sadness or hopelessness, an overall increase of 40 percent from 2009.[3] Emergency department visits for attempted suicide have risen 51 percent among adolescent girls.[4] The need for mental health services is particularly acute for our lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) students. For example, ''[the] share of [lesbian, gay, and bisexual (LGB)] high schoolers who said their mental health was not good most of the time or always during the pandemic was more than double that of heterosexual students (64% vs. 30%) . . . [and] about three-quarters of LGB high schoolers (76%) said they felt sad or hopeless almost daily for at least two weeks such that they stopped doing some of their usual activities, compared with 37% of heterosexual students.'' [5]

This program is designed to address several barriers to increasing mental health support for children and youth in our schools. The first barrier is a significant shortage of qualified mental health services providers, including in schools.[6] Qualified professionals may need training and skill sets that include the capacity to conduct behavioral health assessments, identify youth who may need additional supports or pose a serious threat to themselves or others, and provide evidence-based interventions, particularly related to trauma- and grief-informed care. Qualified providers may also need to assist in the development of school environments and activities that promote behavioral wellness and foster resilience. Second, in mental health services provider preparation and professional development programs, there is a lack of pedagogical practices that prepare providers to create culturally and linguistically inclusive and identity-safe environments. An identity-safe environment is a place where every student feels physically and emotionally safe. Perceptions of safety may differ across subgroups of students, and each intervention and support measure should be designed to ensure the safety and belonging of all students. Third, the public stigmatization associated with mental health care, which often inhibits children and adolescents from taking advantage of care even when it is available, is compounded for underserved groups.[7] Fourth, and related to the second barrier, is the need for more mental health services providers from diverse backgrounds, from the communities they serve, and who can provide services in languages other than English.[8]

In response to these barriers, the Department will make awards in FY 2023 under two competitive grants programs that are designed to increase the number of qualified school-based mental health services providers—the SBMH Program (described in this document) and the Mental Health Service Professional Demonstration Grant Program. The Mental Health Service Professional Demonstration Grant Program provides competitive grants to support and provide examples of effective innovative partnerships to train school-based mental health services providers for employment in schools and LEAs. For more information about the Mental Health Service Professional Demonstration Grant program competition, visit the Department's website at: *https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/mental-health-service-professional-demonstration-grant-program/.* Together these two programs are intended to provide timely and necessary support to LEAs by increasing the number of qualified school-based mental health services providers. We are proposing priorities, requirements, and definitions for the Mental Health Service Professional Demonstration Grant Program in a separate document published in the **Federal Register**.

The priorities we propose in this document for the SBMH Program are intended to address personnel shortages by (1) increasing recruitment and retention-related incentives and (2) promoting the respecialization and certification of existing mental health services providers to qualify them for work in LEAs with demonstrated need. Additionally, the Department proposes a priority that seeks to increase the diversity, and cultural and linguistic competency, of school-based mental health services providers, including competency in providing identity-safe services, which the Department believes is essential to addressing the mental health needs of all students.

The Department also is interested in applicants' demonstrated capacity to increase access to and sustain school-based mental health services beyond the period of Federal funding and support expanded access to care by promoting the integration of mental health services and supports into schools' in-person and telehealth services options. The use of telehealth to address mental health and substance use needs rose dramatically during the height of the pandemic and has remained above pre-pandemic levels even where COVID–19 has waned. These telehealth services have proven both safe and effective, while reducing barriers to care.[9] Telehealth services options also help to address provider shortages in rural communities, in part by improving access to mental health services providers in such communities.

Additionally, the Department encourages applicants to plan for ways they will leverage available Federal, State, and local resources to achieve project goals and objectives.

Proposed Priorities

The Department proposes the following four priorities for this program. Priorities 1 and 3 are only applicable to SEAs. Priority 2 is only applicable to LEAs or consortia of LEAs. Priority 4 is applicable to all eligible applicants. We may apply one or more of these priorities in any year in which this program is in effect.

Proposed Priority 1—SEAs Proposing to Increase the Number of Qualified School-Based Mental Health Services Providers in LEAs with Demonstrated Need.

To meet this priority, an SEA must propose to increase the number of qualified school-based mental health services providers by implementing plans that address recruitment (defined in this document) and retention (defined in this document) of services providers in LEAs with demonstrated need. Applicants must propose plans that include both of the following:

(a) *Recruitment.* An applicant must propose a plan to increase the number of qualified services providers serving

[2] *https://www.psychiatry.org/newsroom/news-releases/new-apa-poll-shows-sustained-anxiety-among-americans-more-than-half-of-parents-are-concerned-about-the-mental-well-being-of-their-children.*

[3] *https://www.cdc.gov/nchhstp/dear_colleague/2020/dcl-102320-YRBS-2009-2019-report.html.*

[4] *https://www.nytimes.com/2021/12/07/science/pandemic-adolescents-depression-anxiety.html.*

[5] *https://www.pewresearch.org/fact-tank/2022/04/25/in-cdc-survey-37-of-u-s-high-school-students-report-regular-mental-health-struggles-during-covid-19/.*

[6] *https://www.edweek.org/leadership/school-counselors-and-psychologists-remain-scarce-even-as-needs-rise/2022/03.*

[7] *https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf.*

[8] *https://www.apa.org/workforce/data-tools/demographics.*

[9] *https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/01/fact-sheet-president-biden-to-announce-strategy-to-address-our-national-mental-health-crisis-as-part-of-unity-agenda-in-his-first-state-of-the-union/.*

students in LEAs with demonstrated need.

(b) *Retention.* An applicant must also propose a plan to increase the likelihood that qualified services providers providing services in LEAs with demonstrated need remain in such LEAs over time.

Proposed Priority 2—LEAs or Consortia of LEAs with Demonstrated Need Proposing to Increase the Number of Qualified School-Based Mental Health Services Providers.

To meet this priority, an LEA or consortium of LEAs with demonstrated need must propose measures to increase the number of qualified school-based mental health services providers, including plans to address the recruitment and retention of qualified services providers in the LEA(s). Applicants must propose plans that include both of the following:

(a) *Recruitment.* An applicant must propose a plan to increase the number of qualified services providers serving students in the LEA(s) with demonstrated need.

(b) *Retention.* An applicant must also propose a plan to improve the likelihood that qualified services providers providing services in the LEA(s) with demonstrated need remain in such LEAs over time.

Proposed Priority 3—SEAs Proposing Respecialization or Additional Certification of Existing Mental Health Services Providers to Qualify Them for Work in LEAs with Demonstrated Need.

To meet this priority, an applicant must propose a respecialization (defined in this document) or other certification plan that promotes the readiness of services providers who already have training as social workers, counselors, or psychologists, or in other related fields, by supporting incremental training needed to work in an elementary school (as defined in section 8101 of the ESEA) or secondary school (as defined in section 8101 of the ESEA) and that is designed to increase the number of services providers qualified to serve in LEAs with demonstrated need.

Proposed Priority 4—Increasing the Number of Qualified School-Based Mental Health Services Providers in LEAs with Demonstrated Need Who Are from Diverse Backgrounds or from Communities Served by the LEAs with Demonstrated Need.

To meet this priority, applicants must propose a plan to increase the number of qualified school-based mental health services providers in LEAs with demonstrated need who are from diverse backgrounds or who are from communities served by the LEAs with demonstrated need.[10]

Applicants must describe how their proposal to increase the number of school-based mental health services providers who are from diverse backgrounds or who are from the communities served by the LEA with demonstrated need will help increase access to mental health services for students within the LEA with demonstrated need and best meet the mental health needs of the diverse populations of students to be served.

Types of Priorities:

When inviting applications for a competition using one or more priorities, the Department of Education designates the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The nature of each type of priority is as follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

The Department proposes the following requirements for this program. Proposed application requirement (a) would apply to SEAs only; and proposed application requirement (b) would apply to LEAs only. All of the remaining proposed requirements would apply to all eligible applicants. We may apply one or more of these requirements in any year in which the program is in effect.

Eligible Applicants: One or both of SEAs, as defined in 20 U.S.C. 7801(49), or LEAs, as defined in 20 U.S.C. 7801(30), including consortia of LEAs.

Proposed Program Requirements:

(a) Applicants that receive an award under this program must ensure that any school-based mental health services provider hired under this grant, including any services provider that offers telehealth services, is qualified by the State to work in an elementary school or secondary school.

(b) Applicants that receive an award under this program must ensure that any school-based mental health services provider offering services (including telehealth services) does so in an equitable manner and consistent with the Family Educational Rights and Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, as well as all other applicable Federal, State, and local laws and profession-specific ethical obligations.

Proposed Application Requirements:

(a) *Describe the LEAs with demonstrated need designated by the SEA to be served by the proposed project.*

SEA applicants must describe the LEAs with demonstrated need designated to benefit from the SBMH program.

(b) *Describe how the LEA, or each LEA in the proposed consortium (if applicable), meets the definition of an LEA with demonstrated need.*

To meet this requirement, an LEA applicant or the lead LEA submitting an application on behalf of a consortium must describe how the LEA or each LEA in the consortium meets the definition of an LEA with demonstrated need.

(c) *Describe the importance and magnitude of the problem.*

Applicants must describe the lack of school-based mental health services providers and its effect on students in the LEA(s) to be served by the grant. This must include a description of the nature of the problem for the LEA(s), based on information including, but not limited to, the most recent available ratios of school-based mental health services providers to students enrolled in the LEA(s), or for SEA applicants, the LEAs designated by the SEA to benefit from the SBMH Program. These data must be provided in the aggregate and disaggregated by profession (*e.g.,* school social workers, school psychologists, school counselors) as compared to local, State, or national data. The description may also include LEA-level or school-level demographic data (including rates of poverty, rates of chronic absenteeism, percentage of students involved in the juvenile justice system, experiencing homelessness, or in foster care, and discipline data), school climate surveys, school violence/crime data, data related

[10] All strategies to increase the diversity of providers must comply with applicable Federal civil rights laws, including Title VI of the Civil Rights Act of 1964.

to suicide rates, and descriptions of barriers to hiring and retaining qualified school-based mental health services providers in the LEA.

(d) *Detailed project budget, including matching funds.*

To promote the sustainability of the school-based mental health services, all applicants must include non-Federal matching funds in one of the following amounts, as determined by the Secretary in the notice inviting applications:

(1) At least 10 percent of their budgets.

(2) At least 15 percent of their budgets.

(3) At least 20 percent of their budgets.

(4) At least 25 percent of their budgets.

Budgets must describe how the applicant will meet the matching requirement for each budget period awarded under this grant and must indicate the source of the funds, such as State, local, or private resources. The Secretary may consider decreasing or waiving the matching requirement post award, on a case-by-case basis, if an applicant demonstrates a significant financial hardship.

Budgets must also specify the portion of funds that will be used for respecialization, if applicable.

Administrative costs for SEA applicants may not exceed 10 percent of the annual grant award. This includes funding for State-level or LEA-level administrative costs that promote respecialization, if applicable. Administrative costs for LEAs and consortia of LEAs may not exceed 5 percent of the annual grant award.

(e) *Number of providers.*

Applicants must include the most recent available data on the number of school-based mental health services providers in the identified LEA(s), disaggregated by profession (*e.g.,* school social workers, school psychologists, school counselors), and the projected number of school-based mental health services providers that will be placed into employment in the identified LEA(s) for each year of the plan using funds from this grant or matching funds, including the unduplicated number of school-based mental health services providers offering telehealth services, as appropriate.

(f) *A plan for collaboration and coordination with related Federal, State, and local organizations and initiatives.*

Applicants must propose a plan describing how they will (1) collaborate with at least one State, regional, or local organization, such as school social worker associations, school psychologist associations, school counselor associations, or colleges or universities, and (2) coordinate with regional or local mental health, public health, child welfare, and other community agencies, which may include school-based health centers, to achieve plan goals and objectives of increasing the number of school-based mental health services providers in LEAs with demonstrated need. Applicants may also describe proposed coordination with existing federally funded efforts related to elementary and secondary school counseling and mental health promotion, including Medicaid, if applicable. If such coordination will occur, applicants must identify which Federal program(s) they are coordinating with and how such coordination will promote program success across multiple programs.

(g) *Use of grant funds to supplement, and not supplant, existing school-based mental health services funds and to expand, not duplicate, efforts to increase the number of providers.*

Applicants must describe how project funds will supplement, and not supplant, non-Federal funds that would otherwise be available for activities funded under this program.

Applicants must describe how they will use the SBMH Program funds to expand, rather than duplicate, existing or new efforts to increase the number of qualified school-based mental health services providers in LEAs with demonstrated need and how they will integrate existing funding streams and efforts to support the plan.

(h) *Plan for immediate services to students.*

For SEA applicants, applicants must describe their plan to ensure services are provided to students immediately, including via subgrants to LEAs, as appropriate. For LEA applicants and consortia of LEAs, applicants must describe their plan to ensure students are provided services immediately.

Proposed Definitions

The Department proposes to establish definitions of ''certified,'' ''certification,'' ''credentialed,'' ''LEA with demonstrated need,'' ''licensed,'' ''recruitment,'' ''respecialization,'' ''retention,'' and ''telehealth'' for use in this program. We may apply these in any year in which this program is in effect.

Certified means an individual has documented verification of education, expertise, or training in school psychology, school counseling, or school social work by a State or other recognized entity.

Certification means a level of achievement awarded by a State or other recognized entity that attests to an individual's education, expertise, or training to serve as a school-based mental health services provider.

Credentialed means an individual who possesses credentialing as a school psychologist, school counselor, or a school social worker from a State-level or other recognized entity.

LEA with demonstrated need means an LEA that has a significant need for additional school-based mental health services providers based on—

(1) High student to mental health services provider ratios as compared to other LEAs statewide or nationally;

(2) High rates of community violence (including hate crimes), poverty, substance use (including opioid use), suicide, or trafficking; or

(3) A significant number of students who are migratory, experiencing homelessness, have a family member deployed in the military or with a military-service connected disability (including veterans), have experienced a natural or manmade disaster or a traumatic event, or have other adverse childhood experiences.

Licensed means an individual has a license that represents a State's legal authority for that individual to serve as a school-based mental health services provider.

Recruitment means strategies that help attract and hire professionals into positions that are otherwise hard to fill or where demand exceeds supply, including by doing at least one of the following:

(a) Providing an annual salary or stipend for school-based mental health services providers who maintain an active national certification.

(b) Providing payment toward the school loans accrued by the school-based mental health services provider.

(c) Creating pathways to grant cross-State credentialing reciprocity for school-based mental health services providers.

(d) Providing incentives and supports to help mitigate shortages. These may include, for example, increasing pay; offering monetary incentives for relocation to high-need areas; providing services via telehealth; creating hybrid roles that allow for leadership, academic, or research opportunities; developing induction programs; developing paid internship programs; and offering service scholarship programs such as those that provide grants in exchange for a commitment to serve in the LEA for a minimum number of years.

Respecialization means strategies that promote the readiness of mental health services providers who already have

training as social workers, counselors, or psychologists, or in other related fields, to serve in elementary or secondary schools, including by doing one or more of the following:

(a) Revising, updating, or streamlining requirements for such individuals so that additional training or other requirements focus only on incremental training needed for working in an elementary school or secondary school.

(b) Providing a stipend or making a payment to support the incremental training needed for working in an elementary school or secondary school.

(c) Offering flexible options for completing training that leads such professionals to meet State requirements.

(d) Establishing new State-level programs that provide alternate means of certification, licensure, or credentialing for such professionals, including through practical or on-the-job training.

(e) Offering other meaningful activities that result in existing mental health services providers obtaining the training they need to work in an elementary school or secondary school.

Retention means strategies to help ensure that qualified individuals stay in their position to avoid gaps in service and unfilled positions, including by—

(a) Providing opportunities for advancement or leadership, such as career pathways programs, recognition and award programs, and mentorship programs; and

(b) Offering incentives and supports to help mitigate shortages. These may include, for example, increasing pay, making payments toward student loans, offering monetary incentives for relocation to high-need areas, providing services via telehealth, offering service scholarship programs such as those that provide grants in exchange for a commitment to serve in the LEA for a minimum number of years, and developing paid internship programs.

Telehealth means the use of electronic information and telecommunication technologies to support and promote long-distance clinical health care, patient and professional health-related education, public health, and health administration. Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and landline and wireless communications.

Final Priorities, Requirements, and Definitions:

We will announce the final priorities, requirements and definitions in a document published in the **Federal Register**. We will determine the final priorities, requirements, and definitions after considering responses to the proposed priorities, requirements, and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use the priorities, requirements, and definitions we invite applications through a notice inviting applications in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866 because it has an annual effect on the economy of more than $100 million. Approximately $145 million are available under this program from fiscal year 2022 appropriations actions, and $100 million are available each year from fiscal year 2023 to fiscal year 2026.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed priorities, requirements, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that the proposed priorities, requirements, and definitions are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Potential Costs and Benefits

The proposed priorities, requirements, and definitions are necessary for the implementation of the SBMH program consistent with the requirements established by Congress in the Department of Education Appropriations Act, 2022, and the Explanatory Statement accompanying that Act. It is important to note that implementation of the SBMH program would almost exclusively confer benefits on the recipients of Federal funds subject to the proposed priorities, requirements, and definitions, whose voluntary participation in the SBMH program would entail minimal costs except for those paid with Federal funds and the Paperwork Reduction Act (PRA) section of this document discusses the burden estimates for preparing an application. This program was established under a statute with broad authority and only non-binding report language establishing program purpose, eligibility, or requirements; consequently, this rulemaking action is necessary to ensure program funds are used for their intended purpose. More specifically, the proposed priorities, requirements, and definitions would ensure that the Department may collect from applicants for SBMH funding the information necessary for competitive review of applications by peer reviewers, and to fund high-quality applications that will lead to the implementation of projects consistent with Congressional intent. Absent this rulemaking action, there is no alternative means of meeting these objectives.

The specific benefits of establishing a menu of proposed priorities include ensuring that funds are used consistent with Congressional intent and providing flexibility to the Department for supporting multiple strategies designed to address the shortage of school-based mental health services providers. The first strategy, embedded in proposed priorities 1 and 2, is to focus grant activities on hiring additional school-based mental health services providers in LEAs with demonstrated need to increase the number of school-based mental health services providers in schools and local educational agencies that have the most need for such services. The definition of LEA with demonstrated need, incorporated into these priorities, also was crafted to provide flexibility for an LEA to show need through data (ratios of school counselors to students), a description of events or conditions affecting school environment (such as community violence or disasters), or evidence that an applicant will serve students who have or are likely to face adverse childhood experiences. Although the total number of LEAs is large (over 13,000 in school year 2018–19), the available funding will only support a limited number of multi-year projects. Absent the targeting of SBMH funds to LEAs with demonstrated need, the program may allocate scarce Federal resources to high-capacity LEAs that already meet the mental health needs of their students. Moreover, ensuring that funds are targeted to LEAs with demonstrated need was a requirement of the fiscal year 2020 SBMH competition, and Congress directed the Department, through the Explanatory Statement accompanying the Department of Education Appropriations Act, 2022, to incorporate the same requirement into the fiscal year 2022 SBMH competition.

The benefit of including Proposed priority 3 is that it supports another strategy for addressing the shortage of school-based mental health services providers. Requirements for school-based mental health services providers are established by States and generally include completion of bachelor's degree or higher, completion of practicum, and internship in a K–12 school, which typically take several years to fulfill. Proposed priority 3 would support States working to establish innovative strategies to expand the pipeline for qualified mental health providers by establishing pathways for individuals in related fields to attain the credentials to work as school-based mental health services providers. Under this priority, for example, a State might determine that individuals in related fields—such as counseling or social work—would only need to obtain incremental, additional training to qualify as a school-based mental health services provider, rather than a full degree or credentialing program. This strategy has the benefit of reducing the time necessary for credentialing and potentially increasing the number of qualified mental health providers available for hiring by LEAs, which is the core goal and purpose of the SBMH program. Absent the expanded use of such strategies, SBMH grantees may not be able to achieve this core goal due to the lack of qualified candidates.

The benefit of Proposed priority 4 is that it supports another strategy for expanding the workforce of school-based mental health services providers. Currently, the psychology [11] and school counselor [12] workforce is significantly less diverse than the student population.[13] Increasing the number of qualified school-based mental health services providers from diverse backgrounds and from communities served by the LEAs with demonstrated need, and who can provide culturally and linguistically appropriate services, not only would expand the numbers of these providers but also increase access to and improve the quality of mental health services available to students. Further, this priority supports the Administration's equity agenda [14] and the Department's mission to support equity and excellence.

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the proposed priorities, requirements, and definitions would not impose a significant burden except when an entity voluntarily elects to apply for a grant. We believe these benefits would outweigh any associated costs.

The Paperwork Reduction Act (PRA) section of this document discusses the burden estimates for preparing an application. The potential benefits of receiving Federal funds under this program to expand the pool of and hire school-based mental health services providers will likely outweigh the application costs detailed in the PRA section. The costs of implementing the requirements established in this notice can be paid for with grant funds. Moreover, even an unsuccessful applicant may benefit from the effort of preparing an application, such as conducting deep data analysis about the needs in their LEA or developing creative plans to expand pathways to high-quality credentialing in this area.

Regulatory Alternatives Considered

The Department believes that the final priorities, requirements, definitions, and selection criteria in this notice are needed to administer the program effectively. The authorizing statute does not provide sufficient detail to develop and administer a competitive grant program consistent with the intent of

[11] *https://www.apa.org/workforce/data-tools/demographics.*

[12] *https://www.schoolcounselor.org/getmedia/9c1d81ab-2484-4615-9dd7-d788a241beaf/member-demographics.pdf.*

[13] *https://nces.ed.gov/programs/coe/indicator/cge/racial-ethnic-enrollment.*

[14] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

Congress as expressed in the Explanatory Statement accompanying the Department of Education Appropriations Act. 2022, which provided funding for the program in fiscal year 2022, or the Bipartisan Safer Communities Act, which provided additional funding for fiscal years 2022 through 2026. Consequently, absent the proposed priorities, requirements, and definitions, the Department would not have a sufficient basis for evaluating the quality of applications or ensuring that the program achieves its intended objectives.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulara004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the changes in annual monetized transfers as a result of this regulatory action.

Expenditures are classified as transfers from the Federal Government to SEAs and LEAs.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers	
	3%	7%
Annualized monetized transfers	$108.6	$108.6
From whom to whom?	From the Federal government to SEAs and LEAs.	

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities, requirements, and definitions easier to understand, including answers to questions such as the following:

- Are the priorities, requirements, and definitions in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make the proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are school districts applying for and receiving funds under this program. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, and definitions, would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priorities, requirements, and definitions would impose no burden on small entities in general. Eligible applicants would determine whether to apply for funds and have the opportunity to weigh the requirements for preparing applications, and any associated costs, against the likelihood of receiving funding and the requirements for implementing projects under the program. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to seek funding from other sources to address a shortage in mental health providers.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides 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) (44 U.S.C. 3501 *et seq.*). This helps ensure that the public understands the Department's collection instructions, respondents provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The proposed priorities, requirements, and definitions contain information collection requirements. Under the PRA the Department has submitted these requirements to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of the law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the notice of final priorities, requirements, and definitions we will display the control number assigned by OMB to any information collection proposed in this document and adopted in the notice of final priorities, requirements, and definitions.

For the years that the Department holds an SBMH Program competition, we estimate 300 applicants will apply and submit an application based on prior competitions for the program. We estimate that it will take each applicant 40 hours to complete and submit the application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this collection is 12,000 hours. At $95.46 per hour (using mean wages for Education and Childcare Administrators [15] and assuming the total cost of labor, including benefits and overhead, is equal to 200 percent of the mean wage rate), the total estimated cost for 300 applicants to complete the SBMH Program application is approximately $1,145,520.

The Department is requesting paperwork clearance on the OMB 1810–xxxx data collection associated with this proposed requirement. That request will account for all burden hours and costs discussed within this section.

Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection through this document. Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in these proposed priorities, requirements, and definitions. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on this Information Collection Request by September 1, 2022.

Comments related to the information collection activities must be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov* by selecting the Docket ID number ED–2022–OESE–XXXX or via postal mail, commercial delivery, or hand delivery by referencing the Docket ID number and the title of the information collection request at the top of your comment. 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.

Note: The Office of Information and Regulatory Affairs and the Department review all comments related to the information collection activities posted at *www.regulations.gov.*

Collection of Information

Information collection activity	Estimated number of responses	Hours per response	Total estimated burden hours	Estimated cost at an hourly rate of $95.46
School-Based Mental Health Services Grant Application	300	40	12,000	$1,145,520

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

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DEPARTMENT OF EDUCATION

RIN 1810–AB67

34 CFR Chapter II

[Docket ID ED–2022–OESE–0094]

Proposed Priorities, Requirements, and Definitions—Mental Health Service Professional Demonstration Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, and definitions.

[15] *See www.bls.gov/oes/current/oes_nat.htm.*

SUMMARY: The Department of Education (Department) proposes priorities, requirements, and definitions under the Mental Health Service Professional Demonstration Grant Program, Assistance Listing Number 84.184X. We may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2022 and later years. We propose priorities, requirements, and definitions designed to provide competitive grants to support and demonstrate innovative partnerships to train school-based mental health services providers (as defined in section 4102 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) for employment in schools and local educational agencies (LEAs). The goal of the program is to increase the number of high-quality, trained providers to address the shortages of mental health services professionals in schools served by high-need LEAs.

DATES: We must receive your comments on or before September 1, 2022.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *www.regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

The Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), the Department strongly encourages you to convert the PDF to ''print-to-PDF'' format, or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

- *Federal eRulemaking Portal:* Please go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for finding a rule on the site and submitting comments, is available on the site under ''FAQ.''

Privacy Note: The Department's policy is to generally make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would allow readers to identify that individual. The Department will not make comments that contain personally identifiable information (PII) about someone other than the commenter publicly available on *www.regulations.gov* for privacy reasons. This may include comments where the commenter refers to a third-party individual without using their name if the Department determines that the comment provides enough detail that could allow one or more readers to link the information to the third party. If your comment refers to a third-party individual, to help ensure that your comment is posted, please consider submitting your comment anonymously to reduce the chance that information in your comment about a third party could be linked to the third party. The Department will also not make comments that contain threats of harm to another person or to oneself available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Earl Myers, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E244, Washington, DC 20202. Telephone: (202) 453–6716. Email: *Mental.Health@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, and definitions. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, and definitions, we urge you to clearly identify the specific section of the proposed priorities, requirements, or definitions that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, and definitions by accessing *Regulations.gov.* You may also inspect the comments in person. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** to make arrangements to inspect the comments in person.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities, requirements, and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The Mental Health Service Professional Demonstration Grant Program provides competitive grants to support and demonstrate innovative partnerships to train school-based mental health services providers for employment in schools and LEAs. The goal of this program is to increase the number of high-quality, trained providers to address the shortages of mental health services professionals in schools served by high-need LEAs. The partnerships must include (1) one or more high-need LEAs or a State educational agency (SEA) on behalf of one or more high-need LEAs; and (2) one or more eligible institutions of higher education (IHE). Partnerships must provide opportunities to place postsecondary graduate students in school-based mental health fields into high-need schools served by the participating high-need LEAs to complete required field work, credit hours, internships, or related training, as applicable, for the degree, license, or credential program of each student. In addition to the placement of graduate students, grantees may also develop mental health career pathways as early as secondary school, through career and technical education opportunities, or through paraprofessional support degree programs at local community or technical colleges.

Program Authority: Section 4631(a)(1)(B) of the Elementary and

Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7281).

Proposed Priorities

This document contains three proposed priorities. We may apply one or more of these priorities in any year in which this program is in effect.

Background:

Like good physical health, positive mental health promotes success in life. As defined by the Centers for Disease Control and Prevention (CDC), ''Mental health includes our emotional, psychological, and social well-being. It affects how we think, feel, and act. It also helps determine how we handle stress, relate to others, and make healthy choices. Mental health is important at every stage of life, from childhood and adolescence through adulthood.'' [1]

Support for the mental health of children and youth advances educational opportunities by creating conditions where students can fully engage in learning. The Novel Coronavirus Disease 2019 (COVID–19) pandemic presented additional challenges to the well-being of children and youth. The disruption to routines, relationships, and the learning environment has led to increased stress and trauma, social isolation, and anxiety that can have both immediate and long-term adverse impacts on the physical, social, emotional, and academic well-being of children and youth.[2] These challenges have only exacerbated existing challenges facing children and youth and have heightened the need to increase access to qualified school-based mental health services providers.

The Mental Health Service Professional Demonstration Grant program is designed to address several barriers to increasing mental health support for children and youth in our schools. First, there is a significant shortage of qualified school-based mental health services providers in all types of schools, whether urban, rural, or suburban, or elementary, middle, or high schools. Qualified professionals may need training and skill sets that include the capacity to conduct behavioral health assessments, identify youth who may need additional supports or pose a serious threat to themselves or others, and provide evidence-based interventions, particularly related to trauma- and grief-informed care. Qualified providers may also need to assist in the development of school environments and activities that promote behavioral wellness and foster resilience. According to recent national data, the ratios of students to providers are significantly greater than what experts recommend:

(1) The student-to-counselor ratio is 415:1, compared to the recommended ratio of 250:1 by the American School Counselor Association; [3] and

(2) The student-to-psychologist ratio is estimated at 1211:1, with some States approaching a ratio of 5000:1, compared to the recommended ratio of 500:1 for providing comprehensive school psychological services by the National Association of School Psychologists.[4]

Second, in mental health services provider preparation and professional development programs, there is a need to expand pedagogical practices that prepare providers to create culturally and linguistically inclusive and identity-safe environments for students when providing services. In particular, the public stigmatization associated with mental health care, which can lead to fewer children and adolescents being willing to access care even when it is available, makes inclusive service environments even more important for underserved groups.[5]

Third, there is a need for greater diversity in the profession, including more school-based mental health services providers from diverse backgrounds or from the communities they serve.[6] Like the inclusive pedagogical practices described above, diversifying the pipeline of candidates is critical to improving access to and utilization of services for all students.

In response to these barriers, the Department is proposing three priorities for the Mental Health Service Professional Demonstration Grant Program that aim to increase the number of school based mental health services providers, increase the number of providers from diverse backgrounds or from the communities they serve, and ensure that all providers are trained in inclusive practices, including supporting providers in ensuring access to services for children and youth who are English learners. Additionally, the Department proposes application requirements for the program, one of which requires applicants to describe how they will leverage available Federal, State, and local resources to achieve project goals and objectives. Specifically, the Department encourages applicants to utilize the American Rescue Plan's (ARP's) historic investment in children and youth by using available ARP funds in conjunction with other Federal, State, and local funds and Mental Health Service Professional Demonstration Grant Program funds to make investments that will create permanent support for an adequate pipeline of trained and diverse providers well beyond the life of the project.

In addition to the competition under the Mental Health Service Professional Demonstration Grant Program described in this document, the Department is conducting a second grant competition this fiscal year also focused on school-based mental health services providers. The School-Based Mental Health Services Grant (SBMH) program provides competitive grants to SEAs, LEAs, and consortia of LEAs to increase the number of qualified mental health services providers providing school-based mental health services to students in LEAs with demonstrated need. For more information about the SBMH program, visit the Department's website at: *https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/school-based-mental-health-services-grant-program/.* Together these two programs are intended to provide timely and necessary support to LEAs by increasing the number of school-based mental health services providers.

Proposed Priorities:

Proposed Priority 1—Expand Capacity of High-need LEAs.

Projects that propose to expand the capacity of high-need LEAs (as defined in this notice) in partnership with IHEs to train school-based mental health services providers (as defined in this notice), with the goal of expanding the number of these professionals available to address the shortages of school-based mental health services providers in high-need schools.

To meet this priority, the applicant must propose a school-based mental health partnership (as defined in this

[1] Centers for Disease Control and Prevention. *https://www.cdc.gov/mentalhealth/learn/index.htm.* Accessed on June 29, 2022.

[2] ''Fact Sheet: President Biden to Announce Strategy to Address Our National Mental Health Crisis, As Part of Unity Agenda in his First State of the Union.'' The White House. *https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/01/fact-sheet-president-biden-to-announce-strategy-to-address-our-national-mental-health-crisis-as-part-of-unity-agenda-in-his-first-state-of-the-union/.* Accessed June 29, 2022.

[3] ''School Counselor Roles and Ratios.'' American School Counselor Association Home Page. *https://www.schoolcounselor.org/About-School-Counseling/School-Counselor-Roles-Ratios.* Accessed June 29, 2022.

[4] ''Research Summary: Shortages in School Psychology.'' National Association of School Psychologists. *https://www.nasponline.org/research-and-policy/policy-priorities/critical-policy-issues/shortage-of-school-psychologists.* Accessed March 28, 2022.

[5] ''Protecting Youth Mental Health'' *https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf.* U.S. Surgeon General's Advisory. Accessed June 17, 2022.

[6] ''Demographics of the U.S. Psychology Workforce'' *https://www.apa.org/workforce/data-tools/demographics.* American Psychological Association. Accessed July 13, 2022.

notice) to place the IHE's graduate students in mental health services fields into schools served by the participating high-need LEAs for the purpose of completing required field work, credit hours, internships, or related training as applicable for their degree, license, or credential program.

Proposed Priority 2—Increase the Number of Qualified School-Based Mental Health Services Providers in High-Need LEAs Who Are from Diverse Backgrounds or from communities Served by the High-Need LEAs.

Projects that propose to increase the number of qualified school-based mental health services providers in high-need LEAs who are from diverse backgrounds or who are from communities served by the high-need LEAs.[7]

Applicants must describe how their proposal to increase the number of school-based mental health services providers who are from diverse backgrounds or who are from the communities served by the high-need LEA will help increase access to mental health services for students within the high-need LEA and best meet the mental health needs of the diverse populations of students to be served.

Proposed Priority 3—Promote Inclusive Practices.

Projects that propose to provide pedagogical practices in mental health services provider preparation programs or professional development programs that are inclusive with regard to race, ethnicity, culture, language, disability, and for students who identify as LGBTQI+, and that prepare school-based mental health services providers to create culturally and linguistically inclusive and identity-safe[8] environments for students when providing services.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

The Department proposes the following program requirement and application requirements for this program. We may apply one or more of these requirements in any year in which the program is in effect.

Proposed Program Requirement:

Eligible Applicants:

Eligible applicants for this program are high-need LEAs, SEAs on behalf of one or more high-need LEAs, and IHEs. High-need LEA applicants and SEA applicants on behalf of one or more high-need LEAs must propose to work in partnership with an eligible institution of higher education (eligible IHE), which may include institutions that serve diverse learners such as partnerships with a Historically Black College or University, Tribal College or University, and other Minority Serving Institutions. Eligible IHE applicants must propose to work in partnership with one or more high-need LEAs or an SEA.

Proposed Application Requirements:

(a) *Identification of schools to be served by the proposed project.*

Applicants must identify or describe how they will identify the high-need schools to be served in each high-need LEA that is part of the school-based mental health partnership.

(b) *A description of the nature and magnitude of the problem.*

Applicants must describe how the lack of school-based mental health services providers is specifically affecting students in the high-need schools to be served by project activities. Applicants must describe the nature of the problem for the LEA, based on information including, but not limited to, the most recent available ratios of school-based mental health services providers to students enrolled in the schools in each high-need LEA that is part of the school-based mental health partnership (in the aggregate and disaggregated by profession (*e.g.,* social workers, school psychologists)). The description may also include LEA and school-level demographic data, including chronic absenteeism and discipline data, school climate surveys, school violence/crime data, data related to suicide rates, and descriptions of barriers to hiring and retaining services providers in the LEA.

(c) *A plan to enhance LEA capacity to provide mental health services to students.*

Applicants must describe the specific activities they will conduct to expand and improve LEA capacity to provide mental health services to students in high-need LEAs and ensure that students receive appropriate, evidence-based (as defined in section 8101 of the ESEA), and culturally and linguistically inclusive mental health services. To meet this requirement, the applicant must propose a school-based mental health partnership (as defined in this notice) established for the purpose of placing the IHE's graduate students in school-based mental health fields into high-need schools served by the participating high-need LEAs to complete required field work, credit hours, internships, or related training as applicable for the degree, license, or credential program of each student. If the applicant intends to establish a program that directly benefits an individual graduate student, such as through a stipend or tuition credit, the applicant must describe its approach to implementing a service obligation for such graduate student as a school-based mental health services provider in a high-need LEA commensurate with the level of support the graduate student receives.

(d) *A Memorandum of Understanding (MOU), a Memorandum of Agreement (MOA), or Letter of Agreement between the LEA or SEA, and the IHE.*

Applicants must include with their application an MOU, MOA, or letter of agreement that is signed by the authorized representatives of the LEA or SEA, and the IHE. The MOU, MOA, or letter of agreement must provide details regarding the roles and responsibilities of each entity in the partnership, to include a description of how the partnership will place graduate students into high-need schools served by the participating high-need LEAs to complete required field work, credit hours, internships, or related training, as applicable, for the degree, license, or credential program of each student. The MOU, MOA, or letter of agreement must also include the estimated number of mental health services providers that will be placed into employment in high-

[7] All strategies to increase the diversity of providers must comply with applicable Federal civil rights laws, including Title VI of the Civil Rights Act of 1964.

[8] An identity-safe enviornment is a place where every student feels physically and emotionally safe. Perceptions of safety often differ across different groups of students, and each intervention and support measure should be designed to ensure the safety and belonging of all students.

need schools and high-need LEAs on an annual basis.

(e) *A plan for collaboration and coordination with related Federal, State, and local initiatives.*

Applicants must propose a plan that describes one or more of the following:

(1) How they will collaborate with at least one State and one local professional organization (to include a regional professional organization, if appropriate), such as a school social worker association, school psychologist association, or school counselor association;

(2) The activities to be carried out in coordination with regional and local mental health, public health, child welfare, and other community agencies, which may include school-based health centers, to achieve the plan goals and objectives of establishing a pipeline program to train and expand the capacity of school-based mental health services providers in high-need LEAs;

(3) How they will leverage other available Federal, State, and local resources to achieve project goals and objectives and sustain investments beyond the life of the project. Applicants must identify these other available resources and describe how they will be used to promote success across programs; and

(4) How they will use the Mental Health Service Professional Demonstration Grant Program funds to expand and enhance existing efforts, or put in place new measures to increase the number of qualified school-based mental health services providers to be employed by eligible schools and LEAs qualified to provide school-based mental health services.

Evidence of collaboration and coordination described in paragraphs (e)(1) and (2) must be provided through letters of support or MOAs/MOUs from State or local organizations or agencies, where applicable.

(f) *A description of the process to identify students for mental health services.*

Applicants must describe the specific process and activities they will use to ensure students in high-need LEAs who need school-based mental health services are properly identified, assessed, and provided the appropriate school-based mental health services. To meet this requirement, applicants must also describe how they will ensure that services are evidence-based and inclusive with regard to race, ethnicity, culture, language, disability, and for students who identify as LGBTQI+, and are accessible to all. Further, applicants must describe how LEAs will engage parents and families for the purposes of raising awareness about the availability of services and connecting students to services.

Proposed Definitions

The Department proposes to establish definitions of ''eligible institution of higher education,'' ''high-need LEA,'' ''high-need school,'' ''school-based mental health partnership,'' and ''students/children from low-income families,'' for use in this program. We may apply the definitions in any year in which this program is in effect.

Eligible institution of higher education means an institution of higher education that offers a program of study that leads to a master's degree or other graduate degree—

(a) In school psychology that prepares students in such program for the State licensing or certification examination in school-based psychology;

(b) In school counseling that prepares students in such program for the State licensing or certification examination in school counseling;

(c) In school social work that prepares students in such program for the State licensing or certification examination in school social work;

(d) In another school-based mental health field, including such fields as behavioral health aides, school nurses, and clinical psychologists employed by the schools or under contract with LEAs to provide evaluations, if applicable, that prepares students in such program for the State licensing or certification examination; or

(e) In any combination of study described in paragraphs (a) through (d).

High-need LEA means a local educational agency—

(a)(1) For which at least 20 percent of the children served by the agency are children from low-income background;

(2) That serves at least 10,000 children from low-income backgrounds;

(3) That meets the eligibility requirements for funding under the Small, Rural School Achievement Program under section 56211(b) of the Elementary and Secondary Education Act of 1965; or

(4) That meets the eligibility requirements for funding under the Rural and Low-Income School Program under section 56221(b) of the Elementary and Secondary Education Act of 1965; and

(b) For which there is a high student to qualified mental health services provider ratio as compared to other LEAs statewide or nationally.

High-need school means a school that, based on the most recent data available, meets at least one of the following:

(a) The school is in the highest quartile of all schools served by an LEA ranked in descending order by percentage of students from low-income families enrolled in such schools, as determined by the LEA based on one of the following measures of poverty:

(1) The percentage of students aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary.

(2) The percentage of students eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act based on the most recently available data.

(3) The percentage of students in families receiving assistance under the State program funded under part A of title IV of the Social Security Act.

(4) The percentage of students eligible to receive medical assistance under the Medicaid program.

(5) A composite of two or more of the measures described in paragraphs (a)(1) through (4).

(b) In the case of—

(1) An elementary school, the school serves students not less than 60 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act based on the most recently available data; or

(2) Any other school that is not an elementary school, the other school serves students not less than 45 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act based on the most recently available data.

School-based mental health partnership means the formal relationship, established for the purpose of training school-based mental health services providers for employment in schools and LEAs, between—

(a) One or more high-need LEAs or an SEA on behalf of one or more high-need LEAs; and

(b) One or more eligible IHEs.

Students/children from low-income families means students whose families meet any of the poverty thresholds established in section 1113 of the ESEA for the relevant grade level.

Final Priorities, Requirements, and Definitions:

We will announce the final priorities, requirements, and definitions in a document published in the **Federal Register**. We will determine the final priorities, requirements, and definitions after considering responses to the proposed priorities, requirements, and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, or definitions, subject to

meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use the priorities, requirements, and definitions, we invite applications through a notice inviting applications in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866 because it has an annual effect on the economy of more than $100 million. Approximately $145 million are available under this program from fiscal year 2022 appropriations actions, and $100 million are available each year from fiscal year 2023 to fiscal year 2026.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed priorities, requirements, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that the proposed priorities, requirements, and definitions are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Potential Costs and Benefits

The proposed priorities, requirements, and definitions are necessary for the implementation of the Mental Health Service Professional Demonstration Grant Program consistent with the requirements established by Congress in the Department of Education Appropriations Act, 2022, and the Explanatory Statement accompanying that Act. It is important to note that implementation of the Mental Health Service Professional Demonstration Grant Program would almost exclusively confer benefits on the recipients of Federal funds subject to the proposed priorities, requirements, and definitions, whose voluntary participation in the Mental Health Service Professional Demonstration Grant Program would entail minimal costs except for those paid with Federal funds, and the Paperwork Reduction Act (PRA) section of this document discusses the burden estimates for preparing an application. This program was established under a statute with broad authority and only non-binding report language establishing program purpose, eligibility, or requirements; consequently, this rulemaking action is necessary to ensure program funds are used for their intended purpose. More specifically, the proposed priorities, requirements, and definitions would ensure that the Department may collect from applicants for Mental Health Service Professional Demonstration Grant Program funding the information necessary for competitive review of applications by peer reviewers, and to fund high-quality applications that will lead to the implementation of projects consistent with Congressional intent. Absent this rulemaking action, there is no alternative means of meeting these objectives.

The specific benefits of establishing a menu of proposed priorities include ensuring that funds are used consistent with Congressional intent and providing flexibility to the Department for supporting multiple strategies designed to address the shortage of mental health services providers in schools. The first strategy, embedded in proposed priority 1, is to focus grant activities on the expansion of school-based mental health services providers on high-need LEAs. The definition of high-need LEA, incorporated into these priorities, was crafted to provide flexibility for an LEA to show need in various ways, including through poverty rates or size. Although the total number of LEAs is large (over 13,000 in school year 2018–19), the available funding will only support a limited number of multi-year projects. Absent the targeting of Mental Health Service Professional Demonstration Grant Program funds to high-need LEAs, the program may allocate scarce Federal resources to high-capacity LEAs that already meet the mental health needs of

their students. Moreover, ensuring that funds are targeted to high-need LEAs was a requirement of the fiscal year 2019 Mental Health Service Professional Demonstration Grant Program competition, and Congress directed the Department, through the Explanatory Statement accompanying the Department of Education Appropriations Act, 2022, to incorporate the same requirement into the fiscal year 2022 Mental Health Service Professional Demonstration Grant Program competition.

Proposed priority 2 supports a strategy for expanding the workforce of school-based mental health services providers. Currently, the psychology [9] and school counselor [10] workforces are significantly less diverse than the student population.[11] Increasing the number of qualified school-based mental health services providers who are from diverse backgrounds and from communities served by the high-need LEAs, and who can provide culturally and linguistically appropriate services, would expand not only the numbers of these providers but also provide better access to and improve the quality of mental health services available to students. This priority has the additional benefit of promoting equity for students, in keeping with the Administration's agenda [12] and the Department's mission to support equity and excellence.

Proposed priority 3 seeks to increase the number of school-based mental health services providers who can provide services that are culturally and linguistically inclusive and identity-safe environments for students. Given the diversity of the student population, every school-based mental health services provider should be able to implement inclusive practices and be able to provide services to any and all students. This priority also supports the Administration's equity agenda and the Department's mission to support equity and excellence.

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and whose costs can generally be covered with grant funds. As a result, the proposed priorities, requirements, and definitions would not impose a significant burden, except when an entity voluntarily elects to apply for a grant. Moreover,the Department believes the benefits associated with the grant application would outweigh any associated costs.

The Paperwork Reduction Act (PRA) section of this document discusses the burden estimates for preparing an application. The potential benefits of receiving Federal funds under this program to expand the pool of and hire school-based mental health services providers will likely outweigh the application costs detailed in the PRA section. The costs of implementing the requirements established in this notice generally can be paid for with grant funds. Moreover, even an unsuccessful applicant may benefit from the effort of preparing an application, such as conducting deep data analysis about the needs in their LEA or developing partnerships with IHEs that lead to other projects.

Regulatory Alternatives Considered

The Department believes that the final priorities, requirements, definitions, and selection criteria in this notice are needed to administer the program effectively The priorities will enable the Department to administer a competitive grant program consistent with the intent of Congress as expressed in the Explanatory Statement accompanying the Department of Education Appropriations Act, 2022 (Pub. L. 117–103), which provided funding for the program in fiscal year 2022, and the Bipartisan Safer Communities Act (Pub. L. 117–159), which provided additional funding for fiscal years 2022 through 2026.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulara004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the changes in annual monetized transfers as a result of this regulatory action.

Expenditures are classified as transfers from the Federal Government to LEAs and IHEs.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers	
	3%	7%
Annualized monetized transfers	$108.6	$108.6
From whom to whom?	From the Federal government to LEAs and IHEs.	

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities, requirements, and definitions easier to understand, including answers to questions such as the following:

- Are the priorities, requirements, and definitions in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

[9] *https://www.apa.org/workforce/data-tools/demographics.*

[10] *https://www.schoolcounselor.org/getmedia/9c1d81ab-2484-4615-9dd7-d788a241beaf/member-demographics.pdf.*

[11] *https://nces.ed.gov/programs/coe/indicator/cge/racial-ethnic-enrollment.*

[12] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

• What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make the proposed priorities, requirements, and definitions easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are school districts and IHEs applying for and receiving funds under this program. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, and definitions, would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priorities, requirements, and definitions would impose no burden on small entities in general. Eligible applicants would determine whether to apply for funds and have the opportunity to weigh the requirements for preparing applications, and any associated costs, against the likelihood of receiving funding and the requirements for implementing projects under the program. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to seek funding from other sources to address a shortage in mental health providers.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides 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) (44 U.S.C. 3501 *et seq.*). This helps ensure that the public understands the Department's collection instructions, respondents provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The proposed priorities, requirements, and definitions contain information collection requirements. Under the PRA the Department has submitted these requirements to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of the law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the notice of final priorities, requirements, and definitions we will display the control number assigned by OMB to any information collection proposed in this document and adopted in the notice of final priorities, requirements, and definitions.

For the years in which the Department holds a Mental Health Service Professional Demonstration Grant Program competition, we estimate there will be 500 applicants based on prior competitions for the program. We estimate that it will take each applicant 40 hours to complete and submit the application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this collection is 20,000 hours. At $95.46 per hour (using mean wages for Education and Childcare Administrators [13] and assuming the total cost of labor, including benefits and overhead, is equal to 200 percent of the mean wage rate), the total estimated cost for 500 applicants to complete the Mental Health Service Professional Demonstration Grant Program application is approximately $1,909,200.

The Department is requesting paperwork clearance on the OMB 1810–xxxx data collection associated with the proposed requirements. That request will account for all burden hours and costs discussed within this section.

Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection through this document. Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in these proposed priorities, requirements, and definitions. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on this Information Collection Request by September 1, 2022.

Comments related to the information collection activities must be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov* by selecting the Docket ID number ED–2022–OESE–0094 or via postal mail, commercial delivery, or hand delivery by referencing the Docket ID number and the title of the information collection request at the top of your comment. 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.

Note: The Office of Information and Regulatory Affairs and the Department review all comments related to the information collection activities posted at *www.regulations.gov.*

[13] See *www.bls.gov/oes/current/oes_nat.htm.*

Collection of Information

Information collection activity	Estimated number of responses	Hours per response	Total estimated burden hours	Estimated cost at an hourly rate of $95.46
Mental Health Service Professional Demonstration Grant Program Application	500	40	20,000	$1,909,200

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

[FR Doc. 2022–16556 Filed 8–1–22; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0766; FRL–9982–01–OCSPP]

RIN 2070–ZA16

Pesticide Tolerances; Implementing Registration Review Decisions for Certain Pesticides (FY22Q4)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to implement several tolerance actions under the Federal Food, Drug, and Cosmetic Act (FFDCA) that the Agency determined were necessary or appropriate during the registration review conducted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for the pesticide active ingredients identified in this document. During registration review, EPA reviews all aspects of a pesticide case, including existing tolerances, to ensure that the pesticide continues to meet the standard for registration under FIFRA. The pesticide actions addressed in this rulemaking are identified in Unit I.B. and discussed in detail in Unit III. of this document.

DATES: Comments must be received on or before October 3, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2021–0766, through the *Federal eRulemaking Portal* at: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Moana Appleyard, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2220; email address: *appleyard.moana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What action is the Agency taking?

EPA is proposing several tolerance actions that the Agency previously determined were necessary or appropriate during the registration review for the identified pesticide active ingredients. During registration review, EPA reviews all aspects of a pesticide case, including existing tolerances, to ensure that the pesticide continues to meet the standard for registration in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.,* and that the pesticide's tolerances meet the safety standard of the Federal Food, Drug and Cosmetic Act (FFCCA), 21 U.S.C. 346a.

Specifically, EPA is proposing to:

- Modify tolerance expressions for ametryn, benfluralin, bensulfuron-methyl, bentazon, chlorpropham, diclosulam, esfenvalerate, ethoxyquin, hydramethylnon (pyrimidinone), imazaquin, phenmedipham, pyrithiobac-sodium, tefluthrin, and uniconazole-P;
- Modify commodity definitions for bispyribac-sodium, imazaquin, and uniconazole-P;
- Update crop groups for fenpropathrin and quinoxyfen;

- Remove expired tolerances for ametryn; and
- Revoke tolerances that are no longer needed for bensulfuron-methyl and chlorpropham.

Although it may not have been identified in the registration review of a particular pesticide, this rule also includes proposals to reflect the Agency's 2019 adoption of the Organization of Economic Cooperation and Development (OECD) Rounding Class Practice. Where applicable, these adjustments are proposed for specific pesticides as discussed in Unit III. of this document.

C. What is EPA's authority for taking this action?

Pursuant to its authority under the FFDCA, 21 U.S.C. 346a, EPA is proposing the tolerance actions in this rulemaking that the Agency previously determined were necessary or appropriate during the registration review conducted under FIFRA, 7 U.S.C. 136 *et seq.*

FFDCA section 408(b) authorizes EPA to establish a tolerance, if the Agency determines that a tolerance is safe; FFDCA section 408(c) authorizes EPA to establish an exemption from the requirement of a tolerance if the Agency determines that the exemption is safe. *See* 21 U.S.C. 346a(b) and (c). If EPA determines that a tolerance or exemption is not safe, EPA must modify or revoke that tolerance or exemption. *Id.* The FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' 21 U.S.C. 346a(b)(2)(A)(ii), (c)(2)(A)(ii). This includes exposure through drinking water and in residential settings but does not include occupational exposure. FFDCA section 408(b)(2)(C) requires EPA to give special consideration to the exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue[s.]'' 21 U.S.C. 346a(b)(2)(C). In addition, FFDCA section 408(b)(2)(D) contains several factors EPA must consider when making determinations about establishing, modifying, or revoking tolerances. 21 U.S.C. 346a(b)(2)(D). FFDCA section 408(c)(2)(B) requires that EPA, when making determinations about exemptions, to take into account, among other things, the considerations set forth in FFDCA section 408(b)(2)(C) and (D). 21 U.S.C. 346a(c)(2)(B).

FFDCA section 408(e), 21 U.S.C. 346a(e), authorizes EPA to establish, modify, or revoke tolerances or exemptions from the requirement of a tolerance on its own initiative. Prior to issuing the final regulation, FFDCA section 408(e)(2) requires EPA to issue a notice of proposed rulemaking for a 60-day public comment period, unless the Administrator for good cause finds that it would be in the public interest to have a shorter period and states the reasons in the rulemaking.

Furthermore, when establishing tolerances or exemptions from the requirement of a tolerance, FFDCA sections 408(b)(3) and (c)(3) require that there be a practical method for detecting and measuring pesticide chemical residue levels in or on food, unless in the case of exemptions, EPA determines that such method is not needed and states the reasons therefor in the rulemaking. 21 U.S.C. 346a(b) and (c).

Under FIFRA section 3(g), 7 U.S.C. 136a(g), EPA is required to periodically review all registered pesticides and determine if those pesticides continue to meet the standard for registration under FIFRA. *See also* 40 CFR 155.40(a). Consistent with its obligations under FIFRA section 3(g) and FFDCA section 408, EPA has reviewed the available scientific data and other relevant information and determined it is appropriate to take the tolerance actions being proposed in this rulemaking.

D. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.regulations.gov/faq.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies.

E. What can I do if I want the Agency to maintain a tolerance that the Agency proposes to revoke?

During the 60-day public comment period for this proposed rule, any person can state an interest in retaining a tolerance proposed for revocation. If EPA receives such a comment within the 60-day period, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f), if needed. The order would specify data needed and the timeframes for submission of the data and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

II. Background

A. What is a tolerance?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on food, which includes raw agricultural commodities and processed foods and feed for animals. Under the FFDCA, residues of a pesticide chemical that are not covered by a tolerance or exemption from the requirement of a tolerance are considered unsafe. *See* 21 U.S.C. 346a(a)(1). Foods containing unsafe residues are deemed adulterated and may not be distributed in interstate commerce. *See* 21 U.S.C. 331(a), 342(a)(2)(B). Consequently, for a food-use pesticide (*i.e.,* a pesticide use that is likely to result in residues in or on food) to be sold and distributed, the pesticide must not only have appropriate tolerances or exemptions under the FFDCA, but also must be registered under FIFRA, 7 U.S.C. 136 *et seq.* Food-use pesticides not registered in the United States must have tolerances or exemptions in order for commodities treated with those pesticides to be imported into the United States. For additional information about tolerances, go to *https://www.epa.gov/pesticide-tolerances/about-pesticide-tolerances.*

B. Why does EPA consider the Codex MRLs?

When establishing a tolerance for residues of a pesticide, EPA must

determine whether the Codex Alimentarius Commission has established a Maximum Residue Limit (MRL) for that pesticide. *See* 21 U.S.C. 346a(b)(4). As part of registration review, EPA identifies opportunities to harmonize with Codex MRLs for each pesticide-crop combination.

C. What is pesticide registration review?

EPA periodically reviews existing registered pesticides to ensure they can continue to be used without unreasonable adverse effects on human health or the environment. The registration review program is intended to make sure that, as the ability to assess risk evolves and as policies and practices change, all registered pesticides continue to meet the FIFRA registration standard of no unreasonable adverse effects. As part of the registration review of a pesticide, EPA also evaluates whether existing tolerances are safe, whether any changes to existing tolerances are necessary or appropriate, and whether any new tolerances are necessary to cover residues from registered pesticides. Additional information about pesticide registration review is available at *https://www.epa.gov/pesticide-reevaluation.*

III. Proposed Tolerance Actions

EPA is proposing to take the specific tolerance actions identified in this unit. Where appropriate, EPA has included the determination of safety for the pesticide actions being taken. These proposed tolerance changes are discussed in detail in the human health risk assessments conducted to support the registration review of each specific pesticide active ingredient or registration review case. In addition, these proposed tolerance changes are summarized in both the Proposed Interim Decision (PID), and in the Interim Decision (ID) for each pesticide active ingredient or registration review case. These documents can be found in the public docket that has been opened for each pesticide, which is available online at *https://www.regulations.gov,* using the docket ID number listed in the heading of each pesticide active ingredient included in this proposed action. To locate the relevant supporting documents, enter the specific docket ID number in the search box at *https://www.regulations.gov.*

A. Ametryn, Case 2010 (Docket ID No. EPA–HQ–OPP–2013–0249).

EPA is proposing to revise the current tolerance expression for ametryn in 40 CFR 180.258 to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify that (1) as provided in FFDCA section 408(a)(3), the tolerances cover metabolites and degradates of ametryn not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression do not substantively change the tolerances or, in any way, modify the permissible level of residues in or on the commodities listed in the regulation.

In addition, as a housekeeping measure, EPA is proposing to remove from the regulation the listing of tolerances for residues of ametryn in or on banana; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; and corn, sweet, stover, because these tolerances expired on June 16, 2010.

During registration review, EPA assessed the risks from exposure to ametryn, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to ametryn residues. Thus, EPA has determined that the tolerances for residues of ametryn are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Ametryn—Preliminary Human Health Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

B. Benfluralin, Case 2030 (Docket ID No. EPA–HQ–OPP–2011–0931)

EPA is proposing to revise the current tolerance expression for benfluralin in 40 CFR 180.208 to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify that (1) as provided in FFDCA section 408(a)(3), the tolerances cover metabolites and degradates of benfluralin, including its metabolites and degradates in or on the commodities not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression do not substantively change the tolerances or, in any way, modify the permissible level of residues in or on the commodities listed in the regulation.

During registration review, EPA assessed the risks from exposure to benfluralin, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to benfluralin residues. Thus, EPA has determined that the tolerances for residues of benfluralin are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Benfluralin: Human Health Draft Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

C. Bensulfuron-methyl, Case 7216 (Docket ID No. EPA–HQ–OPP–2011–0663)

EPA is proposing to revise the current tolerance expression for bensulfuron-methyl in 40 CFR 180.445 to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify that (1) as provided in FFDCA section 408(a), the tolerances cover metabolites and degradates of bensulfuron-methyl not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression do not substantively change the tolerances or, in any way, modify the permissible level of residues in or on the commodities listed in the regulation.

Additionally, EPA is proposing to clarify the spelling of the chemical name with a hyphen between bensulfuron and methyl.

During registration review, EPA assessed the risks from exposure to bensulfuron-methyl, taking into consideration all reliable data on toxicity and exposure, including for

infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to bensulfuron-methyl residues. Thus, EPA has determined that the tolerances for residues of bensulfuron-methyl are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Bensulfuron-methyl. Human Health Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

D. Bentazon, Case 0182 (Docket ID No. EPA–HQ–OPP–2010–0117)

EPA is proposing to revise the current tolerance expressions for bentazon in 40 CFR 180.355 to describe more clearly the scope or coverage of the tolerances for raw agricultural commodities and for livestock commodities and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expressions will clarify that (1) as provided in FFDCA section 408(a)(1), the tolerances cover metabolites and degradates of bentazon not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expressions. The revisions to the tolerance expressions do not substantively change the tolerances or, in any way, modify the permissible level of residues in or on the commodities listed in the regulation.

During registration review, EPA assessed the risks from exposure to bentazon, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to bentazon residues. Thus, EPA has determined that the tolerances for residues of bentazon are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Sodium Bentazon—Preliminary Human Health Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

E. Bispyribac-sodium, Case 7258 (Docket ID No. EPA–HQ–OPP–2014–0074)

EPA is proposing to modify the commodity definition in 40 CFR 180.577 for ''Fish, freshwater'' to the correct definition of ''Fish, freshwater, finfish.'' This revision will help facilitate efficient commodity searches and does not substantively change the tolerance or, in any way, modify the permissible level of residues in or on the commodity listed in the regulation.

During registration review, EPA assessed the risks from exposure to bispyribac-sodium, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to bispyribac-sodium residues. Thus, EPA has determined that the tolerances for residues of bispyribac-sodium are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Bispyribac-sodium. Draft Human Health Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

F. Chlorpropham, Case 0271 (Docket ID No. EPA–HQ–OPP–2010–0923)

EPA is proposing to revise the current tolerance expressions for chlorpropham in 40 CFR 180.181 to describe more clearly the scope or coverage of the tolerances for raw agricultural commodities and livestock commodities and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expressions will clarify that (1) as provided in FFDCA section 408(a)(1), the tolerances cover metabolites and degradates of chlorpropham not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expressions. The revisions to the tolerance expressions do not substantively change the tolerances or, in any way, modify the permissible level of residues in or on the commodities listed in the regulation.

EPA is proposing to revoke tolerances in 40 CFR 180.181 for residues of chlorpropham in or on hog, fat; hog, kidney; hog, meat; and hog, meat byproducts except kidney, which are no longer needed because potatoes and potato, wet peel are no longer hog feed items.

During registration review, EPA assessed the risks from exposure to chlorpropham, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to chlorpropham residues. Thus, EPA has determined that the tolerances for residues of chlorpropham are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Chlorpropham. Draft Human Health Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

G. Diclosulam, Case 7249 (Docket ID No. EPA–HQ–OPP–2015–0285)

EPA is proposing to revise the current tolerance expression for diclosulam in 40 CFR 180.543 to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of diclosulam not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revision to the tolerance expression does not substantively change the tolerance or, in any way, modify the permissible level of residues permitted by the tolerances.

During registration review, EPA assessed the risks from exposure to diclosulam, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA

concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to diclosulam residues. Thus, EPA has determined that the tolerances for residues of diclosulam are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Diclosulam. Human Health Assessment Scoping Document and Preliminary Human Health Risk Assessment in Support of Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

H. Esfenvalerate, Case 7406 (Docket ID No. EPA–HQ–OPP–2009–0301)

EPA is proposing to revise the current tolerance expressions for esfenvalerate in 40 CFR 180.533 for metabolites and degradates of general food commodities, raw agricultural food commodities, and for tolerances with regional registrations, to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of esfenvalerate not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expressions do not substantively change the tolerance or, in any way, modify the permissible level of residues permitted by the tolerances.

During registration review, EPA assessed the risks from exposure to esfenvalerate, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to esfenvalerate residues. Thus, EPA has determined that the tolerances for residues of esfenvalerate are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Esfenvalerate. Draft Human Health Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

I. Ethoxyquin, Case 0003 (Docket ID No. EPA–HQ–OPP–2014–0780)

EPA is proposing to revise the current tolerance expression for ethoxyquin in 40 CFR 180.178 to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of ethoxyquin not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression do not substantively change the tolerance or, in any way, modify the permissible level of residues permitted by the tolerances.

During registration review, EPA assessed the risks from exposure to ethoxyquin, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to ethoxyquin residues. Thus, EPA has determined that the tolerances for residues of ethoxyquin are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Ethoxyquin: Draft Human Health Risk Assessment in Support of Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

J. Fenpropathrin, Case 7601 (Docket ID No. EPA–HQ–OPP–2010–0422)

EPA is proposing to update the existing crop groups in 40 CFR 180.466 for ''fruit, stone, Crop Group 12, except cherry'' to the updated subgroups for peach and plum and cherry and for ''nut, tree crop group 14'' to the updated crop group 14–12. 40 CFR 180.40(j) states that ''At appropriate times, EPA will amend tolerances for crop groups that have been superseded by revised crop groups to conform the pre-existing crop group to the revised crop group (40 CFR 180.41).''

During registration review, EPA assessed the risks from exposure to fenpropathrin, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to fenpropathrin residues. Thus, EPA has determined that the tolerances for residues of fenpropathrin are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Fenpropathrin. Draft Human Health Risk Assessment for Registration Review* and the *Fenpropathrin Interim Registration Review Decision,* which can be accessed using the docket ID number listed in the heading of this unit.

K. Hydramethylnon (Pyrimidinone), Case 2585 (Docket ID No. EPA–HQ–OPP–2012–0869)

EPA is proposing to add the chemical name ''(Pyrimidinone)'' in the title in 40 CFR 180.395 to more accurately reflect the chemical covered by the tolerances in that section.

EPA is also proposing to revise the current tolerance expression for hydramethylnon to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of hydramethylnon not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression do not substantively change the tolerance or, in any way, modify the permissible level of residues permitted by the tolerances.

During registration review, EPA assessed the risks from exposure to hydramethylnon, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to hydramethylnon residues.

Thus, EPA has determined that the tolerances for residues of hydramethylnon are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Hydramethylnon. Draft Human Health Risk Assessment for Registration Review,* and *Hydramethylnon. Addendum to Draft Human Health Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

L. Imazaquin, Case 7204 (Docket ID No. EPA–HQ–OPP–2014–0224)

EPA is proposing to revise the chemical name to add ''Imazaquin'' to the title for 40 CFR 180.426. EPA is also proposing to revise the current tolerance expression in to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of imazaquin not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. In addition, EPA is proposing to add a table to paragraph (a)(1) and to update the commodity definition from ''Soybean'' to ''Soybean, seed.'' The revisions to the tolerance expression and commodity definition for soybean do not substantively change the tolerance or, in any way, modify the permissible level of residues permitted by the tolerances.

During registration review, EPA assessed the risks from exposure to imazaquin, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to imazaquin residues. Thus, EPA has determined that the tolerances for residues of imazaquin are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Imazaquin: Draft Human Health Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

M. Phenmedipham, Case 0277 (Docket ID No. EPA–HQ–OPP–2014–0546)

EPA is proposing to revise the current tolerance expression for phenmedipham in 40 CFR 180.278 to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify that (1) as provided in FFDCA section 408(a)(3), the tolerances cover metabolites and degradates of phenmedipham not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revision to the tolerance expression does not substantively change the tolerances or, in any way, modify the permissible level of residues permitted by the tolerances.

During registration review, EPA assessed the risks from exposure to phenmedipham, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to phenmedipham residues. Thus, EPA has determined that the tolerances for residues of phenmedipham are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Phenmedipham Scoping Document and Draft Human Health Risk Assessment in Support of Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

N. Pyrithiobac-sodium, Case 7239 (Docket ID No. EPA–HQ–OPP–2011–0661)

EPA is proposing to revise the current tolerance expression for pyrithiobac-sodium to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify that (1) as provided in FFDCA section 408(a)(3), the tolerances cover metabolites and degradates of pyrithiobac-sodium not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression do not substantively change the tolerance or, in any way, modify the permissible level of residues permitted by the tolerances. EPA is also proposing to add a hyphen in the chemical name used in the heading in 40 CFR 180.487, to read ''pyrithiobac-sodium.''

During registration review, EPA assessed the risks from exposure to pyrithiobac-sodium, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to pyrithiobac-sodium residues. Thus, EPA has determined that the tolerances for residues of pyrithiobac-sodium are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Pyrithiobac-Sodium: Human Health Draft Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

O. Quinoxyfen, Case 7037 (Docket ID No. EPA–HQ–OPP–2013–0771)

EPA is proposing to convert existing crop group tolerances for residues of quinoxyfen in 40 CFR 180.588 to updated crop group tolerances. EPA is proposing to convert the existing crop group ''Fruit, stone, group 12'' to the updated crop group ''Fruit, stone, group 12–12''. This conversion would modify existing tolerances for commodities in that crop group and establish new tolerances for commodities in the updated crop group. 40 CFR 180.40(j) states that ''At appropriate times, EPA will amend tolerances for crop groups that have been superseded by revised crop groups to conform the pre-existing crop group to the revised crop group.'' EPA has indicated in updates to its crop group rulemakings that registration review is one of those appropriate times. *See, e.g.,* Tolerance Crop Grouping Program V, 85 FR 70976, 70982 (Nov. 6, 2020). As part of registration review, EPA identified tolerances for residues of quinoxyfen in or on commodities in crop groups that have been updated since those tolerances were initially

established. In addition, as indicated above, EPA is removing the trailing zero from the current ''Fruit, stone, group 12'' tolerance, so that it will be 0.7 ppm, to be consistent with the OECD Rounding Class Practice.

During registration review, EPA assessed the risks from exposure to quinoxyfen, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to quinoxyfen residues. Thus, EPA has determined that the tolerances for residues of quinoxyfen are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Quinoxyfen. Draft Human Health Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

P. Tefluthrin, Case 7409 (Docket ID No. EPA–HQ–OPP–2012–0501)

EPA is proposing to revise the current tolerance expression for tefluthrin in 40 CFR 180.440 to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify that (1) as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of tefluthrin not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression do not substantively change the tolerance or, in any way, modify the permissible level of residues permitted by the tolerances.

During registration review, EPA assessed the risks from exposure to tefluthrin, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to tefluthrin residues. Thus, EPA has determined that the tolerances for residues of tefluthrin are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further details, see *Tefluthrin. Revised Human Health Risk Assessment,* which can be accessed using the docket ID number listed in the heading of this unit.

Q. Uniconazole-P, Case 7007 (Docket ID No. EPA–HQ–OPP–2015–0729)

The Agency is proposing to revise the tolerance expression for uniconazole-P to describe more clearly the scope or coverage of the tolerance and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression will clarify that (1) as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of uniconazole-P not specifically mentioned; and (2) in 40 CFR 180.643 compliance with the specified tolerance level is to be determined by measuring the specific compounds mentioned in the tolerance expression. The Agency is also proposing to convert the existing crop group tolerance for ''Vegetable, fruiting, group 8'' to the updated crop group tolerance for ''Vegetable, fruiting, group 8–10.'' The tolerance level of 0.01 ppm would remain the same. 40 CFR 180.40(j) states that ''At appropriate times, EPA will amend tolerances for crop groups that have been superseded by revised crop groups to conform the pre-existing crop group to the revised crop group.'' EPA has indicated in updates to its crop group rulemakings that registration review is one of those appropriate times. *See, e.g.,* Tolerance Crop Grouping Program V, (85 FR 70976, 70982) (Nov. 6, 2020). Additionally, EPA is proposing to clarify the chemical name in the title in 40 CFR 180.643 from ''Uniconazole'' to ''Uniconazole-P'' to more accurately reflect the chemical covered by the tolerances in that section.

During registration review, EPA assessed the risks from exposure to uniconazole-P, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to uniconazole-P residues. Thus, EPA has determined that the tolerances for residues of uniconazole-P are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further detail, see *Uniconazole-P. Draft Human Health Risk Assessment for Registration Review,* which can be accessed using the docket ID number listed in the heading of this unit.

IV. Proposed Effective Date

EPA is proposing that these tolerance actions would become effective six months after the date of publication of the final rule in the **Federal Register**. EPA is proposing this effective date to allow a reasonable interval for producers in exporting members of the World Trade Organization's (WTO's) Sanitary and Phytosanitary (SPS) Measures Agreement to adapt to the requirements of certain actions being taken in the final rule.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

The Office of Management and Budget (OMB) has exempted these types of actions (*e.g.,* the establishment and modification of a tolerance and tolerance revocations for which extraordinary circumstances do not exist) from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This exemption applies for the tolerance revocations in this proposed rule because the Agency knows of no extraordinary circumstances that warrant reconsideration of this exemption for those actions.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA 44 U.S.C. 3501 *et seq.,* because it does not contain any information collection activities (*i.e.,* no recordkeeping, reporting or third-party disclosure requirements).

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for

this rule is any significant adverse economic impact on small entities subject to the requirements of this action and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on small entities subject to the rule.

This takes into account an EPA analysis for tolerance establishments and modifications that published in the **Federal Register** of May 4, 1981 (46 FR 24950) (FRL–1809–5) and for tolerance revocations on December 17, 1997 (62 FR 66020) (FRL–5753–1). Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed rule that would change EPA's previous analysis. Additionally, in a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. See Memorandum from Denise Keehner, Division Director, Biological and Economic Analysis Division, Office of Pesticide Programs to Public Docket concerning Tolerance Revocation Rulemaking, Proposed or Final, ''RFA/SBREFA Certification for Import Tolerance Revocation'', dated May 25, 2001, which is available in the docket. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposed rule and will be addressed prior to issuing a final rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate or impose an enforceable duty on any state, local or tribal government as described in UMRA, 2 U.S.C. 1531–1538, and will not significantly or uniquely affect small governments. Accordingly, this rule is not subject to the requirements of sections 202, 203, or 205 of UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Chemical specific health and safety risk assessments for each chemical are discussed in section III. Proposed Tolerance Actions.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs.

I. National Technology Transfer Advancement Act (NTTAA)

This action does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

In accordance with Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021), EPA finds that this action will not result in disproportionately high and adverse human health, environmental, climate-related, or other cumulative impacts on disadvantaged communities.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 21, 2022.

Edward Messina,

Director, Office of Pesticide Programs.

For the reasons set forth in the preamble, EPA is proposing to amend 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.178 by:
■ a. Revising the introductory text in paragraph (a);
■ b. Adding the table heading ''Table 1 to Paragraph (a)''.

The revision and addition read as follows:§ 180.178 Ethoxyquin; tolerances for residues.

(a) *General.* Tolerances are established for residues of ethoxyquin, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only ethoxyquin (1,2-dihydro-6-ethoxy-2,2,4-trimethylquinoline) in or on the commodity.

Table 1 to Paragraph (a)

* * * * *

■ 3. Amend § 180.181 by:
■ a. Revising the introductory text in paragraph (a)(1);
■ b. Adding the table heading ''Table 1 to Paragraph (a)(1)'';
■ c. Revising the introductory text in paragraph (a)(2);
■ d. Adding the table heading ''Table 2 to Paragraph (a)(2)''; and
■ e. Removing the entries in table 2 for ''*Hog, fat*''; ''*Hog, kidney*''; ''*Hog, meat*'', and ''*Hog, meat byproducts except kidney*''.

The revisions and additions read as follows:

§ 180.181 Chlorpropham; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the plant regulator and herbicide chlorpropham, including its metabolites and degradates. Compliance with the tolerance levels is to be determined by measuring only chlorpropham (1-methylethyl *N*-(3-chlorophenyl)carbamate), in or on the following raw agricultural commodities:

Table 1 to Paragraph (a)(1)

* * * * *

(2) Tolerances are established for residues of the plant regulator and herbicide chlorpropham, including its metabolites and degradates. Compliance with the tolerance levels is to be determined by measuring only the sum of chlorpropham (1-methylethyl *N*-(3-chlorophenyl) carbamate) and its metabolite 4′-hydroxychlorpropham-*O*-sulfonic acid, calculated as the stoichiometric equivalent of chlorpropham, in or on the following raw agricultural commodities:

Table 2 to Paragraph (a)(2)

* * * * *

■ 4. Amend § 180.208, by:
■ a. Revising the introductory text in paragraph (a); and
■ b. Adding the table heading ''Table 1 to Paragraph (a)''.

The revisions and addition read as follows:

§ 180.208 Benfluralin; tolerances for residues.

(a) *General.* Tolerances are established for residues of benfluralin, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only benfluralin, *N*-butyl-*N*-ethyl-2,6-dinitro-4-(trifluoromethyl)benzenamine.

Table 1 to Paragraph (a)

* * * * *

■ 5. Amend § 180.258, by:
■ a. Revising the introductory text in paragraph (a);
■ b. Adding the table heading ''Table 1 to Paragraph (a)''; and
■ c. Removing the expired tolerances in Table 1 for ''*Banana*''; ''*Corn, sweet, forage*'';

''*Corn, sweet, kernel plus cob with husks removed*'', and ''*Corn, sweet, stover*''.

The revisions and addition read as follows:

§ 180.258 Ametryn; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide ametryn, including its metabolites and degradates, in or on the commodities listed in the following table 1 to paragraph (a). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only ametryn (*N*-ethyl-*N′*-(1-methylethyl)-6-(methylthio)-1,3,5-triazine-2,4-diamine), in or on the following commodities:

Table 1 to Paragraph (a)

* * * * *

■ 6. Amend § 180.278, by:
■ a. Revising the introductory text in paragraph (a); and
■ b. Adding a table heading ''Table 1 to Paragraph (a)''.

The revisions and addition read as follows:

§ 180.278 Phenmedipham; tolerances for residues.

(a) *General.* Tolerances are established for the residues of the herbicide phenmedipham, including its metabolites and degradates, in/on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified are to be determined by measuring only phenmedipham (3-methoxycarbonylaminophenyl-3-methylcarbanilate), in or on the commodities.

Table 1 to Paragraph (a)

* * * * *

■ 7. Amend § 180.355, by:
■ a. Revising the introductory text in paragraph (a)(1);
■ b. Adding the table heading ''Table 1 to Paragraph (a)(1)'';
■ c. Revising the introductory text in paragraph (a)(2); and
■ d. Adding the table heading ''Table 2 to Paragraph (a)(2)''.

The revisions and additions read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of bentazon, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a)(1). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only the sum of bentazon (3-(1-methylethyl)-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one 2,2-dioxide) and its metabolites 6-hydroxy bentazon (6-hydroxy-3-(1-methylethyl)-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one 2,2-dioxide) and 8-hydroxy bentazon (8-hydroxy-3-(1-methylethyl)-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one 2,2-dioxide), calculated as the stoichiometric equivalent of bentazon, in or on the following commodities:

Table 1 to Paragraph (a)(1)

* * * * *

(2) Tolerances are established for residues of bentazon, including its metabolites and degradates, in or on the commodities in table 2 to this paragraph (a)(2). Compliance with the tolerance levels specified in table 2 is to be determined by measuring only the sum of bentazon (3-(1-methylethyl)-1*H*-2,1,3-benzothiadiazin- 4(3*H*)-one 2,2-dioxide) and its metabolite 2-amino-*N*-isopropyl benzamide, calculated as the stoichiometric equivalent of bentazon, in or on the following commodities:

Table 2 to Paragraph (a)(2)

* * * * *

■ 8. Amend § 180.395, by:
■ a. Revising the heading;
■ b. Revising the introductory text in paragraph (a); and
■ c. Adding the table heading ''Table 1 to Paragraph (a)''.

The revisions and addition read as follows:

§ 180.395 Hydramethylnon (pyrimidinone); tolerances for residues.

(a) *General.* Tolerances are established for residues of hydramethylnon, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in Table 1 is to be determined by measuring only hydramethylnon, (tetrahydro-5,5-dimethyl-2(1H)-pyrimidinone(3-(4-(trifluoromethyl)phenyl)-1-(2-(4-(trifluoromethyl)phenyl)ethenyl)-2-propenylidene) hydrazone), in or on the commodity:

Table 1 to Paragraph (a)

* * * * *

■ 9. Revise § 180.426 to read as follows:

§ 180.426 Imazaquin 2-[4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinoline carboxylic acid; tolerance for residues.

(a) *General.* Tolerances are established for the combined residues of the herbicide imazaquin, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinoline carboxylic acid, including its metabolites and degradates in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only imazaquin.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Soybean, seed	0.05

(b) [Reserved]

■ 10. Amend § 180.440, by:

■ a. Revising introductory text in paragraph (a); and

■ b. Adding the table heading ''Table 1 to Paragraph (a)''.

The revisions and addition read as follows:

§ 180.440 Tefluthrin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide tefluthrin, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only the sum of tefluthrin [(2,3,5,6-tetrafluoro-4-methylphenyl)methyl (1*R*,3*R*)-*rel*-3-[(1*Z*)-2-chloro-3,3,3-trifluoro-1-propen-1-yl]-2,2-dimethylcyclopropanecarboxylate] and its metabolite (*Z*)-(±)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethyl-cyclopropanecarboxylic acid, calculated as the stoichiometric equivalent of tefluthrin, in or on the commodity.

Table 1 to Paragraph (a)

* * * * *

■ 11. Amend § 180.445, by:

■ a. Revising the heading;.

■ b. Revising the introductory text in paragraph (a); and

■ c. Adding the table heading ''Table 1 to Paragraph (a)''.

The revisions and addition read as follows:

§ 180.445 Bensulfuron-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of bensulfuron-methyl, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only bensulfuron-methyl [methyl 2-[[[[[(4,6-dimethoxy-2-pyrimidinyl)amino]*carbonyl]amino] sulfonyl]methyl]benzoate].

Table 1 to Paragraph (a)

* * * * *

■ 12. In § 180.466 amend the table in paragraph (a) by:

■ a. Adding the table heading ''Table 1 to Paragraph (a)''; and

■ a. Removing the entries for ''*Cherry, sweet*''; and ''*Cherry, tart*''.

■ b. Adding in alphabetical order the entry ''*Cherry, subgroup 12–12A*''.

■ c. Removing the entries for ''*Fruit, stone, crop group 12, except cherry*''; and ''*Nut, tree, crop group 14*''.

■ d. Adding in alphabetical order the entries for ''*Nut, tree, crop group 14–12*''; ''*Peach, subgroup 12–12B*''; and ''*Plum subgroup 12–12C*''.

The additions read as follows:

§ 180.466 Fenpropathrin; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Cherry, subgroup 12–12A	5
* * * * *	
Nut, tree, crop group 14–12	0.15
* * * * *	
Peach, subgroup 12–12B	1.4
* * * * *	
Plum subgroup 12–12C	1.4
* * * * *	

* * * * *

■ 13. Amend § 180.487, by:

■ a. Revising the heading.

■ b. Revising the introductory text in paragraph (a); and

■ c. Adding the table heading ''Table 1 to Paragraph (a)''.

The revisions and addition read as follows:

§ 180.487 Pyrithiobac-sodium; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide pyrithiobac-sodium, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only pyrithiobac-sodium (sodium 2-chloro-6-[(4,6-dimethoxy-2-pyrimidinyl)thio]benzoate), in or on the following commodities:

Table 1 to Paragraph (a)

* * * * *

■ 14. Amend § 180.533, by:

■ a. Revising the introductory text in paragraph (a)(1);

■ b. Adding the table heading ''Table 1 to Paragraph (a)'';

■ c. Revising the introductory text in paragraph (a)(2);

■ d. Revising the introductory text in paragraph (c), and

■ e. Adding the table heading ''Table 2 to Paragraph (c)''.

The revisions and additions read as follows:

§ 180.533 Esfenvalerate; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the insecticide esfenvalerate, including its metabolites and degradates in or on food commodities in table 1 to this paragraph (a)(1). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only the sum of esfenvalerate, (S)-cyano(3-phenoxyphenyl)methyl-(S)-4-chloro-α-(1-methylethyl) benzeneacetate, its non-racemic isomer, (*R*)-cyano(3-phenoxyphenyl)methyl-(R)-4-chloro-α-(1-methylethyl) benzeneacetate and its diastereomers (S)-cyano (3-phenoxyphenyl)methyl-(R)-4-chloro-α-(1-methylethyl) benzeneacetate and (R)-cyano (3-phenoxyphenyl)methyl-(S)-4-chloro-α-(1-methylethyl) benzeneacetate, expressed as the stoichiometric equivalent of esfenvalerate in or on food commodities as follows:

Table 1 to Paragraph (a)(1)

* * * * *

(2) A tolerance of 0.05 ppm on raw agricultural food commodities (other than those food commodities already covered by a higher tolerance as a result of use on growing crops) is established for the combined residues of the insecticide esfenvalerate. Compliance with the tolerance levels specified in table1 is to be determined by measuring only the sum of esfenvalerate, (*S*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-α-(1-methylethyl)benzeneacetate, its non-racemic isomer, (*R*)-cyano(3-phenoxyphenyl)methyl-(*R*)-4-chloro-α-(1-methylethyl)benzeneacetate and its diastereomers (*S*)-cyano(3-phenoxyphenyl)methyl-(*R*)-4-chloro-α-(1-methylethyl)benzeneacetate and (*R*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-α-(1-methylethyl)benzeneacetate expressed as the stoichiometric equivalent of esfenvalerate, as a result of the use of esfenvalerate in food-handling establishments.

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for the combined residues of the insecticide esfenvalerate. Compliance with the tolerance levels specified in table 2 is to be determined by measuring only the sum of esfenvalerate, (*S*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-α-(1-methylethyl)benzeneacetate, its non-racemic isomer, (*R*)-cyano(3-

phenoxyphenyl)methyl-(*R*)-4-chloro-α-(1-methylethyl)benzeneacetate and its diastereomers (*S*)-cyano(3-phenoxyphenyl)methyl-(*R*)-4-chloro-α-(1-methylethyl)benzeneacetate and (*R*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-α-(1-methylethyl)benzeneacetate, expressed as the stoichiometric equivalent of esfenvalerate in or on food commodities as follows:

Table 2 to Paragraph (c)

* * * * *

■ 15. Amend § 180.543, by:
■ a. Revising the introductory text in paragraph (a); and
■ b. Adding the table heading ''Table 1 to Paragraph (a)''.

The revisions and addition read as follows:

§ 180.543 Diclosulam; tolerances for residues.

(a) *General.* Tolerances are established for residues of diclosulam, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only diclosulam [*N*-(2,6-dichlorophenyl)-5-ethoxy-7-fluoro[l,2,4] triazolo[l,5-c]pyrimidine-2-sulfonamide] in or on the following commodities:

Table 1 to Paragraph (a)

* * * * *

■ 16. Amend § 180.577, by:
■ a. Adding the table heading ''Table 1 to Paragraph (a)''.
■ b. Removing the entry in paragraph (a) for ''*Fish, freshwater*''; and
■ c. Adding the entry for ''*Fish, freshwater, finfish*''.

The additions read as follows:

§ 180.577 Bispyribac-sodium; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Fish, freshwater, finfish	0.01
* * * * *	

* * * * *

■ 17. Amend § 180.588, by:
■ a. Adding the table heading ''Table 1 to Paragraph (a)'';
■ b. Removing the entry in paragraph (a) for ''*Fruit, stone, group 12*''; and
■ c. Adding the entry ''*Fruit, stone, group 12–12*''.

The additions read as follows:

§ 180.588 Quinoxyfen; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Fruit, stone, group 12–12	0.7
* * * * *	

* * * * *

■ 18. Amend § 180.643, by:
■ a. Revising the heading.
■ b. Revising the introductory text in paragraph (a);
■ c. Adding the table heading ''Table 1 to Paragraph (a)'';
■ d. Removing the entry for ''Vegetable, fruiting, group 8''; and
■ e. Adding the entry for ''Vegetable, fruiting, group 8–10''.

The revisions and additions read as follows:

§ 180.643 Uniconazole-P; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide/plant growth regulator uniconazole-P, including its metabolites and degradates, in or on the commodities listed in Table 1. Compliance with the tolerance levels specified in table 1 is to be determined by measuring only the sum of uniconazole-P [(α*S*,β*E*)-β-[(4-chlorophenyl)methylene]-α-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol], and its R-enantiomer and Z-isomer.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Vegetable, fruiting, group 8–10	0.01

* * * * *

[FR Doc. 2022–16165 Filed 8–1–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220722–0161]

RIN 0648–BL40

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Fishing Year 2022 Recreational Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rulemaking proposes fishing year 2022 recreational management measures for Gulf of Maine cod and haddock. The measures are intended to ensure the recreational fishery achieves, but does not exceed, fishing year 2022 catch limits.

DATES: Comments must be received on or before August 17, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0068, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2022–0068 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

To review **Federal Register** documents referenced in this proposed rule, you can visit: *https://www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan.*

FOR FURTHER INFORMATION CONTACT: Kyle Molton, Fishery Management Specialist, (978) 281–9236.

SUPPLEMENTARY INFORMATION:

Background

The recreational fishery for Gulf of Maine (GOM) cod and GOM haddock is managed under the Northeast Multispecies Fishery Management Plan (FMP). The multispecies fishing year starts on May 1 and runs through April 30 of the following calendar year. The FMP sets sub-annual catch limits (sub-ACL) for the recreational fishery each fishing year for both stocks. These sub-ACLs are a fixed proportion of the overall catch limit for each stock. The FMP also includes proactive

recreational accountability measures (AM) to prevent the recreational sub-ACLs from being exceeded and reactive AMs to correct the cause or mitigate the effects of an overage if one occurs.

The proactive AM provision in the FMP provides a process for the Regional Administrator, in consultation with the New England Fishery Management Council, to develop recreational management measures for the upcoming fishing year to ensure that the recreational sub-ACL is achieved, but not exceeded. The provisions governing this action can be found in the FMP's implementing regulations at 50 CFR 648.89(f)(3).

The 2022 recreational sub-ACL proposed in Framework Adjustment 63 (87 FR 23482; April 20, 2022) for GOM cod is 192 mt and the 2022 recreational sub-ACL for GOM haddock is 3,634 mt, as set by Framework Adjustment 59 (85 FR 45794; July 30, 2020).

Using the proposed GOM cod and GOM haddock 2022 sub-ACLs and a peer-reviewed bioeconomic model developed by NMFS's Northeast Fisheries Science Center that predicts fishing behavior under different management measures, we estimated 2022 recreational GOM cod and haddock removals under several combinations of minimum sizes, slot limits, possession limits, and closed seasons. The bioeconomic model considers measures for the two stocks in conjunction because cod are commonly caught while recreational participants are targeting haddock, linking the catch and effort for each stock to the other. The bioeconomic model results suggest that measures for both GOM cod and haddock can be liberalized somewhat without the 2022 recreational fishery's sub-ACLs being exceeded. With any given model, however, there exists some level of uncertainty in the accuracy of model predictions. As in past years, we used preliminary data from the Marine Recreational Information Program (MRIP) for this fishing year. Incorporation of new waves, or data updates, may result in changes in model estimates. MRIP data can be uncertain and highly variable from year to year.

For each of the sets of management measures, 100 simulations of the bioeconomic model were conducted, and the number of simulations which yielded recreational mortality estimates under the sub-ACL was used as an estimate of the probability that the simulated set of measures will not result in an overage of the sub-ACL. All sets of measures analyzed resulted in model-estimated removals under the sub-ACL greater than 50 percent of the time. The results of the bioeconomic model runs were shared with the Council and its Recreational Advisory Panel and Groundfish Committee for review.

At its February 2022 meeting, the Council recommended a set of measures that would increase the minimum size for GOM cod from 21 inches (53.3 cm) to 22 inches (55.9 cm) and include no maximum size. The Council discussed options for GOM cod slot limits that would match those for Georges Bank cod included in Framework Adjustment 63 (proposed rule, 87 FR 23482; April 20, 2022). However, the Council did not recommend a maximum size for GOM cod because model runs suggested it was not necessary to adequately constrain catch. The minimum size requirements apply to all private recreational anglers and for-hire vessels not fishing under a groundfish day-at-sea or sector operations plan. The Council also recommended synchronizing the open season for GOM cod for both for-hire and private recreational modes, with a spring open season from April 1–14, and a fall open season from September 1–October 7. The Council recommended increasing the GOM haddock possession limit from 15 fish to 20. The bag limit for GOM cod during open season would remain 1 fish per angler. Based on model runs, these measures are expected to result in catch of cod and haddock that would not exceed the sub-ACL for either stock (Table 1).

TABLE 1—SUMMARY OF THE STATUS QUO AND PROPOSED MEASURES, WITH MODEL ESTIMATES OF CATCH AND THE PROBABILITY OF CATCH REMAINING BELOW THE SUB-ACLS

	Haddock					Cod					
	Possession limit	Minimum size (inches)	Open season	Predicted catch (mt)	% Simulations under haddock sub-ACL	Possession limit	Minimum size (inches)	Open season (for hire)	Open season (private)	Predicted catch (mt)	% Simulations under cod sub-ACL
Status Quo Measures ...	15	17	May 1–February 28, April 1–30.	875	100	1	21	September 8–October 7, April 1–14.	September 15–30, April 1–14.	116	100
Proposed Measures	20		May 1–February 28, April 15–30.	1,020	100		22	September 1–October 7, April 1–14.	September 1–October 7, April 1–14.	146	84

We are proposing to implement the Council's recommended recreational measures for the remainder of fishing year 2022. These measures are expected to adequately constrain total catch to prevent an overage of both the GOM cod and GOM haddock recreational sub-ACL's, while increasing recreational fishing opportunities and harvest of the GOM haddock stock by the recreational and for-hire fleets. Synchronizing the open seasons for GOM cod is also prudent, because the longer for-hire season under status quo measures was previously established to offset the impacts of social distancing restrictions on for-hire businesses, which are no longer in place. Synchronized measures should also improve regulatory compliance by minimizing confusion among the angling public.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has made a determination that this proposed rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Assistant Administrator for Fisheries finds good cause to have a 15-day comment period in accordance with the Administrative Procedures Act and as provided for in the Magnuson-Stevens Act. This rulemaking proposes more liberal management measures for GOM haddock and GOM cod compared to status quo recreational management measures. The Northeast multispecies fishing year begins on May 1 of each year and continues through April 30 of the following calendar year. Further delaying final action on these proposed measures to allow for a longer comment period than the minimum 15-day amount allowed for by the Magnuson-Stevens Act would diminish the value to the public of increasing the haddock possession limit and the more liberal

measures. Additional time for comment may unnecessarily negatively affect business planning for the for-hire segment of the fishery. This rulemaking is straightforward and proposes changes that were discussed during a series of public meetings. These are yearly measures that are familiar to and anticipated by fishery participants. Affected and other interested parties participated in the Council's process to develop this action that provides for extensive opportunity to comment about the measures and their impacts.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

For Regulatory Flexibility Act purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts less than $11 million for all its affiliated operations worldwide. A small for-hire recreational fishing business is defined as a firm with receipts of up to $7.5 million. For purposes of this assessment, business entities have been classified into the SBA-defined categories based on which activity produced the highest percentage of average annual gross revenues from 2018–2020, the most recent 3-year period for which data are available. Ownership data identify all individuals who own fishing vessels. Using this information, vessels can be grouped together according to common owners. The resulting groupings were treated as a fishing business for purposes of this analysis. Revenues summed across all vessels in a group and the activities that generate those revenues form the basis for determining whether the entity is a large or small business.

As the for-hire owner is permitted and required to comply with these measures and can be held liable under the law for violations of the proposed regulations, for-hire business entities are considered directly affected in this analysis. Private anglers are not considered ''entities'' under the RFA.

For-hire fishing businesses are required to obtain a Federal charter/party multispecies fishing permit in order to carry passengers to catch cod or haddock. Limited access permit holders may also take passengers for-hire; however, most limited access permit holders do not take passengers for hire. Thus, for the purposes of this action, the affected businesses entities of concern are businesses that hold Federal multispecies for-hire fishing permits. While all business entities that hold for-hire permits could be affected by changes in recreational fishing restrictions, not all business that hold for-hire permits actively participate in a given year. Those who actively participate, *i.e.,* land fish, would be the group of business entities that are affected by the regulations. Latent fishing power (in the form of unfished permits) has the potential to alter the impacts on a fishery, but it is not possible to predict how many of these latent business entities will participate in this fishery in fishing year 2022. The Northeast Federal landings database (*i.e.,* vessel trip report data) indicates that a total of 750 vessels held a multispecies for-hire fishing permit in 2020 (the most recent full year of available data). Of the 750 for-hire permitted vessels, only 190 actively participated in the for-hire Atlantic cod and haddock fishery in fishing year 2020 (*i.e.,* reported catch of cod or haddock).

Using vessel ownership information and vessel trip report data, it was determined that the 190 for-hire vessels actively participating in the fishery are owned by 179 unique fishing business entities. The vast majority of the 179 fishing businesses were solely engaged in for-hire fishing, but some also earned revenue from shellfish and/or finfish fishing. The highest percentage of annual gross revenues for all but 16 of the fishing businesses was from for-hire fishing.

Average annual gross revenue estimates calculated from the most recent three years (2018–2020) indicate that none of the 179 fishing business entities had annual receipts of more than $3.8 million from all their fishing activities (for-hire, shellfish, and finfish). Therefore, all the affected fishing business entities are considered ''small'' by the SBA size standards and thus this action will not disproportionately affect small versus large for-hire business entities.

The measures proposed in this action are intended to increase opportunities for anglers to harvest GOM haddock and expand the season for GOM cod. These measures would allow party/charter operators greater opportunities to market trips to potential customers, which is expected to have a positive economic impact. As a result, we expect the impact of these measures on impacted entities to be positive. Because the changes to the seasons and bag limits are relatively minor, the positive effect is not expected to be substantial. For these reasons, NMFS has determined that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 22, 2022.

Kimberly Damon-Randall,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.89, revise Table 1 to Paragraph (b)(1), Table 2 to Paragraph (c)(1)(i), and Table 3 to Paragraph (c)(2), to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (b)(1)

Species	Minimum size		Maximum size	
	Inches	cm	Inches	cm
Cod:				
Inside GOM Regulated Mesh Area [1]	22	55.9	N/A	N/A.
Outside GOM Regulated Mesh Area [1]	22	55.9	28	71.1
Haddock:				
Inside GOM Regulated Mesh Area [1]	17	43.2	N/A	N/A.
Outside GOM Regulated Mesh Area [1]	18	45.7	N/A	N/A.
Pollock	19	48.3	N/A	N/A.
Witch Flounder (gray sole)	14	35.6	N/A	N/A.
Yellowtail Flounder	13	33.0	N/A	N/A.
American Plaice (dab)	14	35.6	N/A	N/A.
Atlantic Halibut	41	104.1	N/A	N/A.
Winter Flounder (black back)	12	30.5	N/A	N/A.
Redfish	9	22.9	N/A	N/A.

[1] GOM Regulated Mesh Area specified in § 648.80(a).

* * * * *

(c) * * *

(1) * * *

(i) * * *

TABLE 2 TO PARAGRAPH (c)(1)(i)

Stock	Open season	Possession limit	Closed season
GB Cod	August 1–April 30	5	May 1–July 31.
GOM Cod	September 1–October 7, April 1–14	1	April 15–August 31, October 8–March 31.
GB Haddock	All Year	Unlimited	N/A.
GOM Haddock	May 1–February 28 (or 29), April 1–30	20	March 1–March 31.
GB Yellowtail Flounder	All Year	Unlimited	N/A.
SNE/MA Yellowtail Flounder	All Year	Unlimited	N/A.
CC/GOM Yellowtail Flounder	All Year	Unlimited	N/A.
American Plaice	All Year	Unlimited	N/A.
Witch Flounder	All Year	Unlimited	N/A.
GB Winter Flounder	All Year	Unlimited	N/A.
GOM Winter Flounder	All Year	Unlimited	N/A.
SNE/MA Winter Flounder	All Year	Unlimited	N/A.
Redfish	All Year	Unlimited	N/A.
White Hake	All Year	Unlimited	N/A.
Pollock	All Year	Unlimited	N/A.
N Windowpane Flounder	CLOSED	No retention	All Year.
S Windowpane Flounder	CLOSED	No retention	All Year.
Ocean Pout	CLOSED	No retention	All Year.
Atlantic Halibut	See paragraph (c)(3)		
Atlantic Wolffish	CLOSED	No retention	All Year.

* * * * *

(2) * * *

TABLE 3 TO PARAGRAPH (c)(2)

Stock	Open season	Possession limit	Closed season
GB Cod	August 1–April 30	5	May 1–July 31.
GOM Cod	September 1–October 7, April 1–14	1	April 15–August 31, October 8–March 31.
GB Haddock	All Year	Unlimited	N/A.
GOM Haddock	May 1–February 28 (or 29), April 1–30	20	March 1–March 31.
GB Yellowtail Flounder	All Year	Unlimited	N/A.
SNE/MA Yellowtail Flounder	All Year	Unlimited	N/A.
CC/GOM Yellowtail Flounder	All Year	Unlimited	N/A.
American Plaice	All Year	Unlimited	N/A.
Witch Flounder	All Year	Unlimited	N/A.
GB Winter Flounder	All Year	Unlimited	N/A.
GOM Winter Flounder	All Year	Unlimited	N/A.
SNE/MA Winter Flounder	All Year	Unlimited	N/A.

TABLE 3 TO PARAGRAPH (c)(2)—Continued

Stock	Open season	Possession limit	Closed season
Redfish	All Year	Unlimited	N/A.
White Hake	All Year	Unlimited	N/A.
Pollock	All Year	Unlimited	N/A.
N Windowpane Flounder	CLOSED	No retention	All Year.
S Windowpane Flounder	CLOSED	No retention	All Year.
Ocean Pout	CLOSED	No retention	All Year.
Atlantic Halibut	See Paragraph (c)(3)		
Atlantic Wolffish	CLOSED	No retention	All Year.

* * * * *

[FR Doc. 2022–16137 Filed 8–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220726–0164; RTID 0648–XB952]

Fisheries of the Northeastern United States; Mid-Atlantic Blueline Tilefish Fishery; 2022 and Projected 2023 and 2024 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2022 blueline tilefish fishery north of the North Carolina/Virginia border and projected specifications for 2023 and 2024. The proposed action is necessary to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan. It is also intended to inform the public of these proposed specifications for the 2022 fishing year and projected specifications for 2023 and 2024.

DATES: Comments must be received on August 17, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0071, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0071 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the Supplemental Information Report (SIR) prepared for this action, and other supporting documents for these proposed specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. These documents are also accessible via the internet at *http://www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

SUPPLEMENTARY INFORMATION:

Background

The blueline tilefish fishery north of the North Carolina/Virginia border is managed by the Mid-Atlantic Fishery Management Council under the Tilefish Fishery Management Plan (FMP), which outlines the Council's process for establishing annual specifications. Blueline tilefish south of the North Carolina/Virginia border are managed by the South Atlantic Fishery Management Council under the Snapper Grouper FMP.

The Tilefish FMP requires the Mid-Atlantic Council to recommend acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and other management measures for the commercial and recreational sectors of the fishery, for up to three years at a time. The Council's Scientific and Statistical Committee (SSC) provides an ABC recommendation to the Council to derive these catch limits. The Council makes recommendations to NMFS that cannot exceed the recommendation of its SSC. The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. We are responsible for reviewing these recommendations to ensure that they achieve the FMP objectives and are consistent with all applicable laws. Following review, NMFS publishes the final specifications in the **Federal Register**.

In 2017, a benchmark assessment of the blueline tilefish population along the entire East Coast was conducted through the Southeast Data, Assessment, and Review process (SEDAR 50). Due to data limitations, the coast-wide population was modeled separately north and south of Cape Hatteras, NC. To assist in developing a recommendation for acceptable biological catch (ABC), the Mid- and South Atlantic Councils' Scientific and Statistical Committees (SSC), as well as staff from the Northeast and Southeast Fisheries Science Centers, formed a joint subcommittee to examine available information for the region north of Cape Hatteras, and to develop separate catch advice for each Councils' jurisdiction.

At its March 2018 meeting, the Mid-Atlantic SSC reviewed the output from the SEDAR 50 benchmark stock assessment as well as additional work using the Data-Limited Methods Toolkit (DLMTool) and derived an ABC recommendation using the Mid-Atlantic Council's risk policy. The resulting ABC was 179,500 lb (81.4 mt) for 2019–2021 for the region north of Cape Hatteras. The SSC then followed the recommendation of the Joint Mid- and South Atlantic Blueline Tilefish

Subcommittee to distribute 56 percent of that ABC to the Mid-Atlantic Council (north of the VA/NC border) and 44 percent to the South Atlantic Council. This percentage breakdown is based on the catch distribution from the 2017 Pilot Blueline Tilefish Longline Survey.

At its March 2021 meeting, the Mid-Atlantic SSC used the 2018 approach to recommend a status quo ABC of 100,520 lb (45.6 mt) for the 2022–2024 fishing years for the region north of Cape Hatteras. The SSC made this recommendation under consideration of recent fishery performance, lack of an updated assessment, the need to synchronize the Mid-Atlantic specifications cycle with a SEDAR assessment scheduled for 2024/2025, and the high degree of uncertainty within the recreational sector. A summary of the Council's recommended specifications is shown below in Table 1.

Proposed Specifications

The Council's recommendations are consistent with the SSC's recommended ABC.

TABLE 1—PROPOSED AND PROJECTED BLUELINE TILEFISH SPECIFICATIONS

	Proposed 2022	Projected 2023–2024
ABC—North of NC/VA line	100,520 lb (45.6 mt)	100,520 lb (45.6 mt).
Recreational ACL/ACT	73,380 (33.3 mt)	73,380 (33.3 mt).
Commercial ACL/ACT	27,140 lb (12.3 mt)	27,140 lb (12.3 mt).
Recreational TAL	71,912 lb (32.6 mt)	71,912 lb (32.6 mt).
Commercial TAL	26,869 lb (12.2 mt)	26,869 lb (12.2 mt).

There were no other recommended changes to commercial or recreational management measures. The 2022 fishing year began on January 1, 2022, and the fishery is operating under a rollover provision.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

For Regulatory Flexibility Act purposes, NMFS has established a size standard for small businesses, including their affiliated operations, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as small if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11.0 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the three years from 2018 through 2020. Data was used from 2018 to 2020, not 2021, because 2020 is the most recent full year of ownership data available. The Small Business Administration has established size standards for all other major industry sectors in the U.S., including defining for-hire fishing firms (NAICS code 487210) as small when their receipts are equal to or less than $8 million.

The measures proposed in this action apply to vessels that hold a federal permit for blueline tilefish. Some entities own multiple vessels with tilefish permits. The most recent ownership data indicates that 1,096 business entities hold at least one permit that the proposed action potentially regulations. All 1,096 business entities identified could be directly regulated by this proposed action. Of these, 1,096 entities are commercial entities. Based on 2018–2020 revenues, 1,087 of the commercial entities are classified as small businesses and 9 are classified as large businesses. All 222 for-hire entities are categorized as small businesses.

The specifications are not proposed to change, so there should be no negative impacts on these small businesses compared to recent operations, and this action will not have a significant economic impact on a substantial number of small entities.

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

Dated: July 28, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2022–16511 Filed 8–1–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 147
Tuesday, August 2, 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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 1, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Agricultural Trade Promotion Program.

OMB Control Number: 0551–0049.

Summary of Collection: The authority for the Agricultural Trade Promotion Program (ATP) is contained in the authority derived from the Commodity Credit Corporation (CCC) Charter Act, 15 U.S.C. 714c(f)—Specific Powers of Corporation. Program regulations were necessary to establish this new CCC program. The ATP reimburses trade mitigation activities undertaken by nonprofit U.S. agricultural trade organizations, nonprofit state regional trade groups (SRTGs), U.S. agricultural cooperatives, and state agencies that conduct approved foreign market development activities and suffered damages as a result of tariffs imposed on U.S. agricultural products in 2018/2019. The program is administered by personnel of the Foreign Agricultural Service (FAS).

Need and Use of the Information: The information collected is used by FAS marketing specialists and program managers for the allocation of funds, program management, planning, and evaluation. The integrity of the program hinges on information received from or maintained by the industry.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 63.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 55,029.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–16532 Filed 8–1–22; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–22–CF–0004]

Notice of Request for Revision of a Currently Approved Information Collection; Comments Requested

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed Collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Department of Agriculture (USDA) Rural Housing Service (RHS) announces its intention to request a revision of a currently approved collection and invites comments on this information collection.

DATES: Comments on this notice must be received by October 3, 2022.

FOR FURTHER INFORMATION CONTACT: Lynn Gilbert, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Washington, DC 20250–1522. Telephone: (202) 690–2682. Email *lynn.gilbert@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for revision.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. RHS–22–CF–0004. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents''

Tab. Here you may view comments that have been submitted as well as submit a comment. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link at the bottom. Comments on this information collection must be received by October 3, 2022.

Title: 7 CFR 3570 Community Facilities Technical Assistance and Training Grant Program.

OMB Control Number: 0575–0198.

Type of Request: Revision of a currently approved information collection.

Abstract: The Community Facilities Technical Assistance and Training (TAT) is a competitive grant program which the Rural Housing Service (RHS) administers. Section 306 of the Consolidated Farm and Rural Development Act (CONACT), 7 U.S.C. 1926, was amended by Section 6006 of the Agriculture Act of 2014 (Pub. L. 113–79) to establish the Community Facilities Technical Assistance and Training Grant. Section 6006 authorized grants be made to public bodies and private nonprofit corporations (including Indian Tribes) that will serve rural areas for the purpose of enabling the grantees to provide to associations technical assistance and training with respect to essential community facilities authorized under Section 306(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)). Grants can be made for 100 percent of the cost of assistance.

Need and Use of the Information: Eligible entities receive TAT grants to help small rural communities or areas identify and solve problems relating to essential community facilities. The grant recipients may provide technical assistance to public bodies and private nonprofit corporations. Applicants applying for TAT grants must submit an application, which includes an application form, narrative proposal, various other forms, certifications, and supplemental information. The Rural Development State Offices and the RHS National Office staff will use the information collected to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. Failure to collect proper information could result in improper determinations of eligibility or improper use of funds.

The regulations contain requirements that involve information collection activities, including documentation of assistance, indirect cost agreements, statement of compliance, evidence of legal authority, scope of work, budgets, project plan, appraisal reports, audit reports, selection priorities narrative, appealing denial of grant application, consultations, small business plan evidence, experience documentation, financial information, funding source documentation, performance reports and financial assistance plans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Not-for-Profit Institutions, Public Bodies and Tribal Organizations.

Estimated Number of Respondents: 42.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,733.

Copies of this information collection can be obtained from Lynn Gilbert, Innovation Center, at (202) 690–2682, Email: *lynn.gilbert@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022–16523 Filed 8–1–22; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 03–4A008]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended export trade certificate.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA''), issued an amended Export Trade Certificate of Review to California Pistachio Export Council, LLC (''CPEC''), application no. 03–4A008, on July 22, 2022.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

1. CPEC amended its Certificate as follows: added the following entity as a Member of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

a. Meridian Nut Growers, LLC

2. The following entities have been removed as Members of the Certificate:

a. Arizona Nut Company, LLC

b. ARO Pistachios, Inc.

c. Horizon Growers Cooperative, Inc.

d. Nichols Pistachio

List of Members, as amended:

1. Keenan Farms, Inc.
2. Meridian Nut Growers, LLC
3. Monarch Nut Company
4. Primex Farms, LLC
5. Setton Pistachio of Terra Bella, Inc.
6. Zymex Industries, Inc.

The effective date of the amended certificate is April 22, 2022, the date on which CPEC's application to amend was deemed submitted.

Dated: July 28, 2022.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2022–16529 Filed 8–1–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain pasta (pasta) from Italy was sold in the United States at less than normal value (NV) during the period of review (POR), July 1, 2020, through June 30, 2021. Further, Commerce is rescinding this review for fifteen of the companies for which this review was initiated. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 2, 2022.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1468.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, Commerce published the antidumping duty order on pasta from Italy in the **Federal Register**.[1] On July 1, 2021, Commerce published a notice of opportunity to request an administrative review of the *Order*.[2] On September 7, 2021, based on timely requests for an administrative review, Commerce initiated an administrative review of the *Order* covering the following sixteen companies: Aldino S.R.L., Armonie D'Italia srl., Pastificio Di Martino Gaetano e Flli S.p.A. (Di Martino), F. Divella S.p.A., Falco Molino e Pastificio srl., La Molisana S.p.A., Pasta Casiglioni, Pastificio C.A.M.S. Srl., Pastificio Della Forma S.R.L., Pastificio Favellato srl., Pastificio Fratelli De Luca S.R.L., Liguori Pastificio dal 1820 S.p.A., Pastificio Mediterranea S.R.L., Pastificio Tamma S.R.L., Rummo S.p.A., and Valdigrano di Flavio Pagani S.R.L.[3] Because the review requests for all companies except for Di Martino were timely withdrawn, on December 13, 2022, we selected Di Martino for individual examination as the sole mandatory respondent.[4] Further, we have preliminarily collapsed Di Martino and its affiliate Pastificio dei Campi (Dei Campi) and have treated these two companies as a single entity.[5]

On March 3, 2022, Commerce extended the deadline for these preliminary results to July 29, 2022.[6] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[7] The Preliminary Decision Memorandum is a public document and is on file electronically via the 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 Order

The products covered by this order are certain pasta from Italy. For a full description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price were calculated in accordance with sections 772(a) and (b) of the Act, respectively. NV was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. Because all requests for administrative review of the 15 companies listed in Appendix II were timely withdrawn, and no other party requested a review of these companies, Commerce is rescinding this review, in part, with respect to these companies, in accordance with 19 CFR 351.213(d)(1).

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margin exists for the POR:

Producer or exporter	Weighted-average dumping margin (percent)
Pastificio Di Martino Gaetano e Flli S.p.A. and Pastificio dei Campi S.p.A.[8]	6.60

Disclosure

Commerce intends to disclose under Administrative Protective Order the calculations performed in connection with these preliminary results to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[9] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue;

[1] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 38547 (July 24, 1996) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 86 FR 35065 (July 1, 2021).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 50034 (September 7, 2021).

[4] *See* Memorandum, ''2020–2021 Antidumping Duty Administrative Review of Certain Pasta from Italy: Selection of New Respondent,'' dated December 13, 2021

[5] *See* Memorandum, ''Preliminary Affiliation and Collapsing Memorandum for Pastificio Di Martino and Pastificio Dei Campi,'' dated concurrently with this notice.

[6] *See* Memorandum, ''Certain Pasta from Italy: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 3, 2022.

[7] *See* Memorandum, ''Certain Pasta from Italy: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] Commerce preliminarily determines that Di Martino and Dei Campi are a single entity. *See* Preliminary Decision Memorandum.

[9] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (collectively, *Temporary Rule*).

(2) a brief summary of the argument; and (3) a table of authorities.[10]

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, filed electronically via ACCESS, within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location hearing two days before the scheduled date.

All submissions must be filed electronically using ACCESS.[11] An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time on the date that the submission is due. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[12]

Final Results of Review

Unless extended, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment of Antidumping Duties

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP for the rescinded companies no earlier than 35 days after the date of publication of the preliminary results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

If the weighted-average dumping margin for Di Martino/Dei Campi is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). If Di Martino/Dei Campi's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [13] For entries of subject merchandise during the POR produced by Di Martino/Dei Campi for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.[14]

For the companies for which we have rescinded this review, Commerce intends to instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(1)(i).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Di Martino/Dei Campi will be equal to the weighted-average dumping margin established in the final results of this administrative review (unless that rate is *de minimis* where the cash deposit rate will be zero percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 15.45 percent, the all-others rate established in the less-than-fair-value investigation as modified by the section 129 determination.[15]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: July 25, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Affiliation and Collapsing
V. Partial Rescission of Review

[10] *See* 19 CFR 351.309(c)(2) and (d)(2); *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See generally* 19 CFR 351.303.

[12] *See Temporary Rule.*

[13] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[14] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261, 25263 (May 4, 2007).

VI. Discussion of the Methodology
VII. Recommendation

Appendix II

Companies Rescinded From Review

1. Aldino S.r.l.
2. Armonie D'Italia srl
3. F. Divella S.p.A.
4. Falco Molino e Pastificio srl
5. La Molisana SpA
6. Pasta Castiglioni
7. Pastificio C.A.M.S. Srl
8. Pastificio Della Forma S.r.l.
9. Pastificio Favellato srl
10. Pastificio Fratelli De Luca S.r.l.
11. Pastificio Liguori dal 1870 SpA
12. Pastificio Mediterranea S.R.L.
13. Pastificio Tamma S.r.l.
14. Rummo S.p.A.
15. Valdigrano di Flavio Pagani S.r.L

[FR Doc. 2022–16524 Filed 8–1–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

Opportunity to Request a Review: Not later than the last day of August 2022,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period
Antidumping Duty Proceedings	
CANADA: Utility Scale Wind Towers A–122–867	8/1/21–7/31/22
GERMANY:	
Seamless Line and Pressure Pipe A–428–820	8/1/21–7/31/22
Sodium Nitrite A–428–841	8/1/21–7/31/22
INDIA: Finished Carbon Steel Flanges A–533–871	8/1/21–7/31/22
INDONESIA: Utility Scale Wind Towers A–560–833	8/1/21–7/31/22
ITALY: Finished Carbon Steel Flanges A–475–835	8/1/21–7/31/22
JAPAN:	
Brass Sheet & Strip A–588–704	8/1/21–7/31/22
Tin Mill Products A–588–854	8/1/21–7/31/22
MALAYSIA:	
Polyethylene Retail Carrier Bags A–557–813	8/1/21–7/31/22
Silicon Metal A–557–820	2/1/21–7/31/22
MEXICO:	
Light-Walled Rectangular Pipe and Tube A–201–836	8/1/21–7/31/22
Standard Steel Welded Wire Mesh A–201–853	2/1/21–7/31/22
REPUBLIC OF KOREA:	
Dioctyl Terephthalate A–580–889	8/1/21–7/31/22
Large Power Transformers A–580–867	8/1/21–7/31/22
Light-Walled Rectangular Pipe and Tube A–580–859	8/1/21–7/31/22
Low Melt Polyester Staple Fiber A–580–895	8/1/21–7/31/22
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe A–580–909	2/10/21–7/31/22
Utility Scale Wind Towers A–580–902	8/1/21–7/31/22
ROMANIA: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe A–485–805 (Under 4 ½ Inches)	8/1/21–7/31/22
RUSSIA: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe A–821–826	2/10/21–7/31/22
SPAIN:	
Ripe Olives A–469–817	8/1/21–7/31/22
Utility Scale Wind Towers A–469–823	4/2/21–7/31/22
SOCIALIST REPUBLIC OF VIETNAM:	
Frozen Fish Fillets A–552–801	8/1/21–7/31/22
Seamless Refined Copper Pipe and Tube A–552–831	2/1/21–7/31/22
Utility Scale Wind Towers A–552–825	8/1/21–7/31/22
TAIWAN: Low Melt Polyester Staple Fiber A–583–861	8/1/21–7/31/22
THAILAND:	
Polyethylene Retail Carrier Bags A–549–821	8/1/21–7/31/22
Steel Propane Cylinders A–549–839	8/1/21–7/31/22
THE PEOPLE'S REPUBLIC OF CHINA:	
Cast Iron Soil Pipe Fittings A–570–062	8/1/21–7/31/22
Certain Metal Lockers and Parts Thereof A–570–133	2/11/21–7/31/22
Floor-Standing, Metal-Top Ironing Tables and A–570–888 Parts Thereof	8/1/21–7/31/22
Hydrofluorocarbon Blends A–570–028	8/1/21–7/31/22
Laminated Woven Sacks A–570–916	8/1/21–7/31/22
Light-Walled Rectangular Pipe and Tube A–570–914	8/1/21–7/31/22
Passenger Vehicle and Light Truck Tires A–570–016	8/1/21–7/31/22
Petroleum Wax Candles A–570–504	8/1/21–7/31/22
Polyethylene Retail Carrier Bags A–570–886	8/1/21–7/31/22
Sodium Nitrite A–570–925	8/1/21–7/31/22
Stainless Steel Flanges A–570–064	8/1/21–7/31/22
Steel Nails A–570–909	8/1/21–7/31/22
Steel Propane Cylinders A–570–086	8/1/21–7/31/22
Sulfanilic Acid A–570–815	8/1/21—5/8/22
Tetrahydrofurfuryl Alcohol A–570–887	8/1/21–7/31/22
Tow-Behind Lawn Groomers and Parts Thereof A–570–939	8/1/21–7/31/22
UKRAINE:	
Silicomanganese A–823–805	8/1/21–7/31/22
Seamless Standard, Line, and Pressure Pipe A–823–819	2/10/21–7/31/22
Countervailing Duty Proceedings	
CANADA: Utility Scale Wind Towers C–122–868	1/1/21–12/31/21
INDIA: Finished Carbon Steel Flanges C–533–872	1/1/21–12/31/21
MALAYSIA: Utility Scale Wind Towers C–557–822	3/25/21–12/31/21
MEXICO: Standard Steel Welded Wire Mesh[3] C–201–854	2/3/20—12/31/21
REPUBLIC OF KOREA:	
Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe C–580–910	12/11/20—12/31/21
Stainless Steel Sheet and Strip in Coils C–580–835	1/1/21–12/31/21

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period
RUSSIA: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe C–821–827	12/11/20—12/31/21
SPAIN: Ripe Olives C–469–818	1/1/21–12/31/21
SOCIALIST REPUBLIC OF VIETNAM: Utility Scale Wind Towers C–552–826	1/1/21–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA:	
Cast Iron Soil Pipe Fittings C–570–063	1/1/21–12/31/21
Certain Metal Lockers and Parts Thereof C–570–134	12/14/20—12/31/21
Laminated Woven Sacks C–570–917	1/1/21–12/31/21
Light-Walled Rectangular Pipe and Tube C–570–915	1/1/21–12/31/21
Passenger Vehicle and Light Truck Tires C–570–017	1/1/21–12/31/21
Sodium Nitrite C–570–926	1/1/21–12/31/21
Steel Propane Cylinders C–570–087	1/1/21–12/31/21

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[4]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[5] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[6] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov.*[7] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of August 2022. If Commerce does not receive, by the last day of August 2022, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those

[3] This case has an April anniversary date and was listed in the April opportunity notice. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 19075, 19076 (April 1, 2022). However, the case was listed with the wrong dates for the period of review (POR). Therefore, we are correcting the POR in this notice and providing interested parties with an opportunity to request a review for the correct POR.

[4] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[5] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[6] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[7] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[9] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[10] 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.[11]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [12]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[13] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) New interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) Interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[14] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

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.'' [15] Accordingly, as stated above and 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.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 28, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–16506 Filed 8–1–22; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[10] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[11] *Id.*

[12] This segment has been 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.

[13] *See Procedural Guidance,* 86 FR at 53206.

[14] *See Final Rule,* 86 FR at 52335.

[15] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC228]

Endangered Species; File No. 21516

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

ACTION: Notice: Receipt of application for permit modification and request for public comments.

SUMMARY: NMFS received a request from Virginia Electric and Power Company, D.B.A. Dominion Virginia Power for modification of an incidental take permit, pursuant to the Endangered Species Act for activities associated with the otherwise lawful continued operation and maintenance of the Dominion Chesterfield Power Station in Chesterfield, VA. We are publishing this notice to inform the public that we are considering re-issuing the permit to authorize additional take of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) from the Chesapeake Bay Distinct Population Segment.

DATES: To allow for timely processing of the permit application, we must receive your comments no later than September 1, 2022.

ADDRESSES: The application is available for download and review at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/incidental-take-permits* and at *http://www.regulations.gov.* The application is also available upon request by emailing *Lynn.Lankshear@noaa.gov.*

Submit your comments by including NOAA–NMFS–2022–0077, by either of the following methods.

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov* and enter NOAA–NMFS–2022–0077 in the Search box.

2. Click the ''Comment Now!'' icon, complete the required fields.

3. Enter or attach your comments.

- *Email:* Submit information to *Lynn.Lankshear@noaa.gov.*

Instructions: We may not consider comments if they are sent by any other method, to any other address or individual, or received after the end of the specified period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) confidential business information, or otherwise sensitive or protected information submitted voluntarily by the sender is publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Lynn Lankshear, (978) 282–8473.

SUPPLEMENTARY INFORMATION: We, NMFS, published notice in the **Federal Register** on January 11, 2021 (86 FR 1945), that we had issued an Incidental Take Permit (ITP) (No. 21516) to Virginia Electric and Power Company, D.B.A. Dominion Virginia Power (Dominion) pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of Atlantic sturgeon larvae (*Acipenser oxyrinchus oxyrinchus*) associated with the otherwise lawful operation of the Dominion Chesterfield Power Station (CPS) in Chesterfield, VA. All of the larvae would belong to the Chesapeake Bay Distinct Population Segment of Atlantic sturgeon (Chesapeake Bay DPS) based on where CPS is located. The permit was issued for a duration of 5 years.

In September 2021, Dominion captured three Atlantic sturgeon eggs belonging to the Chesapeake Bay DPS while it was carrying out required entrainment monitoring at CPS. The best available information supports that all free-floating sturgeon eggs are non-viable. However, take of Atlantic sturgeon eggs was not anticipated or authorized in the permit. Therefore, Dominion is requesting modification of their permit to authorize the incidental take of up to 36,985 Atlantic sturgeon eggs belonging to the Chesapeake Bay DPS for the duration of the permit (*i.e.,* through December 30, 2025). Dominion has also requested several changes to the permit conditions based on new information and changes to the cooling water intake operations at CPS.

Background

Section 9 of the Endangered Species Act (ESA) and Federal regulations prohibit the ''take'' of Atlantic sturgeon belonging to the Chesapeake Bay DPS. The ESA defines ''take'' to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing ITPs for threatened and endangered species are found at 50 CFR 222.307.

Dominion is requesting authorization to: (1) Allow for the incidental take of up to 36,985 Atlantic sturgeon eggs from the Chesapeake Bay DPS through December 30, 2025, based on an average take of 12,328 (range 3,066–31,968) eggs per high flow event and assuming three high-flow events over the remainder of the permit; (2) allow entrainment sampling for monitoring to occur at the furthest upriver cooling water intake structure that is operational at CPS at the time monitoring occurs; (3) allow entrainment sampling for monitoring to be paused on the rare occasion that all CPS river circulating pumps are not operating; (4) require visual inspections of the CWIS trash racks only from September through October; (5) require Dominion to annually inspect (*i.e.,* by diver(s)) the intake guards at potentially operating CPS cooling water intake structures to confirm that the guards are intact and capable of excluding any adult Atlantic sturgeon as designed and, as needed based on the dive inspection, make repairs to the guards in advance of the fall Atlantic sturgeon spawning season; (6) require Dominion to clean the trash racks only as operationally necessary or, in the event a unit specific intake guard is found to be in jeopardy of not functioning as designed, require trash raking at the specific intake unit twice per day (once per 12-hour shift during daylight hours) during the fall sturgeon spawning window as identified by the real-time telemetry system; (7) retain the previously identified studies for mitigation but revise those, as needed, to include consideration for the possible seasonal presence of unattached Atlantic sturgeon eggs in the river as it flows past CPS; (8) revise the monitoring and reporting requirements to include Atlantic sturgeon eggs; and (9) correct the current permit condition IV.C.4.g. to reflect the 8-week time period (*i.e.,* September 1 through October 31) that Dominion conducts entrainment monitoring for Atlantic sturgeon at CPS.

Conservation Plan

Dominion is proposing to mitigate for the take of Atlantic sturgeon eggs with the same studies that serve as the mitigation for the take of Atlantic sturgeon larvae, ''Sturgeon Research Movement'' and ''Digital Holography,'' with revisions to the studies as needed.

National Environmental Policy Act

In compliance with NEPA, we analyzed the impacts of the proposed modifications of the ITP and the HCP. We prepared a draft Supplemental Information Report (SIR) that describes why there is no need to supplement the 2020 EA and FONSI. We have made the draft SIR available for public inspection online (see **ADDRESSES**).

We will also evaluate whether modification of the permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis. If the requirements are met, we will issue the modified permit to the applicant.

We will publish a record of our final action in the **Federal Register**.

Authority: This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: July 27, 2022.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–16473 Filed 8–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC215]

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of public meeting and webinar/conference call.

SUMMARY: NMFS will hold a 2-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in September 2022. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

DATES: The AP meeting and webinar will be held on Wednesday, September 7, from 9 a.m. to 5 p.m., and on Thursday, September 8, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. The meeting will also be accessible via WebEx webinar/conference call. Conference call and webinar access information are available at: *https://www.fisheries.noaa.gov/event/september-2022-hms-advisory-panel-meeting.*

Participants accessing the webinar are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

FOR FURTHER INFORMATION CONTACT: Peter Cooper at (301) 427–8503 or *Peter.Cooper@noaa.gov.*

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635.

The Magnuson-Stevens Act requires the establishment of APs and requires NMFS to consult with and consider the comments and views of AP members during the preparation and implementation of FMPs or FMP amendments (16 U.S.C. 1854(g)(1)(A)–(B)). NMFS meets with the HMS AP approximately twice each year to consider potential alternatives for the conservation and management of Atlantic tunas, swordfish, billfish, and shark fisheries, consistent with the Magnuson-Stevens Act.

For this meeting, we anticipate discussing:

- Recreational fishing topics in a roundtable format, with topics including NOAA's Saltwater Recreational Fisheries Policy and the HMS Marine Recreational Information Program Regional Implementation Plan;
- A climate vulnerability analysis for Atlantic HMS; and
- The proposed designation of a new national marine sanctuary in the Hudson Canyon.

We also anticipate inviting other NMFS offices to provide updates, if available, on their activities relevant to HMS fisheries. Additional information on the meetings and a copy of the draft agenda will be posted prior to the meeting at: *https://www.fisheries.noaa.gov/event/september-2022-hms-advisory-panel-meeting.*

In-person access to the meeting by the public may be limited depending on the Centers for Disease Control and Prevention's COVID–19 Community Level for Montgomery County, MD at the time of the meeting. All members of the public will have virtual access to the meeting available via webinar and status updates of in-person public access to the meeting will be available on the NMFS website (see **ADDRESSES**).

Dated: July 27, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–16474 Filed 8–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patent Cooperation Treaty

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: 0651–0021 Patent Cooperation Treaty. The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before October 3, 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 ''0651–0021 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Rafael Bacares, Senior Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–3276; or by email at *Rafael.Bacares@uspto.gov* with ''0651–0021 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 collection of information is required by the Patent Cooperation Treaty (PCT), which became operational in June 1978 and is administered by the International Bureau (IB) of the World

Intellectual Property Organization (WIPO) in Geneva, Switzerland. The provisions of the PCT have been implemented by the United States in part IV of title 35 of the U.S. Code (chapters 35–37) and subpart C of title 37 of the Code of Federal Regulations (37 CFR 1.401–1.499). The purpose of the PCT is to provide a standardized filing format and procedure that allows an applicant to seek protection for an invention in several countries by filing one international application in one location, in one language, and paying one initial set of fees.

The information in this collection is used by the public to submit a patent application under the PCT and by the United States Patent and Trademark Office (USPTO), to fulfill its obligation to process, search, and examine the application as directed by the treaty. The USPTO acts as the Receiving Office (RO/US) for international applications filed by residents and nationals of the United States. These applicants send most of their correspondence directly to the USPTO, but they may also file certain documents directly with the IB. The USPTO serves as an International Searching Authority (ISA) to perform searches and issue international search reports (ISR) and the written opinions of international applications. The USPTO also issues international preliminary reports on patentability (IPRP Chapter II) when acting as an International Preliminary Examining Authority (IPEA).

II. Method of Collection

The survey may be submitted electronically or in paper form via postal mail.

III. Data

OMB Control Number: 0651–0021.

Forms: (IB = International Bureau; IPEA = International Prelimary Examination; RO = Receiving Office; SB = Specimen Book).

- PCT/IB/372 (Notice of Withdrawal)
- PCT/IPEA/401 (Demand and Fee Calculation Sheet)
- PCT/RO/101 (Request and Fee Calculation Sheet)
- PCT/RO/134 (Indications Relating to Deposited Microorganism or Other Biological Material)
- PTO–1382 (Transmittal Letter to the United States Receiving Office (RO/US))
- PTO–1390 (Transmittal Letter to the United States Designated/Elected Office (DO/E.O./US) Concerning a Filing Under 35 U.S.C. 371)
- PTO/SB/64/PCT (Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b))

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households.

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 420,816 respondents.

Estimated Number of Annual Responses: 420,816 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 15 minutes (0.25 hours) and 4 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 358,269 hours.

Estimated Total Annual Respondent Hourly Cost Burden: $155,847,015.

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 (hour) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [1] (f)	Estimated annual total cost (e) × (f) = (g)
1	Request and Fee Calculation Sheet (Annex and Notes).	56,768	1	56,768	1	56,768	$435	$24,694,080
2	Description/claims/drawings/abstracts.	56,768	1	56,768	3	170,304	435	74,082,240
3	Application Data Sheet (35 U.S.C. 371 applications).	105,124	1	105,124	0.38 (23 mins)	39,947	435	17,376,945
4	Transmittal Letter to the United States Receiving Office (RO/US).	16,163	1	16,163	0.25 (15 mins)	4,041	435	1,757,835
5	Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission Under 35 U.S.C. 371.	89,616	1	89,616	0.25 (15 mins)	22,404	435	9,745,740
6	PCT/Model of Power of Attorney.	14,022	1	14,022	0.25 (15 mins)	3,506	435	1,525,110
7	PCT/Model of General Power of Attorney.	1,400	1	1,400	0.25 (15 mins)	350	435	152,250
8	Indications Relating to a Deposited Microorganism.	1	1	1	0.25 (15 mins)	1	435	435
9	Response to invitation to correct defects.	16,651	1	16,651	2	33,302	435	14,486,370
10	Request for rectification of obvious errors.	950	1	950	0.50 (30 mins)	475	435	206,625
11	Demand and Fee Calculation Sheet (Annex and Notes).	198	1	198	1	198	435	86,130
12	Amendments (Article 34)	141	1	141	1	141	435	61,335

[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.*)

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS—Continued

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hour) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [1] (f)	Estimated annual total cost (e) × (f) = (g)
13	Fee Authorization	51,091	1	51,091	0.25 (15 mins)	12,773	435	5,556,255
14	Requests to transmit copies of international application.	601	1	601	0.25 (15 mins)	150	435	65,250
15	Withdrawal of international application.	59	1	59	0.25 (15 mins)	15	435	6,525
16	English Translations after thirty months from priority date.	2,043	1	2,043	2	4,086	435	1,777,410
17	Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(a).	668	1	668	1	668	435	290,580
18	Petitions to the Commissioner for international applications.	28	1	28	4	112	435	48,720
19	Petitions to the Commissioner in national stage examination.	207	1	207	4	828	435	360,180
20	Acceptance of an unintentionally delayed claim for priority (37 CFR 1.78(a)(3)).	122	1	122	2	244	435	106,140
21	Request for the restoration of the right of priority.	124	1	124	3	372	435	161,820
	Totals	412,745	.....	412,745	.....	350,685	.....	152,547,975

TABLE 2—TOTAL BURDEN HOURS AND HOURLY COSTS TO INDIVIDUAL AND HOUSEHOLD RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hour) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [2] (f)	Estimated annual total cost (e) × (f) = (g)
1	Request and Fee Calculation Sheet (Annex and Notes).	1,216	1	1,216	1	1,216	$435	$528,960
2	Description/claims/drawings/abstracts.	1,216	1	1,216	3	3,648	435	1,586,880
3	Application Data Sheet (35 U.S.C. 371 applications).	1,703	1	1,703	0.38 (23 mins)	647	435	281,445
4	Transmittal Letter to the United States Receiving Office (RO/US).	344	1	344	0.25 (15 mins)	86	435	37,410
5	Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission Under 35 U.S.C. 371.	1,248	1	1,248	0.25 (15 mins)	312	435	135,720
6	PCT/Model of Power of Attorney.	471	1	471	0.25 (15 mins)	118	435	51,330
7	PCT/Model of General Power of Attorney.	47	1	47	0.25 (15 mins)	12	435	5,220
8	Indications Relating to a Deposited Microorganism.	1	1	1	0.25 (15 mins)	1	435	435
9	Response to invitation to correct defects.	466	1	466	2	932	435	405,420
10	Request for rectification of obvious errors.	55	1	55	0.50 (30 mins)	28	435	12,180
11	Demand and Fee Calculation Sheet (Annex and Notes).	21	1	21	1	21	435	9,135
12	Amendments (Article 34)	21	1	21	1	21	435	9,135
13	Fee Authorization	1,094	1	1,094	0.25 (15 mins)	274	435	119,190

TABLE 2—TOTAL BURDEN HOURS AND HOURLY COSTS TO INDIVIDUAL AND HOUSEHOLD RESPONDENTS—Continued

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hour) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [2] (f)	Estimated annual total cost (e) × (f) = (g)
14	Requests to transmit copies of international application.	30	1	30	0.25 (15 mins)	8	435	3,480
15	Withdrawal of international application.	2	1	2	0.25 (15 mins)	1	435	435
16	English Translations after thirty months from priority date.	47	1	47	2	94	435	40,890
17	Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(a).	50	1	50	1	50	435	21,750
18	Petitions to the Commissioner for international applications.	4	1	4	4	16	435	6,960
19	Petitions to the Commissioner in national stage examination.	6	1	6	4	24	435	10,440
20	Acceptance of an unintentionally delayed claim for priority (37 CFR 1.78(a)(3)).	12	1	12	2	24	435	10,440
21	Request for the restoration of the right of priority.	17	1	17	3	51	435	22,185
	Total	8,071	.....	8,071	.....	7,584	.....	3,299,040

Estimated Total Annual Respondent Non-hourly Cost Burden: $367,468,926.

There are no capital start-up, maintenance costs, or recordkeeping costs associated with this information collection. However, USPTO estimates that the total annual (non-hour) cost burden for this information collection, in the form of translations, drawings, filing fees, and postage is $367,468,926.

Translations

Applicants entering the national stage in the U.S. are required to file an English translation of the international application if the international application was filed in another language and was not published under PCT Article 21(2) in English. A processing fee is required for accepting an English translation after 30 months from the priority date. This requirement may carry additional costs for the applicant to contract for a translation of the documents in questions. The USPTO believes that the average length of the document to be translated is 10 pages and that it will cost approximately $140 per page for the translation, for an average translation cost of $1,400 per document.

The USPTO estimates that it will receive approximately 2,475 English translations after 30 months from the priority date annually, for a total of $3,465,000 per year for English translations of non-English language documents for PCT applications.

Drawings

Applicants may also incur costs for drawings that are submitted as part of PCT applications. Some applicants may produce their own drawings, while others may contract out the work to various patent illustration firms. For the purpose of estimating burden for this collection, the USPTO will consider all applicants to have their drawings prepared by these firms.

Estimates for the drawings can vary greatly, depending on the number of figures that need to be produced, the total number of pages for the drawings, and the complexity of the drawings. Because there are many variables involved, the USPTO is using a estimate of $1,150 based on experience with domestic filings.

The USPTO expects that it will receive 55,177 sets of drawings with a total of $63,453,550 per year.

Filing Fees

There are fees associated with submitting the information in this collection, for a total of $300,472,525 per year, as outlined in Table 3 below.

TABLE 3—FILING FEES/NON-HOUR COST TO RESPONDENTS

Item No.	Item	Estimated annual responses (a)	Filing fee ($) (b)	Non-hourly cost burden (a) × (b) = (c)
1	Request and Fee Calculation Sheet (Annex and Notes—International Filing Fee)	551	$1,437	$791,787

[2] Ibid.

TABLE 3—FILING FEES/NON-HOUR COST TO RESPONDENTS—Continued

Item No.	Item	Estimated annual responses (a)	Filing fee ($) (b)	Non-hourly cost burden (a) × (b) = (c)
1	Request and Fee Calculation Sheet (Annex and Notes—International Filing Fee electronically filed without ePCT or PCT–EASY zip file).	18,603	1,329	24,723,387
1	Request and Fee Calculation Sheet (Annex and Notes—International Filing Fee electronically filed with ePCT or PCT–EASY zip file).	39,782	1,221	48,573,822
2	[PCT National Stage] Claims—extra independent (over three) (Large entity)	8,710	480	4,180,800
2	[PCT National Stage] Claims—extra independent (over three) (Small entity)	3,151	240	756,240
2	[PCT National Stage] Claims—extra independent (over three) (Micro entity)	120	120	14,400
2	[PCT National Stage] Claims—extra total (over 20) (Large entity)	12,466	100	1,246,600
2	[PCT National Stage] Claims—extra total (over 20) (Small entity)	7,462	50	373,100
2	[PCT National Stage] Claims—extra total (over 20) (Micro entity)	263	25	6,575
2	[PCT National Stage] Claim—multiple dependent (Large entity)	617	860	530,620
2	[PCT National Stage] Claim—multiple dependent (Small entity)	431	430	185,330
2	[PCT National Stage] Claim—multiple dependent (Micro entity)	68	215	14,620
3	National Stage Application Size Fee—for each additional 50 sheets that exceed 100 sheets (Large entity).	4,106	420	1,724,520
3	National Stage Application Size Fee—for each additional 50 sheets that exceed 100 sheets (Small entity).	2,428	210	509,880
3	National Stage Application Size Fee—for each additional 50 sheets that exceed 100 sheets (Micro entity).	36	105	3,780
4	Transmittal fee (Large entity)	66,305	260	17,239,300
4	Transmittal fee (Small entity)	23,311	130	3,030,430
4	Transmittal fee (Micro entity)	1,248	65	81,120
11	Demand and Fee Calculation Sheet (Annex and Notes)	219	216	47,304
14	Transmitting application to Intl. Bureau to act as receiving office (Large entity) ...	392	260	101,920
14	Transmitting application to Intl. Bureau to act as receiving office (Small entity) ...	272	130	35,360
14	Transmitting application to Intl. Bureau to act as receiving office (Micro entity) ...	30	65	1,950
16	English translation after thirty months from priority date (Large entity)	1,078	140	150,920
16	English translation after thirty months from priority date (Small entity)	965	70	67,550
16	English translation after thirty months from priority date (Micro entity)	47	35	1,645
18	Search fee—regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16) (Large entity).	7,943	2,180	17,315,740
18	Search fee—regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16) (Small entity).	15,311	1,090	16,688,990
18	Search fee—regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16) (Micro entity).	1,179	545	642,555
18	Supplemental search fee when required, per additional invention (Large entity)	267	2,180	582,060
18	Supplemental search fee when required, per additional invention (Small entity) ..	520	1,090	566,800
18	Supplemental search fee when required, per additional invention (Micro entity) ..	44	540	23,760
19	Basic National Stage Fee (Large entity)	78,180	320	25,017,600
19	Basic National Stage Fee (Small entity)	27,641	160	4,422,560
19	Basic National Stage Fee (Micro entity)	1,757	80	140,560
19	National Stage Search Fee—U.S. was the ISA or IPEA and all claims satisfy PCT Article 33(1)–(4).	662	0	0
19	National Stage Search Fee –U.S. was the ISA (Large entity)	2,817	140	394,380
19	National Stage Search Fee—U.S. was the ISA (Small entity)	6,262	70	438,340
19	National Stage Search Fee—U.S. was the ISA (Micro entity)	262	35	9,170
19	National Stage Search Fee—search report prepared and provided to USPTO (Large entity).	72,877	540	39,353,580
19	National Stage Search Fee—search report prepared and provided to USPTO (Small entity).	20,560	270	5,551,200
19	National Stage Search Fee—search report prepared and provided to USPTO (Micro entity).	1,325	135	178,875
19	National Stage Search Fee—all other situations (Large entity)	5,626	700	3,938,200
19	National Stage Search Fee—all other situations (Small entity)	2,804	350	981,400
19	National Stage Search Fee—all other situations (Micro entity)	385	175	67,375
19	National Stage Examination Fee—all other situations (Large entity)	77,908	800	62,326,400
19	National Stage Examination Fee—all other situations (Small entity)	27,228	400	10,891,200
19	National Stage Examination Fee—all other situations (Micro entity)	1,704	200	340,800
19	Preliminary examination fee—U.S. was the ISA (Large entity)	260	640	166,400
19	Preliminary examination fee—U.S. was the ISA (Small entity)	690	320	220,800
19	Preliminary examination fee—U.S. was the ISA (Micro entity)	85	160	13,600
19	Preliminary examination fee—U.S. was not the ISA (Large entity)	145	800	116,000
19	Preliminary examination fee—U.S. was not the ISA (Small entity)	93	400	37,200
19	Preliminary examination fee—U.S. was not the ISA (Micro entity)	1	200	200
19	Supplemental examination fee per additional invention (Large entity)	7	640	4,480
19	Supplemental examination fee per additional invention (Small entity)	21	320	6,720
19	Supplemental examination fee per additional invention (Micro entity)	1	160	160

TABLE 3—FILING FEES/NON-HOUR COST TO RESPONDENTS—Continued

Item No.	Item	Estimated annual responses (a)	Filing fee ($) (b)	Non-hourly cost burden (a) × (b) = (c)
19	Search fee, examination fee or oath of declaration after thirty months from priority date (Large entity).	25,628	160	4,100,480
19	Search fee, examination fee or oath of declaration after thirty months from priority date (Small entity).	11,903	80	952,240
19	Search fee, examination fee or oath of declaration after thirty months from priority date (Micro entity).	306	40	12,240
20	Acceptance of an unintentionally delayed claim for priority, or for filing a request for the restoration of the right of priority.	275	2,100	577,500
	Totals	585,338	.....	300,472,525

Postage Costs

Although the USPTO prefers that the items in this information collection be submitted electronically, responses may be submitted by mail through the United States Postal Service (USPS). The USPTO estimates that 2% of the 420,816 items will be submitted in the mail resulting in 8,416 mailed items. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be $9.25. Therefore, the USPTO estimates the total mailing costs for this information collection at $77,848.

IV. 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.

Justin Isaac,

Acting Information Collections Officer, Office of the Chief Adminstrative Officer, United States Patent and Trademark Office.

[FR Doc. 2022–16530 Filed 8–1–22; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0092]

Proposed Collection; Comment Request

AGENCY: Chief Information Officer (CIO), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the DoD CIO 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 October 3, 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: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Director of Defense Industrial Base Cybersecurity Program and Director of DoD CIO Cybersecurity Policy and Partnerships, ATTN: Kevin Dulany, Washington, DC 20301, or call: 703–604–3167.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD's Defense Industrial Base Cybersecurity Program Point of Contact Information; OMB Control Number 0704–0490.

Needs and Uses: DoD's Defense Industrial Base (DIB) Cyber Security (CS) Program enhances and supports DoD's capabilities to safeguard information that resides on, or transits,

DIB unclassified information systems. The DIB CS Program is focused on sharing cyber threat information and cybersecurity best practices with DIB CS participants. This collection is necessary for DoD to collect, share, and manage point of contact (POC) information for program administration and management purposes. The Government will collect typical business POC information from all DIB CS participants during the application process to join the program. This information includes company name and identifiers such as cage code and mailing address, employee names and titles, corporate email addresses, and corporate telephone numbers of company-identified POCs. DIB CS Program POCs include the Chief Executive Officer, Chief Information Officer, Chief Information Security Officer, and Corporate or Facility Security Officer, or their equivalents, as well as those administrative, policy, technical staff, and personnel designated to interact with the Government in executing the DIB CS Program. After joining the program, DIB CS participants provide updated POC information to DoD when personnel changes occur.

Affected Public: Businesses or other for-profit; Not-for-profit Institutions.

Annual Burden Hours: 24,200.

Number of Respondents: 24,200.

Responses per Respondent: 1.

Annual Responses: 24,200.

Average Burden per Response: 1 hour.

Frequency: As required.

Dated: July 28, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–16519 Filed 8–1–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0038]

Submission for OMB Review; Comment Request

AGENCY: 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 September 1, 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: Synchronized Pre-deployment and Operational Tracker Enterprise Suite (SPOT–ES); OMB Control Number 0704–0460.

Type of Request: Extension.

Number of Respondents: 1,062.

Responses per Respondent: 58.

Annual Responses: 61,596.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 30,798 hours.

Needs and Uses: The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, Section 861, requires a common database between the Department of State (DoS), DoD, and the United States Agency for International Development (USAID) to serve as the repository of information on contracts and contractor personnel performing in Iraq and Afghanistan. A 2010 Memorandum of Understanding between DoS, DoD and USAID designates the Synchronized Pre-deployment and Operational Tracker as that common database. Public Law 110–181, Section 862, requires a process for registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions in an area of combat operations. Any individuals who choose not to have data collected will not be entitled to employment opportunities with businesses that require this data to be collected per DFARS Clause 252.225–7040.

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: July 28, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–16521 Filed 8–1–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0091]

Proposed Collection; Comment Request

AGENCY: Chief Information Officer (CIO), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the DoD CIO 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 October 3, 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: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Director of Defense Industrial Base Cybersecurity Program and Director of DoD CIO Cybersecurity Policy and Partnerships, ATTN: Kevin Dulany, Washington, DC 20301, or call: 703–604–3167.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD's Defense Industrial Base Cybersecurity Activities Cyber Incident Reporting; OMB Control Number 0704–0489.

Needs and Uses: DoD designated the DoD Cyber Crime Center (DC3) as the single focal point for receiving all cyber incident reporting affecting the unclassified networks of DoD contractors from industry and other government agencies. DoD collects cyber incident reports using the Defense Industrial Base Network portal (*https://dibnet.dod.mil*). Mandatory reporting requirements are addressed in a separate information collection under OMB Control Number 0704–0478 entitled ''Safeguarding Covered Defense Information, Cyber Incident Reporting, and Cloud Computing'' authorizing the collection of mandatory cyber incident reporting in accordance with 10 U.S.C. 393: ''Reporting on Penetrations of Networks and Information Systems of Certain Contractors,'' 10 U.S.C. 391: ''Reporting on Cyber Incidents with Respect to Networks and Information Systems of Operationally Critical Contractors and Certain Other Contractors, and 50 U.S.C. 3330: ''Reports to the Intelligence Community on Penetrations of Networks and Information Systems of Certain Contractors.

This information collection is necessary for the reporting and sharing of cyber incident information from DoD contractors in accordance with 32 CFR part 236, ''DoD Defense Industrial Base (DIB) Cybersecurity (CS) Activities,'' which authorizes the DIB CS Program. Sharing cyber incident information is critical to DoD's understanding of cyber threats against DoD information systems, programs, and warfighting capabilities. This information helps DoD to inform and mitigate adversary actions that may affect DoD information residing on or transiting unclassified defense contractor networks.

Affected Public: Businesses or other for-profit; Not-for-profit Institutions.

Annual Burden Hours: 85,000 hours.

Number of Respondents: 8,500.

Responses per Respondent: 5.

Annual Responses: 42,500.

Average Burden per Response: 2 hours.

Frequency: On occasion.

Dated: July 28, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–16518 Filed 8–1–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0039]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (USD(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 September 1, 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: Wingman Intervention Training Program Evaluation; OMB Control Number 0704–0627.

Type of Request: Revision.

Number of Respondents: 8,540.

Responses per Respondent: 1.

Annual Responses: 1.

Average Burden per Response: 16.71 minutes.

Annual Burden Hours: 2,379 hours.

Needs and Uses: The purpose of the evaluation is to determine the effectiveness of the Wingman Intervention Training (WIT) program in preventing sexual harassment (SH) and sexual assault (SA). Respondents are Airmen/Guardians. Respondents will be recruited as First Term Airmen/Guardians to target the population most vulnerable to SH and SA. Respondents will start the web-based baseline January 2022 with a six-month intake period until June 2022, and a 6-month follow-up survey (July–December 2022) on SH and SA so that the Department of the Air Force (DAF) can learn whether the WIT programming is effective at preventing SH and SA events and promoting active bystander behaviors. DAF Resilience Office staff can use the results to improve their prevention programming, thus supporting safer, more inclusive settings. Further, Airmen/Guardians may benefit through the improvement of the WIT program to prevent SH and SA within the Air Force. The military and society at large will also benefit because military officers will be more knowledgeable about SH and SA and will be better able to intervene to prevent SH and SA.

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: July 28, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–16522 Filed 8–1–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0024]

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 Naval Air Systems Command (NAVAIR) 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 October 3, 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: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to 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: NAVAIRSYSCOM Yello Pro Application; OMB Control Number 0703–Yell.

Needs and Uses: The information collection, the Yellow Pro application, is necessary to provide a personalized candidate experience to every job seeker in NAVAIR, resulting in quality hires and faster fills. To support the sourcing and recruitment requirements for the command, NAVAIR utilizes Yello Pro to collect prospective candidates hiring information such as name, email, phone, education/experience, GPA, etc. along with their resume for hiring managers to review and consider when filling NAVAIR vacancies. Due to unprecedented hiring demand in 2017 and 2018, NAVAIR moved forward with a pilot of a Software-as-a-Service IT System product named Yello to meet mission demands. As part of the Yello IT System, the Yello Pro application was developed. It enables recruiters to collaborate to attract and engage top talent while providing vital command recruiting metrics that provide meaningful insights and lead to more strategic recruitment initiatives and outcomes. Additionally, it improves the ability to control access to candidate data and allows sanitization and aggregation to perform return on investment of recruiting efforts.

Affected Public: Individuals or households.

Annual Burden Hours: 605.

Number of Respondents: 7,256.

Responses per Respondent: 1.

Annual Responses: 7,256.

Average burden per Response: 5 minutes.

Frequency: On occasion.

Dated: July 28, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–16520 Filed 8–1–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0100]

Agency Information Collection Activities; Comment Request; National Teacher and Principal Survey of 2023–2024 (NTPS 2023–24) Preliminary Field Activities

AGENCY: Institute of Education Sciences (IES), 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 information collection.

DATES: Interested persons are invited to submit comments on or before OCTOBER 3, 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–0100. 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 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection

requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Teacher and Principal Survey of 2023–2024 (NTPS 2023–24) Preliminary Field Activities.

OMB Control Number: 1850–0598.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 18,476.

Total Estimated Number of Annual Burden Hours: 3,419.

Abstract: The National Teacher and Principal Survey (NTPS), conducted every two or three years by the National Center for Education Statistics (NCES), is a system of related questionnaires that provides descriptive data on the context of elementary and secondary education. Redesigned from the Schools and Staffing Survey (SASS) with a focus on flexibility, timeliness, and integration with other ED data, the NTPS system allows for school, principal, and teacher characteristics to be analyzed in relation to one another.

NTPS is an in-depth, nationally representative survey of first through twelfth grade public and private school teachers, principals, and schools. Kindergarten teachers in schools with at least a first grade are also surveyed. NTPS utilizes core content and a series of rotating modules to allow timely collection of important education trends as well as trend analysis. Topics covered include characteristics of teachers, principals, schools, teacher training opportunities, retention, retirement, hiring, and shortages. NTPS also functions as the base-year for the longitudinal studies Teacher Follow-up Survey (TFS) and Principal Follow-up Survey (PFS).

This request is to conduct the NTPS 2023–24 preliminary activities, namely special district recruitment, recruitment of endorsers, and Screener Survey for the NTPS and the NTPS follow-up surveys. The NTPS 2023–24 Main Study final procedures and materials will be published for public comment and OMB review in winter 2022–23, and OMB approval for the follow-up surveys to NTPS 2023–24—the Teacher Follow-up Survey (TFS) and the Principal Follow-up Survey (PFS) will be requested in an additional package in winter 2023–24.

Dated: July 27, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–16459 Filed 8–1–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Basic Needs for Postsecondary Students Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications (NIA) for new awards for fiscal year (FY) 2022 for the Basic Needs for Postsecondary Students Program, Assistance Listing Number 84.116N. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES: *Applications Available:* August 2, 2022.

Deadline for Transmittal of Applications: October 3, 2022.

Deadline for Intergovernmental Review: November 30, 2022.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979*. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf*.

FOR FURTHER INFORMATION CONTACT: Njeri Clark, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B168, Washington, DC 20202–4260. Telephone: (202) 453–6224. Email: *Njeri.Clark@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Basic Needs for Postsecondary Students Program provides grants to eligible institutions of higher education (IHEs) to support programs that address the basic needs of students and to report on practices that improve outcomes for students.

Background: The Basic Needs for Postsecondary Students Program supports IHEs that demonstrate a commitment to developing or enhancing systemic approaches to support the basic needs of students. There is growing evidence that food and housing insecurities compromise the well-being of millions of students across the country, which may reduce the odds that they will complete their degrees or certificates.

The U.S. Government Accountability Office analyzed dozens of studies and found rates of food insecurity among college students were typically reported at more than 30 percent.[1] Studies show that, if a student has not eaten sufficient nutritious food or slept the night before a class or exam, they will have greater difficulty mastering the material and performing well.[2] Students experiencing housing insecurity have lower degree attainment and grade point averages and a higher probability of enrolling part-time rather than full-time.[3] Similarly, a recent study of more than 195,000 students attending 202 colleges and

[1] Government Accountability Office. (2018). *Food Insecurity: Better Information Could Help Eligible College Students Access Federal Food Assistance Benefits.* Retrieved from *https://www.gao.gov/assets/gao-19-95.pdf*.

[2] Government Accountability Office. (2018). *Food Insecurity: Better Information Could Help Eligible College Students Access Federal Food Assistance Benefits.* Retrieved from *https://www.gao.gov/assets/gao-19-95.pdf*. Hershner, S.D., & Chervin, R.D. (2014). Causes and Consequences of Sleepiness Among College Students. *Nature and Science of Sleep, 6,* 73–84.

[3] Broton, Katharine, M. (2021). Poverty in American Higher Education: The Relationship Between Housing Insecurity and Academic Attainment. *Journal of Postsecondary Student Success.* Retrieved from *https://journals.flvc.org/jpss/article/view/129147*.

universities in 42 States by the Hope Center for College, Community, and Justice found that three in five students do not have enough to eat or a safe place to live, and 14 percent were experiencing homelessness.[4] The same study reported that students of color are more likely to experience basic needs insecurity than their White peers. For students at both 2- and 4-year institutions, 75 percent of Indigenous students, 70 percent of Black students, and 64 percent of Hispanic or Latino students experienced basic needs insecurity, compared with 54 percent of White students.

Supporting students' basic needs has many benefits for colleges and universities, including boosting academic performance, promoting retention and degree completion, reducing the barriers that returning adults face, and creating bridges between the institution and community organizations.[5] Applicants are encouraged to identify partnerships with entities that can help facilitate the coordination of public benefits. Examples of this may include changes in processes and data sharing and streamlining access to resources and services that students can more easily navigate to address their basic needs. Partnerships may include, but are not limited to, Federal, State, or local agencies, other IHEs, nonprofit organizations, philanthropic organizations, community-based organizations, and businesses. Examples of the resources and services that could be provided through these strategic partnerships are outreach activities, job training, housing voucher application assistance, access to food banks, childcare services, advising and referral programs, public benefits enrollment assistance, direct financial assistance, etc. A systematic approach that addresses the diverse needs and array of issues faced by students relies on creating partnerships and cross-agency collaboratives that are both sustainable and scalable.

To this end, this competition is designed to promote student success by supporting interventions and programs that holistically address the basic needs of students and reporting on those practices that improve student outcomes. In addition to the absolute priorities, we have included a competitive preference priority to promote comprehensive supports to students. This competitive preference priority furthers the goals of the program by supporting projects that meet the needs of the whole student.

Priorities: This notice contains two absolute priorities and one competitive preference priority. These priorities are from the Secretary's Supplemental Priorities and Definitions for Discretionary Grants Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Absolute Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet each of these priorities.

These priorities are:

Absolute Priority 1—Strengthening Cross-Agency Coordination and Community Engagement To Advance Systemic Change.

Projects that are designed to take a systemic evidence-based approach to improving outcomes for underserved students through one or more of the following priority areas:

(a) Coordinating efforts with Federal, State, or local agencies, or community-based organizations, that support students, to address two or more of the following:

(1) Food assistance.

(2) Housing.

(3) Transportation.

(4) Health, including physical health, mental health, and behavioral health and trauma.

(5) Child care.

(6) Technology.

(b) Conducting community needs and asset mapping to identify existing programs and initiatives that can be leveraged, and new programs and initiatives that need to be developed and implemented, to advance systemic change.

(c) Establishing cross-agency partnerships, or community-based partnerships with local nonprofit organizations, businesses, philanthropic organizations, or others, to meet family well-being needs.

Absolute Priority 2—Promoting Equity in Student Access to Educational Resources and Opportunities.

Under this priority, an applicant must demonstrate that the project will be implemented by one or more of the following entities:

(1) Community colleges (as defined in this notice).

(2) Historically Black colleges and universities (as defined in this notice).

(3) Tribal Colleges and universities (as defined in this notice).

(4) Minority-serving institutions (as defined in this notice).

Competitive Preference Priority: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we will award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Meeting Student Social, Emotional, and Academic Needs (up to 10 points).

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students through creating a positive, inclusive, and identity-safe climate at institutions of higher education through one or both of the following activities:

(1) Fostering a sense of belonging and inclusion for underserved students.

(2) Implementing evidence-based practices for advancing student success for underserved students.

Definitions: The definitions of ''community college,'' ''Historically Black colleges and universities,'' ''Minority-serving institution,'' ''student with a disability,'' ''Tribal Colleges or Universities,'' and ''underserved student'' are from the Supplemental Priorities. The remaining definitions are from 34 CFR 77.1.

Community college means ''junior or community college'' as defined in section 312(f) of the Higher Education Act of 1965, as amended (HEA).

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Evidence-based means the proposed project component is supported by evidence that demonstrates a rationale.

Historically Black colleges and universities means colleges and universities that meet the criteria set out in 34 CFR 608.2.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Pacific Education

[4] The Hope Center for College, Community, and Justice. (2021*) #RealCollege 2021: Basic Needs Insecurity During the Ongoing Pandemic.* Retrieved from *https://hope4college.com/rc2021-bni-during-the-ongoing-pandemic/.*

[5] *hope4college.com/wp-content/uploads/2020/02/2019_RealCollege_Survey_Report.pdf.*

Laboratory's Logic Model Application (*www.ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp*).

Minority-serving institution means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcomes(s) the key project component is designed to improve, consistent with the specific goals of the program.

Students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(20)(B)).

Tribal colleges or universities has the meaning ascribed it in section 316(b)(3) of the HEA.

Underserved student means a student in postsecondary education in one or more of the following subgroups:

(a) A student of color.

(b) A student who is a member of a federally recognized Indian Tribe.

(c) A student with a disability.

(d) A student experiencing homelessness or housing insecurity.

(e) A lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+) student.

(f) A student formerly in foster care.

(g) A pregnant, parenting, or caregiving student.

(h) A student who is the first in their family to attend postsecondary education.

(i) A student enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(j) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

Program Authority: 20 U.S.C. 1138–1138d; and the Explanatory Statement accompanying Division H of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103) (Explanatory Statement).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $7,473,276.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent fiscal years from the list of unfunded applications from this competition.

Estimated Range of Awards: $750,000 to $950,000.

Estimated Average Size of Award: $850,000.

Maximum Award: We will not make an award exceeding $950,000 for the entire project period of 36 months.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Community colleges (as defined in this notice), and 2- and 4-year public and private Historically Black Colleges and Universities (as defined in this notice), Tribal Colleges and Universities (as defined in this notice), and other Minority-Serving Institutions (as defined in this notice).

Note: The notice announcing the FY 2022 process for designation of eligible institutions for programs under parts A and F of title III and programs under title V of the HEA, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on December 16, 2021 (86 FR 71470). The Department extended the deadline for applications in a notice published in the **Federal Register** on February 7, 2022 (87 FR 6855).

For institutions other than community colleges, only institutions that the Department determines are eligible as Historically Black Colleges and Universities, Tribal Colleges and Universities, and other Minority-Serving Institutions, or which are granted a waiver under the process described in the December 16, 2021 notice, and that meet the other eligibility requirements described in this notice, may apply for a grant under those eligibility bases for this program.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Basic Needs for Postsecondary Students Program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

An applicant may wish to request confidentiality of business information because successful applications may be made available to the public, if requested.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

4. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10-pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit applies to the Project Narrative, which is your complete response to the selection criteria, and any response to the competitive preference priorities, if applicable. However, the recommended page limit does not apply to the Application for Federal Assistance form (SF–424); the ED SF–424 Supplemental form; the Budget Information—Non-Construction Programs form (ED 524); the assurances and certifications; or the one-page project abstract and supporting budget narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. An applicant may earn up to a total of 100 points based on the selection criteria and up to 10 additional points under the competitive preference priority, for a total score of up to 110 points. The selection criteria are as follows:

a. *Need for the project.* (Maximum 20 points)

The Secretary considers the need for the proposed project.

In determining the need for the proposed project, the Secretary considers the following factors:

i. The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (Up to 10 points)

ii. The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (Up to 10 points)

b. *Quality of the project design.* (Maximum 25 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

i. The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes (as defined in this notice), using existing funding streams from other programs or policies supported by community, State, and Federal resources. (Up to 10 points)

ii. The extent to which the proposed project demonstrates a rationale (as defined in this notice). (Up to 5 points)

iii. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (Up to 10 points)

c. *Quality of project services.* (Maximum 30 points)

The Secretary considers the quality of the services to be provided by the proposed project.

i. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 10 points)

In addition, the Secretary considers the following factors:

ii. The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (Up to 10 points)

iii. The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (Up to 10 points)

d. *Quality of the management plan.* (Maximum 15 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

e. *Quality of the project evaluation.* (Maximum 10 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

i. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (Up to 5 points)

ii. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (Up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of

funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of external reviewers will read, prepare a written evaluation of, and score all eligible applications using the selection criteria and the competitive preference priority, if applicable, provided in this notice. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score. The Department may use more than one tier of reviews in evaluating grantees. The Department will prepare a rank order of applications based on the evaluation of their quality according to the selection criteria and competitive preference priority points. Additional factors we consider in selecting an application for an award are the relative number of community colleges and 4-year HBCUs, HSIs, and other MSIs on the slate (Explanatory Statement).

In the event there are two or more applications with the same final score in the rank order listing, and there are insufficient funds to fully support each of these applications, the Department will apply the following procedure to determine which application or applications will receive an award:

First Tiebreaker: The first tiebreaker will be the application with the highest percentage of degree/certificate-seeking students who are Pell grant recipients. If a tie remains, a second tiebreaker will be utilized.

Second Tiebreaker: The second tiebreaker will be the highest average score for the selection criterion ''Quality of Project Services.'' If a tie remains, a third tiebreaker will be utilized.

Third Tiebreaker: The third tiebreaker will be the highest average score for the selection criterion ''Quality of the Project Design.'' If a tie remains, a fourth tiebreaker will be utilized.

Fourth Tiebreaker: The fourth tiebreaker will be the highest average score for the selection criterion ''Need for the Project.''

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a GAN; or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements, please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This

does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case, the Secretary establishes a data collection period.

5. *Performance Measures:* For purposes of Department reporting under 34 CFR 75.110, the Department will use the following performance measures to evaluate the success of the Basic Needs for Postsecondary Students Program:

(1) The percentage of underserved students served by any direct student service supported by the grant.

(2) The annual persistence rate at grantee institutions for all students who are served by any direct student service supported by the grant.

(3) The annual rate of degree or certificate completion at grantee institutions for all students served by any direct student service supported by the grant.

(4) The level of basic needs insecurity among all students measured before and after implementation of the grant.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Michelle Asha Cooper,

Acting Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2022–16489 Filed 8–1–22; 8:45 am]

BILLING CODE 4000–01–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: EC22–96–000.
Applicants: Cambria Wind, LLC.
Description: Application for Prospective Authorization Under Section 203 of the Federal Power Act of Cambria Wind, LLC.
Filed Date: 7/26/22.
Accession Number: 20220726–5151.
Comment Date: 5 p.m. ET 8/16/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1818–031; ER10–1819–034; ER10–1820–037.
Applicants: Northern States Power Company, a Wisconsin corporation, Northern States Power Company, a Minnesota corporation, Public Service Company of Colorado.
Description: Notice of Change in Status of Northern States Power Company, a Minnesota corporation, et al.
Filed Date: 7/27/22.
Accession Number: 20220727–5043.
Comment Date: 5 p.m. ET 8/17/22.

Docket Numbers: ER10–1852–067; ER10–2641–042.
Applicants: Oleander Power Project, Limited Partnership, Florida Power & Light Company.
Description: Notice of Change in Status of Florida Power & Light Company, et al.
Filed Date: 7/26/22.
Accession Number: 20220726–5148.
Comment Date: 5 p.m. ET 8/16/22.

Docket Numbers: ER16–1258–005; ER16–438–007; ER13–1266–036; ER15–2211–033; ER10–2984–053.
Applicants: Merrill Lynch Commodities, Inc., MidAmerican Energy Services, LLC, CalEnergy, LLC, Marshall Wind Energy LLC, Grande Prairie Wind, LLC.
Description: Supplement to December 23, 2021 Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Grande Prairie Wind, LLC, et al.
Filed Date: 7/15/22.
Accession Number: 20220715–5241.
Comment Date: 5 p.m. ET 8/8/22.

Docket Numbers: ER16–2481–001.
Applicants: AES Laurel Mountain, LLC.
Description: Notice of Change in Status of AES Laurel Mountain, LLC.
Filed Date: 7/26/22.
Accession Number: 20220726–5145.
Comment Date: 5 p.m. ET 8/16/22.

Docket Numbers: ER20–2101–002.
Applicants: Fern Solar LLC.
Description: Notice of Change in Status of Fern Solar LLC.
Filed Date: 7/26/22.
Accession Number: 20220726–5146.
Comment Date: 5 p.m. ET 8/16/22.

Docket Numbers: ER22–799–003.
Applicants: Lancaster Area Battery Storage, LLC.
Description: Notice of Change in Status of Lancaster Area Battery Storage, LLC.
Filed Date: 7/26/22.
Accession Number: 20220726–5144.
Comment Date: 5 p.m. ET 8/16/22.

Docket Numbers: ER22–2301–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C., Submits a Notice of Cancellation of Transmission Service Agreement No. 325 for Firm Point-to-Point Transmission Service entered into by and between PJM and Carolina Power & Light Company.
Filed Date: 7/1/22.
Accession Number: 20220701–5475.
Comment Date: 5 p.m. ET 8/1/22.

Docket Numbers: ER22–2495–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–07–27_SA 2685 Ameren-SIPC Hoyleton Proj Spec No. 4 to be effective 9/26/2022.
Filed Date: 7/27/22.
Accession Number: 20220727–5013.
Comment Date: 5 p.m. ET 8/17/22.

Docket Numbers: ER22–2496–000.
Applicants: UBS AG.
Description: Notice of Cancellation of Market Based Rate Tariff of UBS AG.

Filed Date: 7/27/22.
Accession Number: 20220727–5045.
Comment Date: 5 p.m. ET 8/17/22.
Docket Numbers: ER22–2497–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of CSA, SA No. 4736; Queue No. AA2–053/AA2–174 to be effective 5/25/2022.
Filed Date: 7/27/22.
Accession Number: 20220727–5057.
Comment Date: 5 p.m. ET 8/17/22.
Docket Numbers: ER22–2498–000.
Applicants: Verso Escanaba LLC.
Description: § 205(d) Rate Filing: Billerud Escanaba LLC Notice of Succession to be effective 7/28/2022.
Filed Date: 7/27/22.
Accession Number: 20220727–5060.
Comment Date: 5 p.m. ET 8/17/22.
Docket Numbers: ER22–2499–000.
Applicants: Border Energy Electric Services, Inc.
Description: Tariff Amendment: Notice of Cancellation to be effective 7/28/2022.
Filed Date: 7/27/22.
Accession Number: 20220727–5079.
Comment Date: 5 p.m. ET 8/17/22.
Docket Numbers: ER22–2500–000.
Applicants: DLS—Jean Duluth Project Co, LLC.
Description: Baseline eTariff Filing: MBR Application to be effective 9/26/2022.
Filed Date: 7/27/22.
Accession Number: 20220727–5098.
Comment Date: 5 p.m. ET 8/17/22.
Docket Numbers: ER22–2501–000.
Applicants: DLS—Laskin Project Co, LLC.
Description: Baseline eTariff Filing: MBR Application to be effective 9/26/2022.
Filed Date: 7/27/22.
Accession Number: 20220727–5099.
Comment Date: 5 p.m. ET 8/17/22.
Docket Numbers: ER22–2502–000.
Applicants: DLS—Sylvan Project Co, LLC.
Description: Baseline eTariff Filing: MBR Application to be effective 9/26/2022.
Filed Date: 7/27/22.
Accession Number: 20220727–5101.
Comment Date: 5 p.m. ET 8/17/22.
Docket Numbers: ER22–2503–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC-Certificate of Concurrence to the CRSG to be effective 10/1/2022.
Filed Date: 7/27/22.
Accession Number: 20220727–5106.
Comment Date: 5 p.m. ET 8/17/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–55–000; ES22–56–000; ES22–57–000; ES22–58–000; ES22–59–000; ES22–60–000.
Applicants: Massachusetts Electric Company, Nantucket Electric Company, Niagara Mohawk Power Corporation, New England Hydro-Transmission Electric Company, Inc., New England Power Company, National Grid Generation LLC.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Massachusetts Electric Company, et al.
Filed Date: 7/27/22.
Accession Number: 20220727–5077.
Comment Date: 5 p.m. ET 8/17/22.

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: July 27, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16513 Filed 8–1–22; 8:45 am]

BILLING CODE 6717–01–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: RP22–1063–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Fuel Exemption Filing to be effective 9/1/2022.
Filed Date: 7/26/22.
Accession Number: 20220726–5076.
Comment Date: 5 p.m. ET 8/8/22.
Docket Numbers: RP22–1064–000.
Applicants: BASF Corporation, KaMin LLC.
Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of BASF Corporation and KaMin LLC under RP22–1064.
Filed Date: 7/26/22.
Accession Number: 20220726–5131.
Comment Date: 5 p.m. ET 8/8/22.

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.

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: July 27, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16515 Filed 8–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–13–000]

Interregional High Voltage Direct, Current Merchant Transmission; Notice of Request for Technical Conference

Take notice that on July 19, 2022, Invenergy Transmission LLC, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2021), filed a petition requesting that the Commission hold a technical conference to explore ways to potentially make available and compensate certain grid reliability and resilience benefits associated with interregional high voltage direct current merchant transmission.

Any person that wishes to comment in this proceeding must file comments in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 (2021).

Comments will be considered by the Commission in determining the appropriate action to be taken. Comments must be filed on or before the comment date.

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://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 the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 26, 2022.

Dated: July 27, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16514 Filed 8–1–22; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1265; FR ID 99060]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 3, 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 notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

OMB Control Number: 3060–1265.

Title: Connect America Fund—Performance Testing Measures.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,677 unique respondents; 4,196 responses.

Estimated Time per Response: 16 hours–60 hours.

Frequency of Response: Biennial reporting requirements, quarterly reporting requirements and annual reporting requirements. Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 164,526 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: We note that the Universal Service Administrative Company (USAC) must preserve the confidentiality of certain data obtained from respondents; must not use the data except for purposes of administering the universal service programs or other purposes specified by the Commission; and must not disclose data in company-specific form unless directed to do so by the Commission. Materials or information submitted to the Commission or the Administrator will be confidential and not be available to the public.

Needs and Uses: In the *USF/ICC Transformation Order,* the Commission laid the groundwork for today's universal service programs providing $4.5 billion in support for broadband internet deployment in high-cost areas. *Connect America Fund, et al.,* Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10–90, et al., 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*). The *USF/ICC Transformation Order* required, among other things, that high-cost universal service recipients ''test their broadband networks for compliance with speed and latency metrics and certify to and report the results to the Universal Service Administrative Company (USAC) on an annual basis.'' *Id.* at 17705, para. 109. Pursuant to the Commission's direction in that Order, the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology (the Bureaus and OET) adopted more specific methodologies for such testing in the *Performance Measures Order. See generally Performance Measures Order. See also* 47 CFR 54.313(a)(6) (requiring that recipients of high-cost support provide ''[t]he results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology'').

This collection includes requirements for testing speed and latency to ensure that carriers are meeting the public interest obligations associated with their receipt of high-cost universal service support. Carriers will identify, from among the locations they have already submitted and certified in USAC's High Cost Universal Broadband (HUBB) portal, the locations where they have an active subscriber (deployment locations are reported under OMB Control Number 3060–1228, and active

locations will be reported under this control number). From those subscriber locations, USAC will then select a random sample from which the carrier will be required to perform testing for speed and latency. Carriers that do not provide location information in the HUBB will use a randomization tool provided by USAC to select a random sample of locations for testing. The carrier will then be required to submit to USAC the results of the testing on an annual basis. The annual filing will include the testing results for each quarter from the prior year. The carrier's sample for each service tier (*e.g.* 10 Mbps/1 Mbps, 25 Mbps/1 Mbps) shall be regenerated every two years. During the two-year cycle, carriers will have the ability to add and remove subscriber locations if necessary, *e.g.,* as subscribership changes. This information collection addresses the burdens associated with these requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2022–16527 Filed 8–1–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 16–185; DA 22–791; FR 98562]

World Radiocommunication Conference Advisory Committee Schedules Its Sixth Meeting on September 12, 2022

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the sixth meeting of the World Radiocommunication Conference Advisory Committee (WAC) will be held on Monday, September 12, 2022 at 11:00 EDT. Due to exceptional circumstances, the sixth WAC meeting will be convened as a virtual meeting with remote participation only. The meeting is open to the public. This sixth WAC meeting will consider status reports and recommendations from its Informal Working Groups (IWG–1, IWG–2, IWG–3, and IWG–4) concerning preparation for the 2023 World Radiocommunication Conference (WRC–23). The Commission's WRC–23 website (*www.fcc.gov/wrc-23*) contains the latest information on the IWG meeting agendas and audience participation information, all scheduled meeting dates and updates, and Advisory Committee matters. Comments may be presented at the Advisory Committee meeting or in advance of the meeting by email to: *WRC-23@fcc.gov.*

DATES: Monday, September 12, 2022 at 11:00 EDT

ADDRESSES: 6th WAC Meeting: *www.fcc.gov/live*.

FOR FURTHER INFORMATION CONTACT: Dante Ibarra, Designated Federal Official, World Radiocommunication Conference Advisory Committee, FCC International Bureau, Global Strategy and Negotiation Division, at *Dante.Ibarra@fcc.gov,* (202) 418–0610 or *WRC-23@fcc.gov*.

SUPPLEMENTARY INFORMATION: The FCC established the Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2023 World Radiocommunication Conference (WRC–23).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the sixth meeting of the Advisory Committee. The Commission's WRC–23 website (*www.fcc.gov/wrc-23*) contains the latest information on the IWG meeting agendas and audience participation information, all scheduled meeting dates and updates, and WRC–23 Advisory Committee matters. The sixth WAC meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live*. There will be audience participation available; send live questions to *livequestions@fcc.gov* only during this meeting.

The proposed agenda for the sixth WAC meeting is as follows:

Agenda

Sixth Meeting of the World Radiocommunication Conference Advisory Committee

Federal Communications Commission

Monday, September 12, 2022; 11:00 a.m. ET

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Fifth Meeting
4. IWG Reports and Consideration Documents
5. Future Meetings
6. Other Business

Federal Communications Commission.

Troy Tanner,

Deputy Bureau Chief, International Bureau.

[FR Doc. 2022–16525 Filed 8–1–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITITME COMMISSION

Sunshine Act Meetings; Correction

AGENCY: Federal Maritime Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Maritime Commission published a document in the **Federal Register** of July 18, 2022, as modified in the **Federal Register** of July 27, 2022, concerning the Sunshine Act Meetings for our July 27, 2022, Commission Meeting. The July 27, 2022, document contained an incorrect agenda item #3.

FOR FURTHER INFORMATION CONTACT: William Cody, 202–523–5725.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 27, 2022, FR Doc. 2022–16188, on page 45105, the **Federal Register** of July 18, 2022, in FR Doc. 2022–15400, on page 42725, item #3 titled ''3. Staff Update on Ocean Carrier Practices with Respect to Congestion or Related Surcharges'' was removed, and item #4 titled ''4. Staff Briefing on Enforcement Process and Pending Matters'' was renumbered as item #3. Item #3, titled ''3. Staff Briefing on Enforcement Process and Pending Matters'' should be removed.

Dated: July 28, 2022.

William Cody,

Secretary.

[FR Doc. 2022–16545 Filed 7–29–22; 11:15 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Savings Association Holding Company Report (FR LL–(b)11; OMB No. 7100–0334).

DATES: Comments must be submitted on or before October 3, 2022.

ADDRESSES: You may submit comments, identified by FR LL–(b)11, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Savings Association Holding Company Report.

Collection identifier: FR LL–(b)11.

OMB control number: 7100–0334.

Frequency: Quarterly,[1] annually, and event-generated.

Respondents: Exempt savings and loan holding companies (SLHCs).

Estimated number of respondents: Quarterly: 3; annually: 3; event-generated: 1.

Estimated average hours per response: Quarterly: 2; annually: 2; event-generated: 2.

Estimated annual burden hours: Quarterly: 18; annually: 6; event-generated: 2.

General description of collection: Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred to the Board the supervisory functions of the former Office of Thrift Supervision related to SLHCs and their non-depository subsidiaries. Pursuant to section 10(b) of the Home Owners' Loan Act (HOLA), the Board may require SLHCs to file reports concerning their operations.

Following the transfer to the Board of authority to supervise SLHCs, the Board determined to exempt certain SLHCs (exempt SLHCs) from regulatory reporting using the Board's existing regulatory reports, including the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128) and the Parent Company Only Financial Statements for Small Holding Companies (FR Y–9SP; OMB No. 7100–0128).[2] An SLHC is an exempt SLHC if it (1) meets the requirements of section 10(c)(9)(C) of HOLA (*i.e.,* it is a ''legacy'' unitary SLHC) and has primarily commercial assets, with thrift assets making up less than 5 percent of the SLHC's consolidated assets [3] or (2) primarily holds insurance-related assets and does not submit financial reports with the Securities and Exchange Commission (SEC) pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.[4]

[1] The FR LL–(b)11 is filed quarterly except for the fourth quarter when the respondent is required to file its annual report.

[2] 76 FR 81933 (December 29, 2011).

[3] Specifically, a legacy unitary SLHC is exempt if (1) as calculated annually as of June 30th, using the four previous quarters (which includes the quarter-ended June 30th reporting period), its savings association subsidiaries' consolidated assets make up less than 5 percent of the total consolidated assets of the legacy SLHC on an enterprise-wide basis for any of these four quarters and (2) as calculated annually as of June 30th, using the assets reported as of June 30th, where more than 50 percent of the assets of the legacy unitary SLHC are derived from activities that are not otherwise permissible under HOLA on an enterprise-wide basis.

[4] Specifically, an SLHC is considered to primarily hold insurance-related assets if, as calculated annually as of June 30th, using the assets reported as of June 30th, more than 50 percent of the assets of the SLHC are derived from the business of insurance on an enterprise-wide basis.

The FR LL–(b)11 collects the following six categories of information:

(1) Information about SEC filings;

(2) Reports provided by nationally recognized statistical rating organizations (NRSROs) and securities analysts;

(3) Supplemental information for the Quarterly Savings and Loan Holding Company Report (FR 2320; OMB No. 7100–0345);

(4) Information about other materially important events;

(5) Financial statements; and

(6) Other exhibits required by the Board.

Legal authorization and confidentiality: The FR LL–(b)11 is authorized by section 10 of the HOLA.[5] The FR LL–(b)11 is mandatory.

Information provided under the FR LL–(b)11 relating to supplemental questions on the FR 2320 to which the respondent provided a ''yes'' response is generally considered to be confidential under exemption 4 of the Freedom of Information Act (FOIA), which protects nonpublic commercial or financial information that is both customarily and actually treated as private by the respondent.[6] Respondents will be notified if it is subsequently determined that any such information must be released.

Information submitted to the Board under the FR LL–(b)11 may also be protected from disclosure pursuant to exemption 8 of the FOIA if it is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.[7] Finally, individual respondents may request confidential treatment in accordance with the Board's Rules Regarding Availability of Information.[8] Requests for confidential treatment of information are reviewed on a case-by-case basis. To the extent information provided on the FR LL–(b)11—apart from the material described above—is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, the information may be protected from disclosure pursuant to exemption 4 of the FOIA.[9]

[5] 12 U.S.C. 1467a(b)(2)(A) (Requiring each SLHC and each subsidiary thereof, other than a savings association, to ''file with the Board, such reports as may be required by the Board.'').

[6] 12 U.S.C. 552(b)(4).

[7] 5 U.S.C. 552(b)(8).

[8] 12 CFR 261.17.

[9] 5 U.S.C. 552(b)(4).

Board of Governors of the Federal Reserve System, July 27, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–16478 Filed 8–1–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 August 16, 2022.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *BMC Bancshares, Inc., Dallas, Texas;* to engage de novo in leasing personal or real property through its wholly owned subsidiary Silver Diamond, LLC, Dallas, Texas, pursuant to section 225.28(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–16461 Filed 8–1–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Inter-agency Guidance on Funding Liquidity Risk Management (FR 4198; OMB No. 7100–0326).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Inter-agency Guidance on Funding Liquidity Risk Management.

Collection identifier: FR 4198.

OMB control number: 7100–0326.

Frequency: Annually.

Respondents: Bank holding companies, savings and loan holding companies, state-licensed branches and agencies of foreign banks (other than insured branches), corporations organized or operating under sections 25 or 25A of the Federal Reserve Act (agreement corporations and Edge corporations), and state member banks.

Estimated number of respondents: Implementation of Recordkeeping Guidance, 37; Ongoing Recordkeeping, 4,646.

Estimated average hours per response: Implementation of Recordkeeping Guidance, 160; Ongoing Recordkeeping, 32.

Estimated annual burden hours: 154,592.

General description of collection: The Interagency Policy Statement on Funding and Liquidity Risk Management (Guidance) was issued to provide consistent interagency expectations on sound practices for managing funding and liquidity risk. The Guidance includes a number of voluntary recordkeeping provisions that apply to the respondents listed above. The recordkeeping provisions relate to liquidity risk management policies, procedures, and assumptions, and contingency funding plans.

Legal authorization and confidentiality: The recordkeeping provisions of the Guidance are authorized pursuant to sections 9(6), 25, and 25A of the Federal Reserve Act [1] (for state member banks, agreement corporations, and Edge corporations, respectively); section 5(c) of the Bank Holding Company Act [2] (for bank holding companies); section 10(b)(3) of the Home Owners' Loan Act [3] (savings and loan holding companies); and section 7(c)(2) of the International Banking Act [4] (state-licensed branches and agencies of foreign banks, other than insured branches). The FR 4198 recordkeeping provisions are contained within guidance, which is nonbinding, and therefore are voluntary.

Because these records would be maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[5] In addition, the information may also be kept confidential under exemption 4 of the FOIA, which protects nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent.[6]

Current actions: On April 6, 2022, the Board published a notice in the **Federal Register** (87 FR 19927) requesting public comment for 60 days on the extension, without revision, of the FR 4198. The comment period for this notice expired on June 6, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, July 27, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–16475 Filed 8–1–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping Provisions Associated with the Guidance on Leveraged Lending (FR 4203; OMB No. 7100–0354).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Recordkeeping Provisions Associated with Guidance on Leverage Lending.

Collection identifier: FR 4203.

OMB control number: 7100–0354.

Frequency: On occasion.

Respondents: The FR 4203 panel comprises all bank holding companies, savings and loan holding companies, state member banks, and state-chartered branches and agencies of foreign banks that engage in leveraged lending activities.

Many community banks are not subject to the FR 4203 because they do not engage in leveraged lending. The limited number of community and smaller institutions that are involved in leveraged lending activities may discuss with the Federal Reserve System whether and, if so, how to implement these collections of information in a cost-effective manner that is appropriate for the complexity of their exposures and activities.

Estimated number of respondents: 37.

Estimated average hours per response: 755.

Estimated annual burden hours: 27,935.

General description of collection: The guidance on leveraged lending (Guidance) [1] outlines high-level principles related to safe-and-sound leveraged lending activities. The Guidance includes a number of voluntary recordkeeping provisions that apply to financial institutions that are

[1] 12 U.S.C. 324, 602, and 625.

[2] 12 U.S.C. 1844(c).

[3] 12 U.S.C. 1467a(b)(3).

[4] 12 U.S.C. 3105(c)(2).

[5] 5 U.S.C. 552(b)(8).

[6] 5 U.S.C. 552(b)(4).

[1] ''Interagency Guidance on Leveraged Lending,'' March 21, 2013, available at *https://www.federalreserve.gov/supervisionreg/srletters/sr1303a1.pdf.* The Guidance was published jointly by the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

engaged in leveraged lending activities and for which the Board is the primary federal supervisor, including bank holding companies, savings and loan holding companies, state member banks, and state-chartered branches and agencies of foreign banks that engage in these activities.

Legal authorization and confidentiality: The recordkeeping provisions of the Guidance are authorized pursuant to sections 9(6), 25, and 25A of the Federal Reserve Act [2] (for state member banks, agreement corporations, and Edge corporations, respectively); section 5(c) of the Bank Holding Company Act [3] (for bank holding companies); sections 10(b)(2) and 10(b)(3) of the Home Owners' Loan Act [4] (savings and loan holding companies); and section 7(c)(2) of the International Banking Act [5] (state-licensed branches and agencies of foreign banks, other than insured branches). The recordkeeping provisions contained in the FR 4203 are voluntary.

Because these records would be maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. If the records were obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[6] In addition, to the extent that information contained in these records constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by a banking organization, it may be kept confidential under exemption 4 of the FOIA, which exempts ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'' [7]

Current actions: On April 6, 2022, the Board published a notice in the **Federal Register** (87 FR 19933) requesting public comment for 60 days on the extension, without revision, of the FR 4203. The comment period for this notice expired on June 6, 2022. The Board did not receive any comments.

[2] 12 U.S.C. 324, 602, and 625, respectively.

[3] 12 U.S.C. 1844(c).

[4] 12 U.S.C. 1467a(b)(2) and (b)(3).

[5] 12 U.S.C. 3105(c)(2).

[6] 5 U.S.C. 552(b)(8).

[7] 5 U.S.C. 552(b)(4).

Board of Governors of the Federal Reserve System, July 27, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–16476 Filed 8–1–22; 8:45 am]

BILLING CODE 6210–01–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 August 31, 2022.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *Heritage Bancshares Group Inc. Employee Stock Ownership Plan and Trust, Spicer, Minnesota;* to acquire additional voting shares up to 38.34 percent of Heritage Bancshares Group, Inc., and thereby indirectly acquire voting shares of Heritage Bank, National Association, both of Spicer, Minnesota.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–16460 Filed 8–1–22; 8:45 am]

BILLING CODE 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 September 1, 2022.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *AllBank Holding Company, Inc., Tulsa, Oklahoma;* to become a bank holding company by acquiring Bank of Locust Grove, Locust Grove, Oklahoma.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–16528 Filed 8–1–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted (FR 4006; OMB No. 7100–0129).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted.

Collection identifier: FR 4006.

OMB control number: 7100–0129.

Effective Date: The revisions are applicable as of August 2, 2022.

Frequency: On occasion.

Respondents: Bank holding companies (BHCs).

Estimated number of respondents: Section 225.12(b), 1; Section 225.22(d)(1), 20; Section 225.140(c) and (d), 12.

Estimated average hours per response: Section 225.12(b), 5; Section 225.22(d)(1), 5; Section 225.140(c) and (d), 2.

Estimated annual burden hours: Section 225.12(b), 5; Section 225.22(d)(1), 100; Section 225.140(c) and (d), 24.

General description of report: The Bank Holding Company Act of 1956 (BHC Act) and the Board's Regulation Y (12 CFR part 225) require a bank holding company that, either through foreclosure or otherwise in the ordinary course of collecting a debt previously contracted (DPC), acquired voting securities of a bank or BHC or the securities or assets of a company engaged in a nonbanking activity to seek prior Board approval in order to retain ownership of those shares or assets for more than two years.

Legal authorization and confidentiality: The FR 4006 is authorized pursuant to sections 3(a) and 4(c)(2) of the BHC Act [1] and sections 225.12(b) and 225.22(d) of the Board's Regulation Y, which permit a BHC to acquire securities or assets in the ordinary course of collecting a DPC in good faith without seeking prior Board approval if such securities or assets (DPC property) are divested within two years of acquisition. To hold the DPC property beyond this two-year period, a BHC must seek the Board's approval.[2] The FR 4006 is required to obtain this benefit.

The information contained on the FR 4006 is not considered confidential unless an applicant requests confidential treatment in accordance with the Board's Rules Regarding Availability of Information.[3] Requests for confidential treatment of information are reviewed on a case-by-case basis. To the extent information provided on the FR 4006 is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, such information may be protected from disclosure pursuant to exemption 4 of the Freedom of Information Act.[4]

Current actions: On April 6, 2022, the Board published a notice in the **Federal Register** (87 FR 19926) requesting public comment for 60 days on the extension, with revision, of the FR 4006. The Board has revised the FR 4006 to account for the voluntary reporting provisions set forth in sections 225.140(c) and 225.140(d) of Regulation Y. These sections state, respectively, that a BHC that holds nonbanking DPC assets past the two-year statutory holding period should report annually to the appropriate Reserve Bank on its efforts to accomplish divestiture of such assets; and that a BHC that holds real estate acquired as DPC property for longer than five years should keep the appropriate Reserve Bank advised on a regular basis concerning its efforts to dispose of the property. The comment period for this notice expired on June 6, 2022. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, July 27, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–16477 Filed 8–1–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1842(a) and 1843(c)(2).

[2] The two-year period may be extended by the Board for up to three years in one-year increments (12 CFR 225.12(b); 12 CFR 225.22(d)(1)). The Board may provide up to five additional one-year extensions (for a total of ten years) if the DPC property is shares, real estate, or other assets where the holding company demonstrates that each extension would not be detrimental to the public interest and either the bank holding company has made good faith attempts to dispose of such shares, real estate or other assets or disposal of the shares, real estate or other assets during the initial period would have been detrimental to the company (12 CFR 225.22(d)(1)(ii)).

[3] 12 CFR 261.17.

[4] 5 U.S.C. 552(b)(4).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0879]

Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for the Safe Processing and Importing of Fish and Fishery Products

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 of an existing collection of information, and

to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with safe and sanitary processing and importing of fish and fishery products.

DATES: Either electronic or written comments on the collection of information must be submitted by October 3, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 3, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2013–N–0879 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for the Safe Processing and Importing of Fish and Fishery Products.'' 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.

Procedures for the Safe Processing and Importing of Fish and Fishery Products—21 CFR Part 123

OMB Control Number 0910–0354—Extension

This information collection supports regulations in part 123 (21 CFR part 123), which mandate the application of hazard analysis and critical control point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety, including section 402(a)(1) and (4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and (4)). Certain provisions in

part 123 require that processors and importers of seafood collect and record information.

The HACCP records compiled and maintained by a seafood processor primarily consist of the periodic observations recorded at selected monitoring points during processing and packaging operations, as called for in a processor's HACCP plan (*e.g.,* the values for processing times, temperatures, acidity, etc., as observed at critical control points). The primary purpose of HACCP records is to permit a processor to verify that products have been produced within carefully established processing parameters (critical limits) that ensure that hazards have been avoided.

HACCP records are normally reviewed by appropriately trained employees at the end of a production lot or at the end of a day or week of production to verify that control limits have been maintained, or that appropriate corrective actions were taken if the critical limits were not maintained. Such verification activities are essential to ensure that the HACCP system is working as planned. A review of these records during the conduct of periodic plant inspections also permits FDA to determine whether the products have been consistently processed in conformance with appropriate HACCP food safety controls.

Section 123.12 requires that importers of seafood products take affirmative steps and maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123. These records are also to be made available for review by FDA as provided in § 123.12(c).

The time and costs of these recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and on the nature of the equipment or instruments required to monitor critical control points. The burden estimate in table 1 includes only those collections of information under the seafood HACCP regulations that are not already required under other statutes and regulations. The estimate also does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (21 CFR 1240.60) is a customary and usual practice among seafood part of processors. Consequently, the estimates in table 1 account only for information collection and recording requirements attributable to part 123.

Description of Respondents: Respondents to this collection of information include processors and importers of seafood.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section; [2] activity	Number of recordkeepers	Number of records per recordkeeper [3]	Total annual records	Average burden per recordkeeping [4]	Total hours
123.6(a), (b), and (c); Prepare hazard analysis and HACCP plan	50	1	50	16	800
123.6(c)(5); Undertake and prepare records of corrective actions	15,000	4	60,000	0.30 (18 minutes)	18,000
123.8(a)(1) and (c); Reassess hazard analysis and HACCP plan	15,000	1	15,000	4	60,000
123.12(a)(2)(ii); Verify compliance of imports and prepare records of verification activities.	4,100	80	328,000	0.20 (12 minutes)	65,600
123.6(c)(7); Document monitoring of critical control points	15,000	280	4,200,000	0.30 (18 minutes)	1,260,000
123.7(d); Undertake and prepare records of corrective actions due to a deviation from a critical limit.	6,000	4	24,000	0.10 (6 minutes)	2,400
123.8(d); Maintain records of the calibration of process-monitoring instruments and the performing of any periodic end-product and in-process testing.	15,000	47	705,000	0.10 (6 minutes)	70,500
123.11(c); Maintain sanitation control records	15,000	280	4,200,000	0.10 (6 minutes)	420,000
123.12(c); Maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123.	4,100	80	328,000	0.10 (6 minutes)	32,800
123.12(a)(2); Prepare new written verification procedures to verify compliance of imports.	41	1	41	4	164
Total					1,930,264

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] These estimates include the information collection requirements in the following sections:
§ 123.16—Smoked Fish—process controls (see § 123.6(b));
§ 123.28(a)—Source Controls—molluscan shellfish (see § 123.6(b));
§ 123.28(c) and (d)—Records—molluscan shellfish (see § 123.6(c)(7).
[3] Based on an estimated 280 working days per year.
[4] Estimated average time per 8-hour workday unless one-time response.

Based on a review of the information collection since our last OMB approval, we have made no adjustments to our burden estimate. We base this hour burden estimate on our experience with the application of HACCP principles in food processing. Further, the burdens have been estimated using typical small seafood processing firms as a model because these firms represent a significant proportion of the industry. The hour burden of HACCP recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the size of the facility and complexity of the HACCP control scheme (*i.e.,* the number of products and the number of hazards controlled); the daily frequency that control points are monitored and values recorded; and also on the extent that data recording time and cost are minimized by the use of automated data logging technology. The burden estimate does not include burden hours for activities that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (§ 1240.60) is a customary and usual practice among seafood processors.

Dated: July 20, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16534 Filed 8–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–2325; FDA–2020–E–2326; FDA–2020–E–2335; FDA–2020–E–2338]

Determination of Regulatory Review Period for Purposes of Patent Extension; ROZLYTREK TABLETS, New Drug Application 212725

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ROZLYTREK TABLETS new drug application (NDA) 212725 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claim that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 3, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 30, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 October 3, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 3, 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 Nos. FDA–2020–E–2325; FDA–2020–E–2326; FDA–2020–E–2335; and FDA–2020–E–2338 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ROZLYTREK TABLETS NDA 212725.'' 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.

- 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 § 10.20 (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.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an

application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ROZLYTREK TABLETS (entrectinib). ROZLYTREK TABLETS (entrectinib) is indicated for the treatment of adult patients with metastatic non-small cell lung cancer (NSCLC) whose tumors are *ROSI*—positive and adult and pediatric patients 12 years of age and older with solid tumors that:

- have a neurotrophic tyrosine receptor kinase gene fusion without a known acquired resistance mutation;
- are metastatic or where surgical resection is likely to result in severe morbidity; and
- have progressed following treatment or have no satisfactory alternative therapy.

This indication is approved under accelerated approval based on tumor response rate and durability of response. Continued approval for this indication may be contingent upon verification and description of clinical benefit in the confirmatory trials.

Subsequent to this approval, the USPTO received patent term restoration applications for ROZLYTREK TABLETS NDA 212725 (U.S. Patent Nos. 8,299,057; 8,673,893; 9,029,356; and 9,085,565) from Genentech, Inc. and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 1, 2021, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ROZLYTREK TABLETS represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ROZLYTREK TABLETS is 1,968 days. Of this time, 1,727 days occurred during the testing phase of the regulatory review period, while 241 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* March 28, 2014. The applicant claims March 29, 2014, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 28, 2014, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 18, 2018. FDA has verified the applicant's claims that the new drug application (NDA) for ROZLYTREK TABLETS (NDA 212725) was initially submitted on December 18, 2018.

3. *The date the application was approved:* August 15, 2019. FDA has verified the applicant's claims that NDA 212725 was approved on August 15, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 864 days, 899 days, or 1,104 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16504 Filed 8–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0101]

Duniel Tejeda: 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 Duniel Tejeda 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 Duniel Tejeda was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product under the FD&C Act. Duniel Tejeda was given notice of the proposed permanent debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of April 20, 2022 (30 days after receipt of the notice), Mr. Tejeda had not responded. Mr. Tejeda's failure to respond and request a hearing within the prescribed timeframe constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is applicable August 2, 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 *https://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.*

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 January 20, 2022, Mr. Duniel Tejeda 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 his plea of guilty and entered judgment against him for one count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. 1349.

As contained in the indictment, entered into the docket on February 24, 2021, and the Factual Proffer in support of Mr. Tejeda's guilty plea, entered into the docket on October 26, 2021, both from his case, Mr. Tejeda was a project manager and study coordinator employed at Tellus Clinical Research, Inc. (''Tellus''). Tellus was a medical research clinic located in Miami, Florida that conducted clinical trials on behalf of pharmaceutical companies and other sponsors. Among the clinical research trials conducted by Tellus were two studies of an investigational drug intended to treat opioid dependency, sponsored by Sponsor 1 and managed by clinical research organization (CRO) 1 (collectively, ''the opioid dependency trials''); two studies of an investigational drug intended to treat irritable bowel syndrome in female subjects, sponsored by Sponsor 2 and managed by CRO 2 (collectively, ''the IBS trials''); and one study of an investigational injectable drug intended to treat diabetic nephropathy, sponsored by Sponsor 3 and managed by CRO 3 (''the diabetes trial''). In Mr. Tejeda's roles with Tellus, he conspired with others to defraud these sponsors and CROs responsible for initiating and overseeing these clinical trials. For the purpose of obtaining money by means of materially false and fraudulent pretenses, representations, and promises, Mr. Tejeda, along with his co-conspirators, caused false information to be entered in subject case histories to make it appear that subjects had, among other things, satisfied the eligibility criteria to participate in the studies, provided informed consent to participate in the studies, received proper physical examinations, received or had been administered the investigational drug that was the subject of each clinical trial, and received payments for visits to Tellus for the clinical trials, when in fact Mr. Tejeda knew that such events had not occurred. As an example of Mr. Tejeda's specific conduct to further this scheme, in one of the opioid dependency trials, Mr. Tejeda entered his initials in the case history documentation for one of the study subjects to represent falsely that he had administered multiple doses of the investigational drug to the subject as required by the study protocol, and that this drug administration was witnessed by one of Mr. Tejeda's co-conspirators. As Mr. Tejeda well knew, these representations were false because the study subject was not participating in the study, Mr. Tejeda did not dose them with the study medication, and the dosing was not witnessed by Mr. Tejeda's co-conspirator.

In another instance, in connection to one of the IBS trials, Mr. Tejeda wrote a check, endorsed by one of his co-conspirators, to a study participant for their purported participation in a study visit. As Mr. Tejeda well knew, the individual was not in fact participating in the study and had not received the check. Mr. Tejeda deposited that check in his own bank account. Further, as part of the IBS trials, study subjects were required to make daily phone calls to an ''e-diary'' system (a toll-free number maintained by a third party) and report their personal experience with the study drug. Using the subjects' individual personal identification numbers, Mr. Tejeda, along with one or more of his co-conspirators, placed telephone calls to this 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 Mr. Tejeda by certified mail on March 1, 2022, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) of the FD&C Act, that Mr. Tejeda 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 Mr. Tejeda an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted an election not to use the opportunity for a hearing and a waiver of any contentions concerning his debarment. Mr. Tejeda received the proposal on March 21, 2022. He did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and any contentions concerning his 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 Mr. Tejeda 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, Mr. Tejeda 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. 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 Mr. Tejeda in any capacity during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If during his period of debarment Mr. Tejeda provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Mr. Tejeda during his period of debarment, other than in connection with an audit under section 306 of the FD&C Act. Note that, for purposes of sections 306 and 307 of the FD&C Act, a ''drug product'' is defined as a ''drug subject to regulation under section 505, 512, or 802 of this 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 Mr. Tejeda for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2022–N–0101 and sent to the Dockets Management Staff (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: July 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16507 Filed 8–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0490]

Policy Regarding N-acetyl-L-cysteine; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a final guidance for industry entitled ''Policy Regarding N-acetyl-L-cysteine.'' The guidance explains our intent to exercise enforcement discretion with respect to the sale and distribution of certain products that contain N-acetyl-L-cysteine (NAC) and are labeled as dietary supplements. This enforcement discretion policy applies to products that would be lawfully marketed dietary supplements if NAC were not excluded from the definition of ''dietary supplement'' and that are not otherwise in violation of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: The announcement of the guidance is published in the **Federal Register** on August 2, 2022.

ADDRESSES: You may submit either electronic or written comments on FDA guidances 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–2022–D–0490 for ''Policy Regarding N-acetyl-L-cysteine: Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Dietary Supplement Programs, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Lisa Bieniek, Center for Food Safety and Applied Nutrition, Office of Dietary Supplements and Programs (HFS–810), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–4528; or Lauren Baham, 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:

I. Background

We are announcing the availability of a guidance for industry entitled ''Policy Regarding N-acetyl-L-cysteine: Guidance for Industry.'' We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

In the **Federal Register** of April 22, 2022 (87 FR 24170), we made available a draft guidance for industry entitled ''Policy Regarding N-acetyl-L-cysteine: Draft Guidance for Industry,'' which explained our intent to exercise enforcement discretion with respect to the sale and distribution of certain products that contain NAC and are labeled as dietary supplements. In the draft guidance, we explained FDA determined that, under section

201(ff)(3)(B)(i) of the FD&C Act (21 U.S.C. 321(ff)(3)(B)(i)), NAC is excluded from the dietary supplement definition because NAC was approved as a new drug before it was marketed as a dietary supplement or as a food. We described that FDA denied two citizen petitions requesting that we conclude that NAC is not excluded from the definition of dietary supplement under section 201(ff)(3)(B) of the FD&C Act.

In addition, we described that one citizen petition asked FDA to issue a regulation that would determine NAC to be lawful under the FD&C Act. We described that we have not yet reached a final decision on this request, but are considering initiating rulemaking under section 201(ff)(3)(B) of the FD&C Act to permit the use of NAC in or as a dietary supplement (*i.e.,* to provide by regulation that NAC is not excluded from the definition of dietary supplement). If, among other considerations, we do not identify safety-related concerns as we continue our review of the available data and information, we are likely to propose a rule providing that NAC is not excluded from the definition of dietary supplement.

We gave interested parties an opportunity to submit comments by May 23, 2022, to ensure their comments would be considered before we began work on the final version of the guidance. We received comments on the draft guidance that misinterpreted the guidance as converting NAC into a ''drug'' under the FD&C Act. Our guidance does not convert NAC into a ''drug'' under the FD&C Act. Rather, our guidance states our intent to exercise enforcement discretion with respect to the sale and distribution of certain products that contain NAC and are labeled as dietary supplements. We also received comments that supported our intent to exercise enforcement discretion with respect to the sale and distribution of certain products that contain NAC and are labeled as dietary supplements, as well as comments that supported possible notice-and-comment rulemaking to allow the use of NAC in or as a dietary supplement. After careful review and consideration of the comments to the draft guidance, we are finalizing the guidance without substantive change.

As discussed in the guidance, the enforcement discretion policy applies to products that would be lawfully marketed dietary supplements if NAC were not excluded from the definition of ''dietary supplement'' and that are not otherwise in violation of the FD&C Act. Unless we identify safety-related concerns during our ongoing review, FDA intends to exercise enforcement discretion until either of the following occurs: we complete notice-and-comment rulemaking to allow the use of NAC in or as a dietary supplement (if we move forward with such proceedings), or we deny the citizen petition's request for rulemaking. Should we determine that this enforcement discretion policy is no longer appropriate, we will withdraw or revise this guidance in accordance with 21 CFR 10.115.

The guidance announced in this notice finalizes the draft guidance, dated April 2022.

II. Paperwork Reduction Act of 1995

FDA concludes that this guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/FoodGuidances, https://www.fda.gov/CosmeticGuidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: July 27, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16499 Filed 8–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0478]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before September 1, 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: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–0478 30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Unified Hospital Data Surveillance System (U.S. Healthcare COVID–19 Collection).

Type of Collection: Emergency Revision.

OMB No.: 0990–0478.

Abstract: Since March 29, 2020, the U.S. government has been collecting data from hospitals and states to understand health care system stress, capacity, capabilities, and the number of patients hospitalized due to COVID–19. The principal use of the data collected through this ICR is to inform federal allocations of limited supplies (*e.g.,* protective equipment and medication). It is also used to inform the White House, conduct research on hospitalization, and communicate to the public through daily and weekly reports for the public's use and analysis.

Hospitals, with the exception of psychiatric and rehabilitation hospitals, are required to report seven days a week but, where possible and pending further direction from their state or jurisdiction, are encouraged to report weekend data on the following Monday with the data backdated to the appropriate date. Data elements may be required or optional and may be associated with a specific cadence. Some data elements are requested at each reporting interval (*i.e.,* daily), while others are requested weekly. As of the August 10, 2022 guidance, per Secretary discretion, psychiatric and rehabilitation facilities must submit data once annually for the

week prior to meet federal reporting requirements. This may evolve based on the needs of the national response. All hospitals are asked to follow the direction of their state and jurisdiction to ensure reporting meets state, tribal, local, and territorial (STLT) needs. This collection will continue for the length of the public health emergency declaration.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Hospitals (excluding Psychiatric and Rehabilitation Hospitals)	5,200	365	1.1	2,087,800
Psychiatric and Rehabilitation Hospitals	870	1	1.1	957
Total				2,088,757

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–16505 Filed 8–1–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging: 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: National Institute on Aging Special Emphasis Panel Glial Pathology in Brain Aging.

Date: October 4, 2022.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue Bethesda, MD 20892, 301–496–9666 *Parsadaniana@nia.nih.gov*.

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 26, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–16468 Filed 8–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Aging: 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: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Drug Development.

Date: October 21, 2022.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV*.

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 26, 2022.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–16470 Filed 8–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2258]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community

number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

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: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

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).

These 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. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

(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.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa	City of Surprise, (22–09–0029P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works, Department Engineering, Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Nov. 14, 2022	040053
Maricopa	City of Surprise, (22–09–0374P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works, Department Engineering, Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Oct. 28, 2022	040053
Maricopa	Unincorporated Areas of Maricopa County, (22–09–0374P).	The Honorable Bill Gates, Chair, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Oct. 28, 2022	040037
California:						
Riverside	City of San Jacinto, (21–09–1682P).	The Honorable Crystal Ruiz, Mayor, City of San Jacinto, 595 South San Jacinto Avenue, San Jacinto, CA 92583.	Tri-Lake Consultants, 24 South D Street, Suite 100, Perris, CA 92570.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Nov. 9, 2022	065056
Riverside	Unincorporated Areas of Riverside County, (21–09–1682P).	The Honorable Jeff Hewitt, Chair, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92502.	Riverside County, Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Nov. 9, 2022	060245

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
San Diego	City of Poway, (21–09–1484P).	The Honorable Steve Vaus, Mayor, City of Poway, 13325 Civic Center Drive, Poway, CA 92064.	City Hall, 13325 Civic Center Drive, Poway, CA 92064.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Nov. 4, 2022	060702
Illinois:						
Cook	Village of Western Springs, (21–05–1260P).	The Honorable Alice Gallagher, Village President, Village of Western Springs, Village Hall, 740 Hillgrove Avenue, Western Springs, IL 60558.	Village Hall, Community Development Department, 740 Hillgrove Avenue, Western Springs, IL 60558.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Oct. 28, 2022	170171
Will	Village of Bolingbrook, (22–05–1649P).	The Honorable Mary Alexander-Basta, Mayor, Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, IL 60440.	Village Hall, 375 West Briarcliff Road, Bolingbrook, IL 60440.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Oct. 24, 2022	170812
Indiana:						
Morgan	City of Martinsville, (22–05–1449P).	The Honorable Kenneth Costin, Mayor, City of Martinsville, P.O. Box 1415, Martinsville, IN 46151.	City Hall, 59 South Jefferson Street, Martinsville, IN 46151.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2022	180177
Morgan	Unincorporated Areas of Morgan County, (22–05–1449P).	Commissioner Don Adams, Morgan County Board of Commissioners, 180 South Main Street, Suite 112, Martinsville, IN 46151.	Morgan County, Administration Building, 180 South Main Street, Martinsville, IN 46151.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2022	180176
Michigan:						
Ingham	Charter Township of Lansing, (22–05–1554P).	Supervisor Maggie Sanders, Charter Township of Lansing, 3209 West Michigan Avenue, Lansing, MI 48917.	Township Hall, 3209 West Michigan Avenue, Lansing, MI 48917.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Oct. 27, 2022	260632
Ingham	City of East Lansing, (22–05–1554P).	The Honorable Ron Bacon, Mayor, City of East Lansing, 410 Abbot Road, Room 100, East Lansing, MI 48823.	City Hall, 410 Abbott Road, East Lansing, MI 48823.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Oct. 27, 2022	260089
Ingham	City of Lansing, (22–05–1554P).	The Honorable Andy Schor, Mayor, City of Lansing, 124 West Michigan Avenue, 9th Floor, Lansing, MI 48933.	City Hall, 124 West Michigan Avenue, Lansing, MI 48933.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Oct. 27, 2022	260090
Nebraska:						
Saline	City of Crete, (20–07–0590P).	The Honorable Dave Bauer, Mayor, City of Crete, 243 East 13th Street, Crete, NE 68333.	City Hall, 241 East 13th Street, Crete, NE 68333.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Oct. 27, 2022	310186
Saline	Unincorporated Areas of Saline County, (20–07–0590P).	Commissioner Russ Karpisek, Chair, Saline County, 315 North Shimerda, Wilber, NE 68465.	Saline County Courthouse, 215 South Court Street, Wilber, NE 68465.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Oct. 27, 2022	310472
Nevada: Clark	City of Henderson, (22–09–0379P).	The Honorable Debra March, Mayor, City of Henderson, 240 South Water Street, Henderson, NV 89015.	Public Works Department, 240 South Water Street, Henderson, NV 89015.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Oct. 24, 2022	320005
New York:						
Montgomery ...	City of Amsterdam, (21–02–0893P).	The Honorable Michael Cinquanti, Mayor, City of Amsterdam, 61 Church Street, Amsterdam, NY 12010.	City Hall, 61 Church Street, Amsterdam, NY 12010.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Dec. 1, 2022	360440
Montgomery ...	Town of Amsterdam, (21–02–0893P).	Supervisor Thomas Dimezza, Town of Amsterdam, 283 Manny's Corners Road, Amsterdam, NY 12010.	Office Building, 283 Manny's Corners Road, Amsterdam, NY 12010.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Dec. 1, 2022	360441
Montgomery ...	Town of Florida, (21–02–0893P).	Supervisor Eric Mead, Town of Florida, 214 Fort Hunter Road, Amsterdam, NY 12010.	Office Building, 214 Fort Hunter Road, Amsterdam, NY 12010.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Dec. 1, 2022	360445

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Montgomery ...	Town of Mohawk, (21–02–0893P).	Supervisor Ed Bishop, Town of Mohawk, P.O. Box 415, Fonda, NY 12068.	Town of Mohawk, Richard A. Papa Office Building, 2–4 Park Street, Fonda, NY 12068.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Dec. 1, 2022	360452
Montgomery ...	Village of Fort Johnson, (21–02–0893P).	The Honorable Michael Simmons, Mayor, Village of Fort Johnson, P.O. Box 179, Fort Johnson, NY 12070.	Fort Johnson Municipal Building, 1 Prospect Street, Fort Johnson, NY 12070.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Dec. 1, 2022	360447
South Carolina: Spartanburg.	Unincorporated Areas of Spartanburg County, (21–04–4426P).	Chair A. Manning Lynch, Spartanburg County, 366 North Church Street, Main Level, Suite 1000, Spartanburg, SC 29303.	Spartanburg County, Administration Building, 366 North Church Street, Spartanburg, SC 29303.	*https://msc.fema.gov/portal/advanceSearch. msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2022	450176

[FR Doc. 2022–16485 Filed 8–1–22; 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–2255]

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 October 31, 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–2255, 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
San Luis Obispo County, California Project: 18–09–0044S Preliminary Dates: September 28, 2021 and April 29, 2022	
City of Arroyo Grande	City Hall, 300 East Branch Street, Arroyo Grande, CA 93420.
City of El Paso de Robles	City Hall, 1000 Spring Street, Paso Robles, CA 93446.
City of Grover Beach	City Hall, 154 South Eighth Street, Grover Beach, CA 93433.
City of Pismo Beach	City Hall, 760 Mattie Road, Pismo Beach, CA 93449.
City of San Luis Obispo	City Hall, 990 Palm Street, San Luis Obispo, CA 93401.
San Luis Obispo County Unincorporated Areas	San Luis Obispo County Government Center, 1055 Monterey Street, Room D–430, San Luis Obispo, CA 93408.

[FR Doc. 2022–16481 Filed 8–1–22; 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–2256]

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 October 31, 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–2256, 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
Marion County, Ohio and Incorporated Areas Project: 14–05–4454S Preliminary Date: March 25, 2022	
Unincorporated Areas of Marion County	Marion County Building, 222 West Center Street, Marion, OH 43302.
Village of Caledonia	Town Hall, 110 East Marion Street, Caledonia, OH 43314.
Arlington County, Virginia (All Jurisdictions) Project: 14–03–3327S Preliminary Date: April 29, 2022	
Unincorporated Areas of Arlington County	Arlington County Department of Environmental Services, 2100 Clarendon Boulevard, Suite 705, Arlington, VA 22201.
City of Fairfax, Virginia, Independent City Project: 14–03–3327S Preliminary Date: April 29, 2022	
City of Fairfax	Department of Public Works, 10455 Armstrong Street, City Hall Annex, Room 200 A, Fairfax, VA 22030.

[FR Doc. 2022–16484 Filed 8–1–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0022; OMB No. 1660–0054]

Agency Information Collection Activities: Proposed Collection; Comment Request; Assistance to Firefighters Grant Program and Fire Prevention and Safety Grants—Grant Application Supplemental Information

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a currently approved collection with revisions. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the applications for the Assistance to Firefighters Grant (AFG) program, the Fire Prevention and Safety (FP&S) Grants program, the Staffing for Adequate Fire and Emergency Response (SAFER) Grants program, and the Assistance to Firefighters Grant Program—COVID–19 Supplemental (AFG–S). These programs focus on enhancing the safety of the public and firefighters with respect to fire and fire-related hazards. The changes proposed will acknowledge the FEMA Grants Outcomes (FEMA GO) system as the new collection instrument for the AFG, AFG–S, SAFER, and FP&S programs. The individual forms will be combined into a question bank to allow the FEMA GO system to fully utilize its technology to simplify the process by reducing unnecessary questions.

DATES: Comments must be submitted on or before October 3, 2022.

ADDRESSES: Submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0022. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID, and will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William Dunham, Fire Program Specialist, FEMA, Grant Programs Directorate, 202–786–9813 or *Firegrants@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The authority for these grant programs is derived from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Div. B (Pub. L. 116–136); and Sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974, Public Law 93–498, as amended (15 U.S.C. 2229, 2229a). The information collected is grant application information that is necessary to assess the needs of the applicants as well as the benefits to be obtained from the use of funds. The information collected through the program's application is the minimum necessary to evaluate grant applications and is necessary for FEMA to comply with mandates delineated in the law.

FEMA is consolidating several forms associated with these programs into the FEMA GO electronic system, FF–207–FY–21–116. Transitioning and consolidating these forms into the electronic system will allow FEMA to retire the following forms: FEMA Form 080–0–2, AFG Application (General Questions and Narrative); FEMA Form 080–0–2a, Activity Specific Questions for AFG Vehicle Applicants; FEMA Form 080–0–2b, Activity Specific Questions for AFG Operations and Safety Applications; FEMA Form 080–3, Activity Specific Questions for Fire Prevention and Safety Applicants; FEMA Form 080–0–3a, Fire Prevention and Safety; FEMA Form 080–0–3b, Research and Development; FEMA Form 080–0–0–13, Semi-Annual Performance Plan; FEMA Form 080–0–0–16, Final Performance Plan; FEMA

Form 080–0–4, SAFER (General Questions for All Applicants); FEMA Form 080–0–4a, SAFER Hiring of Firefighters Application (Questions and Narrative); FEMA Form 080–0–4b, SAFER Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative); FEMA Form 087–0–0–2, SAFER Quarterly Report and Payment Request Form; and the AFG–S Application.

Temporary forms, FF–207–FY–22–120, Assistance to Firefighters Gant Programmatic Performance Report, FF–207–FY–22–120–A, Fire Preventions and Safety Programmatic Performance Report, FF–207–FY–22–120–B, Staffing for Adequate Fire and Emergency Response Hiring Programmatic Performance Report, and FF–207–FY–22–120–C, Staffing for Adequate Fire and Emergency Response Recruitment and Retention Programmatic Performance Report, will be used to collect required performance reports until the system is able to collect this information electronically.

Collection of Information

Title: Assistance to Firefighters Grant Program and Fire Prevention and Safety Grants-Grant Application Supplemental Information.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0054.

FEMA Forms: FF–207–FY–21–116, Assistance to Firefighters Grant Programs; FF–207–FY–22–120; Assistance to Firefighters Gant Programmatic Performance Report; FF–207–FY–22–120–A, Fire Preventions and Safety Programmatic Performance Report; FF–207–FY–22–120–B, Staffing for Adequate Fire and Emergency Response Hiring Programmatic Performance Report; and FF–207–FY–22–120–C, Staffing for Adequate Fire and Emergency Response Recruitment and Retention Programmatic Performance Report.

Abstract: The Fire Prevention and Safety (FP&S) Grants program, the Staffing for Adequate Fire and Emergency Response (SAFER) Grants program, and the Assistance to Firefighters Grant Program—COVID–19 Supplemental (AFG–S) focus on enhancing the safety of the public and firefighters with respect to fire and fire-related hazards. FEMA uses this information to ensure that FEMA's responsibilities under the legislation can be fulfilled accurately and efficiently. The information will be used to objectively evaluate each of the anticipated applicants to determine which of the applicants' proposals in each of the activities are the closest to the established program priorities.

Affected Public: State, Local or Tribal Government; Not-for-Profit Institutions.

Estimated Number of Respondents: 24,112.

Estimated Number of Responses: 24,112.

Estimated Total Annual Burden Hours: 191,720.

Estimated Total Annual Respondent Cost: $12,345,373.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $433,412.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–16503 Filed 8–1–22; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Meetings To Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meetings; correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a document in the **Federal Register** of June 2, 2022, concerning an announcement of meetings to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic. The document incorrectly listed certain meeting dates.

FOR FURTHER INFORMATION CONTACT: Kathy Hill, Office of Business, Industry, and Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212–1666.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of June 2, 2022, in FR Doc. 2022–11842 on page 33498, correct the **DATES** to read:

DATES:

- Thursday, June 2, 2022, from 2:00 p.m. to 3:00 p.m. Eastern Time (ET).
- Thursday, June 16, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Thursday, June 23, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Thursday, June 30, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Thursday, July 28, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Thursday, August 11, 2022, from 1:30 p.m. to 2:30 p.m. ET.

Dated: July 27, 2022.

Shabnaum Q. Amjad,

Deputy Associate Chief Counsel, Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency.

[FR Doc. 2022–16486 Filed 8–1–22; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2208]

Proposed Flood Hazard Determinations for Lafourche Parish, Louisiana and Incorporated Areas

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth,

Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for Lafourche Parish, Louisiana and Incorporated Areas.

DATES: This withdrawal is effective August 2, 2022.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–2208, 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.*

SUPPLEMENTARY INFORMATION: On February 9, 2022, FEMA published a proposed notice at 87 FR 7490, proposing flood hazard determinations for Lafourche Parish, Louisiana and Incorporated Areas. FEMA is withdrawing the proposed notice.

(Authority: 42 U.S.C. 4104; 44 CFR 67.4)

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2022–16488 Filed 8–1–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2022–0044]

Homeland Security Advisory Council

AGENCY: The Department of Homeland Security (DHS), The Office of Partnership and Engagement (OPE).

ACTION: Amended notice of open Federal Advisory Committee meeting.

SUMMARY: The Department of Homeland Security announces the rescheduling of the public meeting of the Homeland Security Advisory Council scheduled for August 3, 2022. This meeting will be held August 24, 2022 from 3 p.m. to 4 p.m. ET. The meeting is open to the public.

DATES: The meeting announced in the **Federal Register** on July 19, 2022 (87 FR 43045) to be held on August 3, 2022, is rescheduled for August 24, 2022 from 3 p.m. to 4 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Michael Miron at 202–891–2876 or *HSAC@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: DHS gives notice under the Federal Advisory Committee Act, 5 U.S.C.A. app. 2, that the meeting of the Homeland Security Advisory Council (HSAC), originally scheduled for August 3, 2022, 3 p.m. to 4 p.m. via teleconference will be held August 24, 2022, from 3 p.m. to 4 p.m. ET. The meeting is open to the public.

Dated: July 29, 2022.

Michael J. Miron,

Deputy Executive Director, Homeland Security Advisory Council, Department of Homeland Security.

[FR Doc. 2022–16620 Filed 8–1–22; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Fifth Amendment to the Technical Standards in the Tribal-State Compact for Control of Class III Video Games of Chance on the Shakopee Mdewakanton Sioux Community Reservation in Minnesota (Amendment) between the Shakopee Mdewakanton Sioux Community of Minnesota (Tribe) and the State of Minnesota.

DATES: The Amendment takes effect on August 2, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. On June 23, 2022, the Shakopee Mdewakanton Sioux Community of Minnesota (Tribe) and the State of Minnesota (State) submitted the Fifth Amendment to Technical Standards in Tribal-State Compact for Control of Class III Video Games of Chance on the Shakopee Mdewakanton Sioux Community Reservation in Minnesota (Amendment), providing for the regulation of class III gaming activities by the Tribe. The Amendment permits the Tribe to offer a higher wager payback percentage and to ease the eligibility requirements for players to win top awards for Video Games of Chance. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–16517 Filed 8–1–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN060000 L71220000.EU00000 LVTFBX980070 19X: CACA–57676; MO#4500157350]

Notice of Realty Action: Direct Sale of Public Lands in Shasta County, CA

AGENCY: Bureau of Land Management

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is proposing a noncompetitive (direct) sale of 4.12 acres of public lands in Shasta County, California, to John Friesen. There is no legal public access to these parcels, which are surrounded by private land on three sides. The sale would be subject to applicable provisions of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), and BLM land-sale regulations. The proponent would purchase the two parcels for the appraised fair market value of the land, which is $45,500.

DATES: Submit written comments to the BLM regarding this direct sale by September 16, 2022.

ADDRESSES: Mail written comments to Jennifer Mata, Field Manager, BLM, Redding Field Office, 6640 Lockheed Drive, Redding, California 96002 or submit them by email to *jmata@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsey Moyer, Realty Specialist, BLM Redding Field Office, telephone: (530) 224–2121, email: *lmoyer@blm.gov,* or you may contact the BLM Redding Field Office at the earlier-listed address. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access

telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 2720.0–6, only the surface estate of the lands would be conveyed in the sale, and the United States would retain the mineral estate, including sand and gravel. The BLM will consider a direct sale of the following described lands in accordance with Section 203 of FLPMA.

Mount Diablo Meridian, California

T. 32 N, R. 5 W,
Sec. 28, lots 160 and 161.
The area aggregates 4.12 acres.

These lands were identified for disposal in the BLM Redding Resource Management Plan (RMP) approved July 27,1993, and amended November 15, 2005. The BLM also completed a plan maintenance action February 2, 2022, to identify these parcels by Assessor Parcel Number and clarify that these parcels had already been identified in the RMP for disposal, as well as more specifically outline their suitability for disposal, pursuant to Section 203(a)(1) of FLPMA.

FLPMA authorizes the sale of public lands without competitive bidding by giving preference to the adjoining landowners. These BLM parcels are small unmanageable remnants that are surrounded by Mr. Friesen's property and property owned by one other landowner. The BLM notified the other landowner of the potential sale to gauge interest. This landowner responded that they were not interested in acquiring the BLM parcels. Mr. Friesen's intent is to acquire the public land to secure access to his adjacent private lands. This sale would terminate an existing reciprocal right-of-way.

The BLM considered the criteria for disposal found in Sec. 203(a)(1) of FLMPA, which states that land is suited for disposal, ''. . . because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.'' The lands were examined and have been determined to be suitable for direct sale consistent with 43 CFR 2711.3–3, which states the authorized officer can determine a direct sale best serves the public interest, for example when the adjoining land pattern indicates a direct sale would be most efficient. The identified land is not needed for any Federal purpose.

In conformance with the National Environmental Policy Act, the BLM prepared a site-specific environmental assessment (EA) (DOI–BLM–CA–360–2021–0019–EA). Based on the EA, the BLM issued a Finding of No Significant Impact and Decision Record on August 12, 2021, to conduct the sale of the lands.

Publication of this notice in the **Federal Register** will segregate the previously described lands from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions under Section 203 of the FLPMA. The segregation will terminate automatically upon issuance of a patent or on August 2, 2024, whichever occurs first, unless extended by the BLM California State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. If issued, the patent will include the following terms, covenants, conditions, and reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890;

2. All minerals in the lands, including, without limitation, substances subject to disposition under the general mining laws, the Mineral Leasing Act, the Materials Act, and the Geothermal Steam Act, and to the United States, its permittees, licensees, lessees, and mining claimants, the right to prospect for, mine, and remove the minerals owned by, acquired by, or vested in the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This includes necessary ingress and egress rights and the right to conduct all necessary and incidental activities authorized under law and implementing regulations. Unless otherwise provided by separate agreement with the surface owner, permittees, licensees, and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior. All causes of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against mining claimants, permittees, licenses, and lessees of the United States; and the United States shall not be liable for the acts or omissions of its mining claimants, permittees, licenses, or lessees;

3. Valid existing rights of record;

4. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands; and

5. Additional terms and conditions that the authorized officer deems appropriate.

The EA, appraisal, maps, and Environmental Site Assessment are available for review during business hours Monday through Friday at the address in the **ADDRESSES** section, except during federally recognized holidays. If the office is closed due to Covid prevention protocols, interested parties can make arrangements to view the documents by contacting the office at (530) 224–2100. Interested parties may submit written comments concerning the sale, including notification of any encumbrances or other claims related to the parcels, by either of the methods identified in the **ADDRESSES** section earlier.

The BLM California State Director will review adverse comments regarding the sale and may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely objections, this realty action will become the final determination of the Department of the Interior.

In addition to publication in the **Federal Register**, the BLM will publish this notice in the *Redding Record Searchlight* newspaper once a week for 3 consecutive weeks.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 2711)

Erica E. St. Michel,

BLM California Deputy State Director, Communications.

[FR Doc. 2022–16501 Filed 8–1–22; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; H–2A Temporary Agricultural Labor Certification Program

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 September 1, 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 Immigration and Nationality Act (INA) requires the Secretary of Labor to certify, among other things, that any foreign worker seeking to enter the United States (U.S.) to perform certain skilled or unskilled labor will not, by doing so, adversely affect wages and working conditions of workers in the United States similarly employed. The Secretary must also certify there are not sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor. Before any employer may petition for any temporary skilled or unskilled foreign workers, it must submit a request for certification to the Secretary containing the elements prescribed by the INA and regulations. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 10, 2022 (87 FR 13760).

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: H–2A Temporary Agricultural Labor Certification Program.

OMB Control Number: 1205–0466.

Affected Public: Private Sector—Businesses or other for-profits, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 14,586.

Total Estimated Number of Responses: 458,114.

Total Estimated Annual Time Burden: 88,268 hours.

Total Estimated Annual Other Costs Burden: $3,692,705.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: July 27, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–16496 Filed 8–1–22; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; American Time Use Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information 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 September 1, 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) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The American Time Use Survey (ATUS) is the Nation's only federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, providing eldercare, sleeping or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities. The ATUS supports the mission of the Bureau of Labor Statistics by providing data on when, where, and how much employed Americans work. Individuals aged 15 and up are selected from a nationally representative sample of approximately 2,060 sample households each month for the ATUS. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 14, 2022 (87 FR 22235).

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–BLS.

Title of Collection: American Time Use Survey.

OMB Control Number: 1220–0175.

Affected Public: Private Sector—Individuals or Households.

Total Estimated Number of Respondents: 9,435.

Total Estimated Number of Responses: 9,435.

Total Estimated Annual Time Burden: 3,381 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–16497 Filed 8–1–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Older Workers Implementation and Descriptive Study

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Chief Evaluation Office (CEO)-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 September 1, 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) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Chief Evaluation Office of the U.S. Department of Labor commissioned the Older Workers Implementation and Descriptive Study to examine the implementation of the Senior Community Service Employment Program (SCSEP) and other DOL workforce programs serving older workers to inform the continuous improvement of SCSEP and develop options for potential future research studies that would address gaps in the evidence base related to employment services for older workers. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 14, 2022 (87 FR 8296).

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–CEO.

Title of Collection: Older Workers Implementation and Descriptive Study.

OMB Control Number: 1290–0NEW.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 226.

Total Estimated Number of Responses: 226.

Total Estimated Annual Time Burden: 487 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–16498 Filed 8–1–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Claim for Reimbursement—Assisted Reemployment (CA–2231)

AGENCY: Office of Workers' Compensations.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, ''Claim for Reimbursement—Assisted Reemployment (CA–2231). This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by October 3, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden,

conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Background: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA). Section 8104 (a) of the FECA provides vocational rehabilitation services to eligible injured workers to facilitate their return to work. Annual appropriations language under the Consolidated Appropriations Act of 2022 (currently in Pub. L. 117–103) provides OWCP with legal authority to use amounts from the Fund to reimburse private sector employers for a portion of the salary of reemployed FECA claimants hired through OWCP's assisted reemployment program. Additionally, 5 U.S.C. 8111 provides that an individual undergoing vocational rehabilitation under section 8104 may be paid additional compensation necessary for his maintenance, which is initiated by an employer for a claimant using Form CA–2231. Information collected on Form CA–2231 provides OWCP with the necessary remittance information for the employer, documents the hours of work, certifies the payment of wages to the claimant for which reimbursement is sought, and summarizes the nature and costs of the wage reimbursement program for a prompt decision by OWCP. This information collection is currently approved for use through December 31, 2022.

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 under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(b) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Number 1240–0018. Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL—Office of Workers' Compensation Programs.

Type of Review: Extension.

Title of Collection: Claim for Reimbursement—Assisted Reemployment.

Form: CA–2231.

OMB Number: 1240–0018.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 14.

Frequency: Quarterly.

Total Estimated Annual Responses: 56.

Estimated Average Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 28.

Total Estimated Annual Other Cost Burden: 0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2022–16500 Filed 8–1–22; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collections, NCUA Personnel Security Processing Forms

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before October 3, 2022 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; email at *PRAComments@NCUA.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Dawn Wolfgang at the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0201.

Title: NCUA Personnel Security Processing Forms.

Forms: NCUA 1092, 1092C, and 1093.

Type of Review: Extension of a currently approved collection.

Abstract: Title 5, Code of Federal Regulations, Part 731 (suitability), Executive Order (E.O.) 13764 (contractor fitness), E.O. 12968/SEAD 4 (classified access), and Homeland Security Directive-12 (badging) requires all federal and contractor employees to undergo a background investigation when seeking employment with an agency. The NCUA Personnel Security Processing Forms (Personnel Security Data Form—Contractor, Personnel Security Data Form—Employee and the Authorization for Release of Credit Information) are used to collect information necessary for applying the government-established suitability/fitness criteria on employees before they can begin employment with or perform contractual services for the NCUA. It may be also required should a contract employee be moved to a new contract

work. The background investigation process culminates in an adjudicative determination on whether or not these employees are fit to perform services on behalf of the agency.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 500.

Estimated No. of Responses per Respondent: 2.4.

Estimated Total Annual Responses: 1,200.

Estimated Burden Hours per Response: 10 mins. (0.167).

Estimated Total Annual Burden Hours: 200.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) 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) 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on July 27, 2022.

Dated: July 27, 2022.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2022–16454 Filed 8–1–22; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Week of July 25, 2022. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Betty.Thweatt@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of July 25, 2022

Friday, July 29, 2022

2:00 p.m. Affirmation Session (Public Meeting) (Tentative); Final Rule: NuScale Small Modular Reactor Design Certification (RIN 3150–AJ98; NRC–2017–0029) (Tentative); (Contact: Monika Coflin: 301–415–5932)

Additional Information: By a vote of 3–0 on July 28, 2022, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and 10 CFR 9.107 that this item be affirmed with less than one week notice to the public. The item will be affirmed in the meeting being held on July 29, 2022. The public is invited to attend the Commission's meeting live; via teleconference. Details for joining the teleconference in listen only mode at *https://www.nrc.gov/pmns/mtg.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meeting under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: July 29, 2022.

For the Nuclear Regulatory Commission.

Monika G. Coflin,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2022–16596 Filed 7–29–22; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95375; File No. SR–NASDAQ–2022–042]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Fees To Add Two New Features to the Enterprise Licenses at Equity 7, Section 123(c)

July 27, 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 July 19, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees to add two new features to the enterprise licenses at Equity 7, Section 123(c). First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to also include distribution of data externally to Professionals for no additional fees beyond the per Subscriber charges already set forth in that section. Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise license options listed at Section 123(c) to deliver TotalView using an Enhanced Display Solution for the same per Subscriber fees paid by any other purchaser of the Section 123(c) enterprise licenses. The Proposal also includes a number of technical and conforming changes, described in further detail below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As explained above, the Exchange proposes to add two new features to the enterprise licenses at Equity 7, Section 123(c).[3]

First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to also include distribution of data externally to Professionals for no additional fees beyond the per Subscriber charges already set forth in that section.

Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise license options listed at Section 123(c) to deliver TotalView using an Enhanced Display Solution for the same per Subscriber fees paid by any other purchaser of the Section 123(c) enterprise licenses.

The Exchange also proposes two sets of conforming changes. First, Nasdaq proposes to remove the $100,000 enterprise license at Section 123(c)(2) as redundant. The newly-modified $25,000 enterprise license at Section 123(c)(1) will have exactly the same features as the current $100,000 at Section 123(c)(2), rendering the latter unnecessary. Second, the Exchange proposes a few conforming changes related to paragraph numbering and presentation, discussed in detail below.[4]

Products and Current Fees

Nasdaq TotalView

Nasdaq TotalView provides customers with all orders and quotes from Nasdaq members displayed in the Nasdaq Market Center, as well as the aggregate size of such orders and quotes at each price level executed at the Nasdaq Market Center, with respect to stocks listed on Nasdaq and those listed on NYSE, NYSE American, and regional exchanges.[5] Customers that purchase TotalView also receive the Net Order Imbalance Indicator (''NOII''), a supply and demand monitor that provides information leading up to key liquidity events such as the Open, Close, Halt Resumptions, and Initial Public Offerings (''IPOs'').[6] For IPOs, NOII shows the details of all orders during the pre-IPO quoting period and the number of shares and orders that would execute if the cross were to occur at an indicative price and time.

Customers that purchase Nasdaq TotalView pay per Subscriber fees as set forth at Equity 7, Section 123(b)(2). In the alternative, Nasdaq offers customers the option of lowering their costs by purchasing one of three different enterprise licenses.

The first of these three, set forth in Section 123(c)(1), permits the dissemination of Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to Non-Professional Subscribers with whom the firm has a brokerage relationship, for a monthly fee of $25,000, plus Professional and Non-Professional Subscriber fees.[7]

The second, at Section 123(c)(2), permits dissemination of Nasdaq TotalView for Display Usage for Internal Distribution, as well as External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship.[8] The monthly fee for this license is $100,000, plus Professional and Non-Professional Subscriber fees. The key difference between the first and second licenses is the latter allows External Distribution to Professionals.

The third, at Section 123(c)(3), permits Internal and External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship for a monthly fee of $500,000.[9] The key difference between the third enterprise license and the first two is that the third has no Professional or Non-Professional Subscriber fees.

Enhanced Display Solution

An Enhanced Display Solution (''EDS'') allows the purchaser to display Depth-of-Book data and connect to an Application Programming Interface (''API'') that allows users to export data to a display application of their choosing.[10] EDS is available for Display Usage [11] only, and may not be used for Non-Display [12] purposes.[13]

[3] The Exchange initially proposed these fee changes on June 14, 2022, in SR–Nasdaq–2022–037. On July 19, 2022, the Exchange withdrew that filing and submitted the instant filing, which proposes the same changes as SR–Nasdaq–2022–037.

[4] *See infra* note 19.

[5] *See* Equity 7, Section 123(a)(1)(B) (''Nasdaq TotalView means, with respect to stocks listed on Nasdaq and on an exchange other than Nasdaq, all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center.''). Nasdaq TotalView is one of two Depth-of-Book feeds. The other is Nasdaq Level 2. *See* Section 123(a)(1) (defining Depth-of-Book as ''data feeds containing price quotations at more than one price level,'' and identifying the two Depth-of-Book fees as Nasdaq Level 2 and Nasdaq TotalView); *see also* Nasdaq TotalView (product description), available at *https://www.nasdaq.com/solutions/nasdaq-totalview.*

[6] *See* Securities Exchange Act Release No. 79863 (January 23, 2017), 82 FR 8632 (January 27, 2017) (SR–NASDAQ–2017–004).

[7] *See* Equity 7, Section 1236(c)(1) (''A Distributor that is also a broker-dealer pays a monthly fee of $25,000 for the right to provide Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License fee shall be in addition to a monthly fee of $9 for each Non-Professional Subscriber and a monthly fee of $60 for each Professional Subscriber for Display Usage based upon Direct or Indirect Access.'').

[8] *See* Equity 7, Section 123(c)(2) (''A Distributor that is also a broker-dealer pays a monthly fee of $100,000 for the right to provide Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License fee shall be in addition to a monthly fee of $9 for each Non-Professional Subscriber and a monthly fee of $60 for each Professional Subscriber for Display Usage based upon Direct or Indirect Access.'').

[9] *See* Section 123(c)(3) (''As an alternative to subsections (1) and (2) above, a Distributor that is also a broker-dealer may pay a monthly fee of $500,000 to provide Nasdaq Level 2 or Nasdaq TotalView for Display Usage by Professional or Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License shall not apply to relevant Level 1 or Depth Distributor fees.'').

[10] *See* Securities Exchange Act Release No. 80015 (February 10, 2017), 82 FR 10944 (February 16, 2017) (SR–NASDAQ–2017–007).

[11] *See* Equity 7, Section 123(a)(2)(A) (''Display Usage means any method of accessing Depth-of-Book data that involves the display of such data on a screen or other visualization mechanism for access or use by a natural person or persons . . .'').

[12] *See* Equity 7, Section 123(a)(2)(B) (''Non-Display Usage means any method of accessing Depth-of-Book data that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.'')

[13] *See* Securities Exchange Act Release No. 73807 (December 10, 2014), 79 FR 74784 (December 16, 2014) (SR–NASDAQ–2014–117) (''While Distributors are not required to technically control against non-display usage (due to the difficulty of achieving such control), the Distributor is required to restrict non-display usage contractually by including such restrictions in any agreements with recipients of the Information.''); *see also* Nasdaq, US Equities and Options Data Policies at 20–21,

Continued

Customers that wish to purchase EDS pay a Distributor fee [14] and a per Subscriber fee.[15] EDS may also be purchased through an enterprise license for $33,500 per month.[16]

Proposed Changes

As explained above, the Exchange proposes to add two features to the enterprise licenses at Equity 7, Section 123(c).

First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to allow distribution of data externally to Professionals as well as Non-Professionals. The Exchange will charge no additional fees for this external distribution beyond the per Subscriber charges already set forth in that section. To accomplish this, the Exchange proposes to add Professional Subscribers to the list of users eligible for External Distribution in that subsection.

Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise license options listed at Section 123(c) to deliver TotalView using EDS for the same per Subscriber fee paid by a purchaser of any of the Section 123(c) enterprise licenses. Under the current rule, Distributors that subscribe to the enterprise depth fees at Section 123(c) are exempt from paying EDS Distributor fees.[17] The proposed change is to add a clause exempting such purchasers from the EDS per Subscriber fees as well. Such customers would pay only the applicable per Subscriber fees set forth in Section 123(c).

As a conforming change, the Exchange proposes to remove the $100,000 enterprise license at Section 123(c)(2) as redundant. As explained above, the newly modified $25,000 enterprise license at Section 123(c)(1) will have exactly the same features that the $100,000 at Section 123(c)(2) has currently, rendering the latter unnecessary.[18] The Proposal also includes a number of other minor conforming changes to paragraph numbering and presentation.[19]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[21] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [22] Market data, often mistakenly characterized as the ''exhaust'' of an exchange, is related to order flow because it advertises liquidity available on the exchange, which encourages firms to send more order flow to the exchange.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [23]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [24] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [25] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [26] In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [27]

This specific Proposal will support and expand competition by providing customers with more options for lowering fees or enhancing services. The options available to a particular customer depends on that customer's use cases. The Proposal will enable a customer that currently purchases the

available at *http://www.nasdaqtrader.com/content/AdministrationSupport/Policy/USEquitiesandOptionsDataPolicies.pdf.*

[14] *See* Equity 7, Section 126(a)(1). The Distributor fee is based on the number of users, as follows: $4,000/month for 1–399 users; $7,500/month for 400–999 users; $15,000/month for 1,000 users.

[15] The per Subscriber fee is $80 per month for Professionals, and the underlying rate for Nasdaq Level 2 or TotalView for Non-Professionals. *See* Equity 7, Section 126(a)(1)(B).

[16] *See* Equity 7, Section 126(a)(1)(C) (''EDS Distributors may elect to purchase an Enterprise License for $33,500 per month. Such Enterprise License shall entitle the EDS Distributor to distribute to an unlimited number of Professional EDS Subscribers for a monthly fee of $76 for TotalView and/or Level 2, notwithstanding the fees set forth in subsection (B) above.'').

[17] *See* Equity 7, Section 126(a)(1)(A).

[18] The proposed removal of the $100,000 enterprise license at Section 123(c)(2) will not impact current customers, as no customers currently purchase this license.

[19] The Exchange proposes the following additional conforming changes: (i) change the numbering of current subparagraph 123(c)(3) to 123(c)(2) to reflect removal of the current $100,000 enterprise license and to remove references to the former paragraph; (ii) substitute the word ''license'' for ''depth'' at Section 126(a)(1)(A) as a more accurate description of the license at Section 123(c); and (iii) remove the asterisk from Section 123(c), given that the modified subsection no longer applies solely to Distributor fees.

[20] *See* 15 U.S.C. 78f(b).

[21] *See* 15 U.S.C. 78f(b)(4) and (5).

[22] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[24] *See NetCoalition,* 615 F.3d at 534–35; *see also* H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[25] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[26] *See id.*

[27] *See* U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Rule filings Relating to Fees'' (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

$25,000 enterprise license at Section 123(c)(1) to distribute information externally to Professional Subscribers, enhancing the value of that license. A customer that would otherwise purchase the $100,000 enterprise license at Section 123(c)(2) would be able to obtain the same service for the lower monthly fee of $25,000 under the proposed modifications. A customer that currently purchases the $25,000 license at proposed Section 123(c)(1) and also uses EDS as a delivery method would be able to pay the relatively lower per Subscriber fees at the proposed Section 123(c)(1). A customer that pays for the $500,000 enterprise license at proposed Section 123(c)(2) and uses EDS would be required to pay no additional per Subscriber fees at all.

All of these proposed modifications enhance customer choice. If the total cost of service based on the underlying fees exceeds the cost of the enterprise license, the customer will purchase the enterprise license to reduce cost; otherwise, the customer will not. Customer choice—the customer's ability to choose whether or not to purchase an enterprise license depending on whether the purchase is economically advantageous—is a competitive force that constrains the ability of the Exchange to charge excessive fees for enterprise licenses.

The proposed changes are not unfairly discriminatory. As explained above, a customer chooses whether to purchase an enterprise license based on its economic benefits. Customers that choose to avail themselves of the additional features will benefit. Customers that do not choose to purchase any of these licenses, or which choose not to avail themselves of the additional features, will remain unaffected.

The enterprise licenses subject to the Proposal are available to all potential customers on a non-discriminatory basis. They are entirely optional in that Nasdaq is not required to offer them and customers are not required to purchase them. Customers can discontinue their use at any time and for any reason, including an assessment of the fees charged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. Because competitors are free to modify their own fees in response to proposed changes, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

As explained above, the Proposal will support and expand competition by providing customers with more options for lowering fees or enhancing services. Customers that choose to purchase the enterprise licenses will benefit from lower fees and enhanced features. Customers that elect not to purchase the enterprise licenses, or not to avail themselves of the additional services, will remain unaffected.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because all self-regulatory organization will have the option of proposing changes to their own fee schedules.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because each customer will be able to decide whether or not to purchase an enterprise license depending on whether it is economically advantageous for it to do so.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[28]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–042. 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–NASDAQ–2022–042 and should be submitted on or before August 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16482 Filed 8–1–22; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–026, OMB Control No. 3235–0033]

Proposed Collection; Comment Request; Extension: Rule 17a–3

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–3 (17 CFR 240.17a–3), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–3 under the Securities Exchange Act of 1934 establishes minimum standards with respect to business records that broker-dealers registered with the Commission must make and keep current. These records are maintained by the broker-dealer (in accordance with a separate rule), so they can be used by the broker-dealer and reviewed by Commission examiners, as well as other regulatory authority examiners, during inspections of the broker-dealer.

The collections of information included in Rule 17a–3 are necessary to enable Commission, self-regulatory organization (''SRO''), and state examiners to conduct effective and efficient examinations to determine whether broker-dealers are complying with relevant laws, rules, and regulations. If broker-dealers were not required to create these baseline, standardized records, Commission, SRO, and state examiners could be unable to determine whether broker-dealers are in compliance with the Commission's antifraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and State laws, rules, and regulations.

As of December 31, 2021 there were 3,528 broker-dealers registered with the Commission. The Commission estimates that these broker-dealer respondents incur a total hour burden of approximately 8,342,195 hours per year to comply with Rule 17a–3.

In addition, Rule 17a–3 contains ongoing operation and maintenance costs for broker-dealers, including the cost of postage to provide customers with account information, and costs for equipment and systems development. The Commission estimates that the total cost burden associated with Rule 17a–3 would be approximately $105,320,999 per year.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by October 3, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 27, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16479 Filed 8–1–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–537, OMB Control No. 3235–0597]

Submission for OMB Review; Comment Request: Extension: Rule 31 and Form R31

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information provided for in Rule 31 (17 CFR 240.31) and Form R31 (17 CFR 249.11) under the Securities Exchange Act of 1934 (15 U.S.C. 78ee) (''Exchange Act'').

Section 31 of the Exchange Act requires the Commission to collect fees and assessments from national securities exchanges and national securities associations (collectively, ''self-regulatory organizations'' or ''SROs'') based on the volume of their securities transactions. To collect the proper amounts, the Commission adopted Rule 31 and Form R31 under the Exchange Act whereby each SRO must report to the Commission the volume of its securities transactions and the Commission, based on those data, calculates the amount of fees and assessments that each SRO owes pursuant to Section 31. Rule 31 and Form R31 require each SRO to provide these data on a monthly basis.

Currently, there are 27 respondents under Rule 31 that are subject to the collection of information requirements of Rule 31: 24 national securities exchanges, one national securities association, and two registered clearing agencies that are required to provide certain data in their possession needed by the SROs to complete Form R31, although these two clearing agencies are not themselves required to complete and submit Form R31.[1] The Commission estimates that the total burden for all 27 respondents is 432 hours per year. The Commission estimates that, based on previous and current experience, three additional national securities exchanges will become registered and subject to the reporting requirements of Rule 31 over the course of the authorization period and collectively incur a burden of 18 hours per year. Thus, the Commission estimates the collective burden for all respondents (existing and new added together) to be 450 hours per year. The SEC does not believe that the 27 existing or 3 expected new respondents will have to incur any capital or start-up costs, or any additional operational or maintenance costs (other than as already discussed in this paragraph), to comply with the collection of information requirements imposed by Rule 31 and Form R31. The SEC estimates that the average annual cost to the SEC of processing all of these filings would be $20,307.48 (90.1 hours at an average of $225.39 per hour).

[1] Since the last renewal period, when there was one security futures exchange that reported transactions, that exchanged has ceased operation. Therefore, currently, no security futures exchanges report any transaction in security futures on Form R31.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: >*www.reginfo.gov*<. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by September 1, 2022 to (i) >*MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov*< and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 27, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16480 Filed 8–1–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34138A; 812–14951–01]

KKR Income Opportunities Fund, et al.

December 11, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice; technical amendment.

Notice [1] of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment funds and accounts.

[1] This notice retroactively amends the original notice (Investment Company Act Release No. 34138) (85 FR 81987, December 17, 2020), which erroneously listed SEC file number 812–14951. In this amended notice, that erroneous file number has been replaced with the correct file number, 812–14951–01. The same correction has been made to the order granting the relief described in this notice (formerly Investment Company Act Release No. 34164; now 34164A).

APPLICANTS: KKR INCOME OPPORTUNITIES FUND (''KIO''), KKR CREDIT OPPORTUNITIES PORTFOLIO (''KCOP''), KKR CREDIT ADVISORS (US) LLC (''KKR Credit''), KKR CREDIT ADVISORS (HONG KONG) LIMITED, KKR STRATEGIC CAPITAL MANAGEMENT LLC, KKR FI ADVISORS LLC, KKR FINANCIAL ADVISORS LLC, KKR FINANCIAL ADVISORS II, LLC, KKR CS ADVISORS I LLC, KKR MEZZANINE I ADVISORS LLC, KKR FI ADVISORS CAYMAN LTD., KAM ADVISORS LLC, KAM FUND ADVISORS LLC, KKR CREDIT FUND ADVISORS LLC, KKR ASSET MANAGEMENT, LTD., KKR CREDIT ADVISORS (IRELAND) UNLIMITED COMPANY, KKR CREDIT ADVISORS (EMEA) LLP, KKR CREDIT ADVISORS (SINGAPORE) PTE. LTD., KKR CAPITAL MARKETS HOLDINGS L.P., KKR CAPITAL MARKETS LLC, KKR CAPITAL MARKETS LIMITED, KKR CAPITAL MARKETS ASIA LIMITED, MCS CAPITAL MARKETS LLC, KKR CAPITAL MARKETS PARTNERS LLP, KKR CAPITAL MARKETS INDIA PRIVATE LIMITED, KKR CAPITAL MARKETS (IRELAND) LIMITED, KKR CAPITAL MARKETS JAPAN LIMITED, KKR RTV MANAGER LLC, KKR LOAN ADMINISTRATION SERVICES LLC, KKR CORPORATE LENDING LLC, KKR CORPORATE LENDING (CAYMAN) LIMITED, KKR CORPORATE LENDING (UK) LLC, MERCHANT CAPITAL SOLUTIONS LLC, MCS CORPORATE LENDING LLC, KKR ALTERNATIVE ASSETS LLC, KKR ALTERNATIVE ASSETS L.P., KKR ALTERNATIVE ASSETS LIMITED, KKR CORPORATE LENDING (CA) LLC, KKR CORPORATE LENDING (TN) LLC, KKR FINANCIAL HOLDINGS, INC., KKR FINANCIAL HOLDINGS, LTD., KKR FINANCIAL HOLDINGS II, LLC, KKR FINANCIAL HOLDINGS II, LTD., KKR FINANCIAL HOLDINGS III, LLC, KKR FINANCIAL HOLDINGS III, LTD., KKR FINANCIAL CLO HOLDINGS, LLC, KKR FINANCIAL CLO HOLDINGS II, LLC, KKR TRS HOLDINGS, LTD., KKR STRATEGIC CAPITAL INSTITUTIONAL FUND, LTD., KKR DEBT INVESTORS II (2006) IRELAND L.P., KKR DI 2006 LP, KKR EUROPEAN SPECIAL OPPORTUNITIES LIMITED, 8 CAPITAL PARTNERS L.P., KKR FINANCIAL CLO 2007–1, LTD., KKR FINANCIAL CLO 2012–1, LTD., KKR FINANCIAL CLO 2013–1, LTD., KKR FINANCIAL CLO 2013–2, LTD., KKR CLO 9 LTD., KKR CLO 10 LTD., KKR CLO 11 LTD., KKR CLO 12 LTD., KKR CLO 13 LTD., KKR CLO 14 LTD., KKR CLO 15 LTD., KKR CLO 16 LTD., KKR CLO 17 LTD., KKR CLO 18 LTD., KKR CLO 19 LTD., KKR CLO 20 LTD., KKR CLO 21 LTD., KKR CLO 22 LTD., KKR CLO 23 LTD., KKR CLO 24 LTD., KKR CLO 25 LTD., KKR CLO 26 LTD., KKR CLO 27 LTD., KKR CLO 28 LTD., KKR CLO 29 LTD., KKR CLO 30 LTD., KKR CLO 31 LTD., KKR CORPORATE CREDIT PARTNERS L.P., KKR MEZZANINE PARTNERS I L.P., KKR MEZZANINE PARTNERS I SIDE–BY–SIDE L.P., KKR–KEATS CAPITAL PARTNERS L.P., KKR–MILTON CAPITAL PARTNERS L.P., KKR–MILTON CAPITAL PARTNERS II L.P., KKR LENDING PARTNERS L.P., KKR LENDING PARTNERS II L.P., KKR–VRS CREDIT PARTNERS L.P., KKR PIP INVESTMENTS L.P., KKR SPECIAL SITUATIONS (DOMESTIC) FUND L.P., KKR SPECIAL SITUATIONS (OFFSHORE) FUND L.P., KKR SPECIAL SITUATIONS (DOMESTIC) FUND II L.P., KKR SPECIAL SITUATIONS (EEA) FUND II L.P., KKR STRATEGIC CAPITAL OVERSEAS FUND LTD., KKR–CDP PARTNERS L.P., KKR–PBPR CAPITAL PARTNERS L.P., KKR CREDIT SELECT (DOMESTIC) FUND L.P., KKR PRIVATE CREDIT OPPORTUNITIES PARTNERS II L.P., KKR PRIVATE CREDIT OPPORTUNITIES PARTNERS II (EEA) L.P., KKR PRIVATE CREDIT OPPORTUNITIES PARTNERS II (EEA) EURO L.P., KKR TACTICAL VALUE SPN L.P., KKR LENDING PARTNERS EUROPE (GBP) UNLEVERED L.P., KKR LENDING PARTNERS EUROPE (EURO) UNLEVERED L.P., KKR LENDING PARTNERS EUROPE (USD) L.P., KKR LENDING PARTNERS EUROPE (EURO) L.P., KKR EUROPEAN RECOVERY PARTNERS L.P., KKR REVOLVING CREDIT PARTNERS L.P., AVOCA CAPITAL CLO X DESIGNATED ACTIVITY COMPANY, AVOCA CLO XI DESIGNATED ACTIVITY COMPANY, AVOCA CLO XII DESIGNATED ACTIVITY COMPANY, AVOCA CLO XIII DESIGNATED ACTIVITY COMPANY, AVOCA CLO XIV DESIGNATED ACTIVITY COMPANY, AVOCA CLO XV DESIGNATED ACTIVITY COMPANY, AVOCA CLO XVI DESIGNATED ACTIVITY COMPANY, AVOCA CLO XVII DESIGNATED ACTIVITY COMPANY, AVOCA CLO XVIII DESIGNATED ACTIVITY COMPANY, AVOCA CLO XIX DESIGNATED ACTIVITY COMPANY, AVOCA CLO XX DESIGNATED ACTIVITY COMPANY, AVOCA CLO XXI DESIGNATED ACTIVITY COMPANY, AVOCA CLO XXIV DESIGNATED ACTIVITY COMPANY, KKR EUROPEAN FLOATING RATE LOAN FUND, ABSALON CREDIT DESIGNATED

ACTIVITY COMPANY, GARDAR LOAN FUND, AVOCA CREDIT OPPORTUNITIES PLC, KKR EUROPEAN CREDIT OPPORTUNITIES FUND II, PRISMA SPECTRUM FUND LP, POLAR BEAR FUND LP, KKR TFO PARTNERS L.P., TACTICAL VALUE SPN—APEX CREDIT L.P., TACTICAL VALUE SPN–GLOBAL DIRECT LENDING L.P., KKR GLOBAL CREDIT OPPORTUNITIES MASTER FUND L.P., TACTICAL VALUE SPN–GLOBAL CREDIT OPPORTUNITIES L.P., KKR PRINCIPAL OPPORTUNITIES PARTNERSHIP L.P., KKR SPN CREDIT INVESTORS L.P., CDPQ AMERICAN FIXED INCOME III, L.P., KKR LENDING PARTNERS III L.P., LP III WAREHOUSE LLC, KKR ACS CREDIT FUND, KKR BESPOKE GLOBAL CREDIT OPPORTUNITIES (IRELAND) FUND, KKR CREDIT INCOME FUND, KKR DAF DIRECT LENDING FUND, KKR DAF GLOBAL OPPORTUNISTIC CREDIT FUND, KKR DAF PRIVATE CREDIT FUND, KKR DAF STERLING ASSETS FUND, KKR DAF SYNDICATED LOAN AND HIGH YIELD FUND, KKR DAF SECURITISED PRIVATE CREDIT FUND, KKR DRAGON CO–INVEST L.P., KKR EUROPEAN CREDIT OPPORTUNITIES FUND II DESIGNATED ACTIVITY COMPANY, KKR GLOBAL CREDIT DISLOCATION (CAYMAN) LTD., KKR DISLOCATION OPPORTUNITIES (DOMESTIC) FUND L.P., KKR DISLOCATION OPPORTUNITIES (EEA) FUND SCSP, KKR GOLDFINCH L.P., KKR LENDING PARTNERS EUROPE II (EURO) UNLEVERED SCSP, KKR LENDING PARTNERS EUROPE II (USD) SCSP, KKR MACKELLAR PARTNERS L.P., KKR PIP CREDIT INVESTORS LLC, KKR REVOLVING CREDIT PARTNERS EUROPE SCSP, KKR REVOLVING CREDIT PARTNERS II L.P., KKR SENIOR FLOATING RATE INCOME FUND, KKR US CLO EQUITY PARTNERS II L.P., KKR US CLO EQUITY PARTNERS L.P., KKR–BARMENIA EDL PARTNERS SCSP, KKR–CARDINAL CREDIT OPPORTUNITIES FUND L.P., KKR–DUS EDL PARTNERS SCSP, KKR–GENERALI PARTNERS SCSP SICAV–RAIF, KKR–MANDATE 2020 DIRECT LENDING FUND, KKR–MILTON CO–INVESTMENTS II L.P., KKRN EURO LOAN FUND 2018 FCP–RAIF, KKR–NYC CREDIT A L.P., KKR–NYC CREDIT B L.P., KKR–NYC CREDIT C L.P., KKR–UWF DIRECT LENDING PARTNERSHIP L.P., PRISMA PELICAN FUND LLC, RR–RW CREDIT L.P., SWISS CAPITAL KKR PRIVATE DEBT FUND L.P., KKR–JESSELTON HIF CREDIT PARTNERS L.P., KKR–MILTON CREDIT HOLDINGS L.P., KKR–MILTON OPPORTUNISTIC CREDIT FUND L.P., KKR CENTRAL PARK LEASING AGGREGATOR L.P., FS KKR CAPITAL CORP. (''FSK''), FS KKR CAPITAL CORP. II (''FSKR''), FS/KKR ADVISOR, LLC (''FS/KKR Advisor'').

FILING DATES: The application was filed on September 13, 2018, and amended on September 4, 2020, and December 3, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on January 4, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, *Secretarys-Office@sec.gov.* Applicants: Noah Greenhill, KKR Credit Advisors (US) LLC, *Noah.Greenhill@kkr.com.*

FOR FURTHER INFORMATION CONTACT: Jennifer O. Palmer, Senior Counsel, at (303) 844–1012, or David J. Marcinkus, Branch Chief, at (202) 551–6825 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The Applicants request an order of the Commission under Sections 17(d) and 57(i) and Rule 17d–1 thereunder (the ''Order'') to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), one or more Regulated Entities [2] and/or one or more Affiliated Funds [3] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which a Regulated Entity (or a Blocker Subsidiary, defined below) participated together with one or more other Regulated Entities and/or one or more Affiliated Investors in reliance on the Order or the Prior Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Entity (or a Blocker Subsidiary) could not participate together with one or more other Regulated Entities and/or one or more Affiliated Investors [4] without obtaining and relying on the Order.[5]

[2] ''Regulated Entities'' means the Existing Regulated Entities and any Future Regulated Entity. ''Existing Regulated Entities'' means FSK, FSKR, KCOP and KIO. ''Future Regulated Entity'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC and (b) whose investment adviser or sub-adviser is a KKR Credit Adviser that is registered as an investment adviser under the Act. ''KKR Credit Adviser'' means an Existing KKR Credit Adviser or any investment adviser that (i) is controlled by, or is a relying adviser of, KKR Credit, (ii) is registered as an investment adviser under the Advisers Act, and (iii) is not a Regulated Entity or a subsidiary of a Regulated Entity. ''Existing KKR Credit Adviser'' means KKR Credit, FS/KKR Advisor, and the investment advisory subsidiaries and relying advisers of KKR Credit set forth on schedule A of the application (''Schedule A'').

''Adviser'' means any KKR Credit Adviser; provided that a KKR Credit Adviser serving as a sub-adviser to an Affiliated Fund is included in this term only if (i) such KKR Credit Adviser controls the entity and (ii) the primary adviser to such Affiliated Fund is not an Adviser. The term Adviser does not include any other primary adviser to an Affiliated Fund or a Regulated Entity whose sub-adviser is an Adviser, except that such adviser is deemed to be an Adviser for purposes of Conditions 2(c)(iv), 14 and 15 only. Any primary adviser to an Affiliated Fund or a Regulated Entity whose sub-adviser is an Adviser will not source any Potential Co-Investment Transactions under the requested Order.

[3] ''Affiliated Fund'' means (a) any Existing Affiliated Fund or (b) any entity (i) whose investment adviser or sub-adviser is a KKR Credit Adviser and (ii) that either (A) would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act or (B) relies on the Rule 3a-7 exemption from investment company status; provided that an entity sub-advised by a KKR Credit Adviser is included in this term only if (i) such KKR Credit Adviser serving as sub-adviser controls the entity and (ii) the primary adviser of such Affiliated Fund is not an Adviser. ''Existing Affiliated Fund'' means each investment fund set forth on Schedule A together with its direct and indirect wholly-owned subsidiaries.

[4] ''Affiliated Investor'' means any Affiliated Fund or any Proprietary Affiliate. ''Proprietary Affiliate'' means any KCM Company or any KKR Proprietary Account. ''KCM Company'' means (a) any Existing KCM Company (defined below) or (b) any entity that (i) is an indirect, wholly- or majority-owned subsidiary of KKR and (ii) is registered or authorized as a broker-dealer or its foreign equivalent. ''KKR Proprietary Account'' means (a) any Existing KKR Proprietary Account (defined below) or (b) any entity that (i) is an indirect, wholly- or majority- owned subsidiary of KKR, (ii) is advised by a KKR Credit Adviser and (iii) from time to time, may hold various financial assets in a principal capacity, as described in greater detail herein.

[5] All existing entities that currently intend to rely on the Order have been named as Applicants and

Applicants

2. FS KKR Capital Corp. (''FSK'') and FS KKR Capital Corp. II (''FSKR'') are closed-end management investment companies that have elected to be regulated as business development companies (''BDCs'') under the Act.[6] FSK and FSKR were each organized under the General Corporation Law of the State of Maryland for the purpose of operating as an externally-managed, non-diversified, BDC. FSK and FSKR each have a Board [7] that is comprised of a majority of Independent Directors.[8]

3. KKR Income Opportunities Fund (''KIO'') and KKR Credit Opportunities Portfolio (''KCOP'') were organized as statutory trusts under the laws of the State of Delaware. KIO and KCOP are diversified, closed-end management investment companies registered under the Act. KCOP is a continuously offered closed-end fund that operates as an interval fund. KIO and KCOP each have a five member Board, of which four members are Independent Directors.

4. FS/KKR Advisor and KKR Credit are Delaware limited liability companies registered as investment advisers with the Commission. FS/KKR Advisor is controlled by KKR Credit. FS/KKR Advisor serves as the investment adviser to FSK and FSKR. KKR Credit, a subsidiary of KKR & Co., Inc. (''KKR''), serves as the investment adviser to KIO and KCOP. Each Regulated Entity will be advised or sub-advised by KKR Credit or another KKR Credit Adviser that is a registered investment adviser.

5. The Existing Affiliated Funds are the investment funds identified on Schedule A, together with their direct and indirect wholly-owned subsidiaries. Applicants represent that each investment fund identified on Schedule A is an entity that either (A) would be an investment company but for Section 3(c)(1) or 3(c)(7) of the 1940 Act or (B) relies on the Rule 3a–7 exemption from investment company status. Certain Existing Affiliated Funds are collateralized loan obligation (''CLO'') entities that rely on Rule 3a–7 under the Act in addition to Section 3(c)(7) thereof. These Existing Affiliated Funds are all advised by an Existing KKR Credit Adviser.

6. KKR Capital Markets Holdings L.P. and its capital markets subsidiaries set forth on Schedule A, each of which is an indirect, wholly- or majority-owned subsidiary of KKR, may, from time to time, hold various financial assets in a principal capacity (the ''Existing KCM Companies''). In addition, KKR Financial Holdings LLC, its wholly-owned subsidiaries set forth on Schedule A and its wholly-owned subsidiaries that may be formed in the future, and other indirect, wholly- or majority-owned subsidiaries of KKR set forth on Schedule A may, from time to time, hold various financial assets in a principal capacity (the ''Existing KKR Proprietary Accounts'').

7. Applicants state that any of the Regulated Entities may, from time to time, form a special purpose subsidiary (a ''Blocker Subsidiary'').[9] A Blocker Subsidiary would be prohibited from investing in a Co-Investment Transaction with any other Regulated Entity or Affiliated Investor because it would be a company controlled by the Regulated Entity for purposes of Section 57(a)(4) and rule 17d–1. Applicants request that a Blocker Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Entity and that the Blocker Subsidiary's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Entity were participating directly.

Applicants' Representations

A. Allocation Process

8. Applicants state that opportunities for Potential Co-Investment Transactions may arise when advisory personnel of a KKR Credit Adviser become aware of investment opportunities that may be appropriate for a Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors. In such cases, Applicants state that the Adviser to a Regulated Entity will be notified of such Potential Co-Investment Transactions, and such investment opportunities may result in Co-Investment Transactions. For each such investment opportunity, the Adviser to a Regulated Entity will independently analyze and evaluate the investment opportunity as to its appropriateness for each Regulated Entity for which it serves as investment adviser taking into consideration the Regulated Entity's Objectives and Strategies [10] and any Board-Established Criteria.[11] If the Adviser to the Regulated Entity determines that the opportunity is appropriate for one or more Regulated Entities (and the applicable Adviser approves the investment for each Regulated Entity for which it serves as adviser), and one or more other Regulated Entities and/or one or more Affiliated Investors may also participate, the Adviser to a Regulated Entity will present the investment opportunity to the Eligible Directors [12] of the Regulated Entity prior to the actual investment by the Regulated Entity. As to any Regulated Entity, a Co-Investment Transaction will be consummated only upon approval by a required majority of the Eligible Directors within the meaning of Section

any existing or future entities that may rely on the Order in the future will comply with the terms and Conditions of the Application.

[6] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in Section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[7] ''Board'' means the board of directors or trustees of a Regulated Entity.

[8] ''Independent Director'' means the director or trustee of any Regulated Entity who is not an ''interested person'' within the meaning of Section 2(a)(19) of the Act. No Independent Director of a Regulated Entity will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Entities.

[9] ''Blocker Subsidiary'' means an entity (a) whose sole business purpose is to hold one or more investments on behalf of a Regulated Entity; (b) that is wholly-owned by the Regulated Entity (with the Regulated Entity at all times holding, beneficially and of record, 100% of the voting and economic interests); (c) with respect to which the Regulated Entity's Board has the sole authority to make all determinations with respect to the Blocker Subsidiary's participation under the conditions to this Application; (d) that does not pay a separate advisory fee, including any performance-based fee, to any person; and (e) that is an entity that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act.

[10] ''Objectives and Strategies'' means a Regulated Entity's investment objectives and strategies, as described in the Regulated Entity's registration statement on Form N–2, other filings the Regulated Entity has made with the Commission under the Securities Act of 1933, as amended (the ''1933 Act''), or under the Securities and Exchange Act of 1934, as amended (the ''1934 Act''), and the Regulated Entity's reports to shareholders.

[11] ''Board-Established Criteria'' means criteria that the Board of a Regulated Entity may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which each Adviser to the Regulated Entity should be notified under condition 1. The Board-Established Criteria will be consistent with a Regulated Entity's Objectives and Strategies. If no Board-Established Criteria are in effect, then each Adviser to a Regulated Entity will be notified of all Potential Co-Investment Transactions that fall within the Regulated Entity's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. Each Adviser to a Regulated Entity may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Entity may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[12] The term ''Eligible Directors'' means the directors or trustees who are eligible to vote under section 57(o) of the Act.

57(o) of such Regulated Entity (''Required Majority'').[13]

9. Applicants state that each Adviser, acting through an investment committee, will carry out its obligation under condition 1 to make a determination as to the appropriateness of the Potential Co-Investment Transaction for any Regulated Entity. In the case of a Potential Co-Investment Transaction, the applicable Adviser would apply its allocation policies and procedures in determining the proposed allocation for the Regulated Entity consistent with the requirements of condition 2(a). Applicants note that each Adviser, as a registered investment adviser with respect to the Regulated Entities and as a registered investment adviser or a relying adviser with respect to the Affiliated Funds, has developed a robust allocation process as part of its overall compliance policies and procedures. Applicants state that these procedures are in addition to, and not instead of, the procedures required under the conditions.

10. Applicants acknowledge that some of the Affiliated Investors may not be funds advised by an Adviser because they are KKR Proprietary Accounts or KCM Companies. KKR Proprietary Accounts are balance sheet entities advised by an Adviser pursuant to an investment management agreement that hold financial assets in a principal capacity. KCM Companies are regulated broker-dealers that may hold financial assets in a principal capacity. Applicants do not believe that the participation of Proprietary Affiliates in the co-investment program would raise any regulatory or mechanical concerns different from those discussed with respect to the Affiliated Investors that are clients.

11. Applicants represent that the Advisers have implemented a robust allocation process to ensure that each Regulated Entity is treated fairly in respect of the allocation of Potential Co-Investment Transactions. The initial amount proposed by an Adviser to be allocated to each applicable Regulated Entity is documented in a written allocation statement. If the amount proposed to be allocated to a Regulated Entity changes from the time the final written allocation statement is prepared and the date of settlement of the transaction, the updated allocation statement will also be recorded and reviewed by a member of the Regulated Entity's compliance team. Each Regulated Entity's Board will be provided with all relevant information regarding the Adviser's proposed allocations to such Regulated Entity and Affiliated Investors, including Proprietary Affiliates, as contemplated by the conditions hereof. With respect to Affiliated Investors that are relying on the Order, each Adviser is subject to the same robust allocation process. As a result, all Potential Co-Investment Transactions that are presented to an Adviser would also be presented to every other Adviser which, as required by condition 1, would make an independent determination of the appropriateness of the investment for the Regulated Entities.

B. Follow-On Investments

12. Applicants state that, from time to time, the Regulated Entities and Affiliated Investors may have opportunities to make Follow-On Investments[14] in an issuer in which a Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors previously have invested and continue to hold an investment.

13. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[15] If the Regulated Entities and Affiliated Funds (and potentially Proprietary Affiliates) have previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment (a ''Standard Review Follow-On'') would be subject to the process described in Condition 9. If the Regulated Entities and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment (an ''Enhanced Review Follow-On'') would be subject to the process described in Condition 10. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Entities and Affiliated Investors would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

14. A Regulated Entity would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 9(c) or without Board approval under Condition 9(b) if it is (i) a Pro Rata Follow-On Investment[16] or (ii) a Non-Negotiated Follow-On Investment.[17] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 11.

C. Dispositions

15. Applicants propose that Dispositions[18] would be divided into two categories. If the Regulated Entities and Affiliated Funds (and potentially Proprietary Affiliates) holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer and continue to hold any securities acquired in a Co-Investment Transaction

[13] In the case of a Regulated Entity that is a registered closed-end fund, the directors or trustees that make up the Required Majority will be determined as if the Regulated Entity were a BDC subject to Section 57(o).

[14] ''Follow-On Investment'' means an additional investment in an existing portfolio company, the exercise of warrants, conversion privileges or other similar rights to acquire additional securities of the portfolio company.

[15] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Entity as well as one or more Affiliated Funds, one or more Proprietary Affiliates and/or one or more other Regulated Entities that were acquired prior to participating in any Co-Investment Transaction: (i) in transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters; or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Entity and any Affiliated Fund or other Regulated Entity. ''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[16] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Regulated Entity and each Affiliated Investor is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Entity, a majority of the Board has approved the Regulated Entity's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Entity. The Regulated Entity's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Entity's Eligible Directors in accordance with Condition 9(c).

[17] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Entity participates together with one or more Affiliated Investors and/or one or more other Regulated Entities (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

[18] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

for such issuer, then the terms and approval of the Disposition (a ''Standard Review Disposition'') would be subject to the process described in Condition 7. If the Regulated Entities and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition (an ''Enhanced Review Disposition'') would be subject to the process described in Condition 8. Subsequent Dispositions with respect to the same issuer would be governed by the requirements of Standard Review Dispositions.[19]

16. A Regulated Entity may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 7(d) or without Board approval under Condition 7(c) if (i) the Disposition is a Pro Rata Disposition [20] or (ii) the securities are Tradable Securities [21] and the Disposition meets the other requirements of Condition 7(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 11.

D. Delayed Settlement

17. Applicants represent that all Regulated Entities and Affiliated Investors participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for a Regulated Entity, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Entities is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Entity participating in the transaction will occur within ten business days of each other.

E. Holders

18. Under Condition 17, if an Adviser or its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and any Affiliated Investor (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Entity, then the Holders will vote such shares in the same percentages as the Regulated Entity's other shareholders (not including the Holders) when voting on matters specified in the Condition. Applicants believe this Condition will ensure that the Independent Directors will act independently in evaluating the co-investment program, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly.

Applicants' Legal Analysis

1. Section 17(d) of the 1940 Act generally prohibits an affiliated person (as defined in Section 2(a)(3) of the 1940 Act), or an affiliated person of such affiliated person, of a registered closed-end investment company acting as principal, from effecting any transaction in which the registered closed-end investment company is a joint or a joint and several participant, in contravention of such rules as the Commission may prescribe for the purpose of limiting or preventing participation by the registered closed-end investment company on a basis different from or less advantageous than that of such other participant. Rule 17d–1 under the 1940 Act generally prohibits participation by a registered investment company and an affiliated person (as defined in Section 2(a)(3) of the 1940 Act) or principal underwriter for that investment company, or an affiliated person of such affiliated person or principal underwriter, in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application.

2. Similarly, with regard to BDCs, Section 57(a)(4) makes it unlawful for any person who is related to a BDC in a manner described in Section 57(b), acting as principal, knowingly to effect any transaction in which the BDC (or a company controlled by such BDC) is a joint or a joint and several participant with that person in contravention of rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by the BDC (or a controlled company) on a basis less advantageous than that of the other participant. Because the Commission has not adopted any rules expressly under Section 57(a)(4), Section 57(i) provides that the rules under Section 17(d) applicable to registered closed-end investment companies (*e.g.,* Rule 17d–1) are, in the interim, deemed to apply to transactions subject to Section 57(a).

3. Co-Investment Transactions would be prohibited by Sections 17(d) and 57(a)(4) and Rule 17d-1 without a prior exemptive order of the Commission to the extent that the Affiliated Investors and the other Regulated Entities fall within the categories of persons described by Section 17(d) and Section 57(b), as modified by Rule 57b–1 thereunder, vis-à-vis each Regulated Entity. Each Regulated Entity may be deemed to be affiliated persons of each other Regulated Entity within the meaning of Section 2(a)(3) if it is deemed to be under common control because a KKR Credit Adviser is or will be either the investment adviser or sub-adviser to each Regulated Entity. Section 17(d) and Section 57(b) apply to any investment adviser to a closed-end fund or a BDC, respectively, including the sub-adviser. Thus, a KKR Credit Adviser and any Affiliated Investors that it advises could be deemed to be persons related to Regulated Entities in a manner described by Sections 17(d) and 57(b) and therefore prohibited by Sections 17(d) and 57(a)(4) and Rule 17d–1 from participating in the co-investment program.

[19] However, with respect to an issuer, if a Regulated Entity's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Entity does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Entity may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review is required because such findings were not required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[20] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Regulated Entity and each Affiliated Investor is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Entity, a majority of the Board has approved the Regulated Entity's participation in pro rata Dispositions as being in the best interests of the Regulated Entity. The Regulated Entity's Board may refuse to approve, or at any time rescind, suspend or qualify, their approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Entity's Eligible Directors.

[21] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) it trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Entities holding investments in the issuer and retained for the life of the Regulated Entity) to allow each Regulated Entity to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by Section 2(a)(41) of the 1940 Act) at which the Regulated Entity has valued the investment.

4. In addition, because all of the KKR Credit Advisers are ''affiliated persons'' of each other, Affiliated Investors advised by any of them could be deemed to be persons related to Regulated Entities (or a company controlled by a Regulated Entity) in a manner described by Sections 17(d) and 57(b) and also prohibited from participating in the Co-Investment Program.

5. Finally, because Proprietary Affiliates are under common control with each KKR Credit Adviser and, therefore, are ''affiliated persons'' of each KKR Credit Adviser, Proprietary Affiliates could be deemed to be persons related to Regulated Entities (or a company controlled by a Regulated Entity) in a manner described by Sections 17(d) and 57(b) and also prohibited from participating in the Co-Investment Program.

6. In passing upon applications under rule 17d–1, the Commission considers whether the participation by the investment company in such joint enterprise, joint arrangement, or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

7. Applicants submit that the fact that the Required Majority will approve each Co-Investment Transaction before investment (except for certain Dispositions or Follow-On Investments, as described in the conditions), and other protective conditions set forth in this Application, will ensure that a Regulated Entity will be treated fairly. Applicants state that the conditions to which the requested relief will be subject are designed to ensure that principals of the Advisers would not be able to favor the Affiliated Investors over a Regulated Entity through the allocation of investment opportunities among them. Further, Applicants state that the terms and conditions proposed herein will ensure that all such transactions are reasonable and fair to each Regulated Entity and the Affiliated Investors and do not involve overreaching by any person concerned, including a KKR Credit Adviser. Applicants submit that each Regulated Entity's participation in the Co-Investment Transactions will be consistent with the provisions, policies and purposes of the 1940 Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. Each time a KKR Credit Adviser considers a Potential Co-Investment Transaction for an Affiliated Investor or another Regulated Entity that falls within a Regulated Entity's then-current Objectives and Strategies and Board-Established Criteria, the Adviser to a Regulated Entity will make an independent determination of the appropriateness of the investment for the Regulated Entity in light of the Regulated Entity's then-current circumstances.

2. (a) If the Adviser to a Regulated Entity deems participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Entity, the Adviser will then determine an appropriate level of investment for such Regulated Entity.

(b) If the aggregate amount recommended by the Adviser (to a Regulated Entity to be invested by the Regulated Entity in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Entities and Affiliated Investors, collectively, in the same transaction, exceeds the amount of the investment opportunity, the amount of the investment opportunity will be allocated among the Regulated Entities and such Affiliated Investors, *pro rata* based on each participant's Available Capital for investment in the asset class being allocated, up to the amount proposed to be invested by each. The Adviser to a Regulated Entity will provide the Eligible Directors of a Regulated Entity with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Regulated Entity's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a) above, the Adviser to the Regulated Entity will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by each Regulated Entity and any Affiliated Investor, to the Eligible Directors for their consideration. A Regulated Entity will co-invest with one or more other Regulated Entities and/or an Affiliated Investor only if, prior to the Regulated Entities' and the Affiliated Investors' participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) the terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Entity and its shareholders and do not involve overreaching in respect of the Regulated Entity or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) the interests of the Regulated Entity's shareholders; and

(B) the Regulated Entity's then-current Objectives and Strategies and Board-Established Criteria;

(iii) the investment by any other Regulated Entity or an Affiliated Investor would not disadvantage the Regulated Entity, and participation by the Regulated Entity would not be on a basis different from or less advantageous than that of any other Regulated Entity or Affiliated Investor; *provided,* that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) the settlement date for another Regulated Entity or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Entity by no more than ten business days or earlier than the settlement date for the Regulated Entity by no more than ten business days, in either case, so long as: (x) the date on which the commitments of the Affiliated Funds and Regulated Entities are made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Entity participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Entity or Affiliated Investor, but not the Regulated Entity itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer, or any similar right to participate in the governance or management of the portfolio company so long as: (x) the Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser to the Regulated Entity agrees to, and does, provide periodic reports to the Regulated Entity's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Entity or any Affiliated Investor or any affiliated person of any other Regulated Entity or

an Affiliated Investor receives in connection with the right of one or more Regulated Entities or Affiliated Investors to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Investors (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Entity in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Entity will not benefit the Advisers, any other Regulated Entity, or the Affiliated Investors or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 15, (B) to the extent permitted under Sections 17(e) and 57(k) of the 1940 Act, as applicable, (C) in the case of fees or other compensation described in condition 2(c)(iii)(B), or (D) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction.

3. A Regulated Entity will have the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The Adviser to the Regulated Entity will present to the Board of each Regulated Entity, on a quarterly basis, a record of all investments in Potential Co-Investments made by any of the other Regulated Entities or any of the Affiliated Investors during the preceding quarter that fell within the Regulated Entity's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Entity, and an explanation of why the investment opportunities were not offered to the Regulated Entity. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Entity and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 9 and 10,[22] a Regulated Entity will not invest in reliance on the Order in any issuer in which a Related Party [23] is an existing investor.

6. A Regulated Entity will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, the date on which the commitment is entered and registration rights will be the same for each participating Regulated Entity and Affiliated Investor and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Entity or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Entities or Affiliated Investors, but not the Regulated Entity itself, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 6, if Condition 2(c)(iii)(B) is met.

7. (a) If any Regulated Entity or Affiliated Investor elects to sell, exchange or otherwise dispose of an interest in a security that was acquired by one or more Regulated Entities and/or Affiliated Investors in a Co-Investment Transaction, the applicable Adviser(s) [24] will:

(i) notify each Regulated Entity of the proposed Disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by the Regulated Entity in the Disposition.

(b) Each Regulated Entity will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Investors and any other Regulated Entity.

(c) A Regulated Entity may participate in such Disposition without obtaining prior approval of the Required Majority if:

(i) (A) the proposed participation of each Regulated Entity and each Affiliated Investor in such Disposition is proportionate to its outstanding investments in the issuer immediately preceding the Disposition; [25] (B) the Regulated Entity's Board has approved as being in the best interests of the Regulated Entity the ability to participate in such Dispositions on a *pro rata* basis (as described in greater detail in this Application); and (C) the Regulated Entity's Board is provided on a quarterly basis with a list of all Dispositions made in accordance with this condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Entities and Affiliated Investors is price.

(d) In all other cases, the Adviser to the Regulated Entity will provide their written recommendation as to the Regulated Entity's participation to the Eligible Directors, and the Regulated Entity will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Entity's best interests.

8. (a) If any Regulated Entity or Affiliated Investor elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Entities and Affiliated Investors have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) the Adviser to such Regulated Entity or Affiliated Investor will notify each Regulated Entity that holds an investment in the issuer of the proposed disposition at the earliest practical time;

(ii) the Adviser to each Regulated Entity that holds an investment in the issuer, will formulate a recommendation as to participation by such Regulated Entity in the disposition; and

(iii) the Advisers will provide to the Board of each Regulated Entity that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Entities and Affiliated Investors, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this condition.

(b) The Adviser will provide its written recommendation as to the Regulated Entity's participation to the

[22] This exception applies only to Follow-On Investments by a Regulated Entity in issuers in which that Regulated Entity already holds investments.

[23] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate. ''Close Affiliate'' means the Advisers, the Regulated Entities, the Affiliated Funds and any other person described in Section 57(b) (after giving effect to Rule 57b-1) in respect of any Regulated Entity (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in Section 57(b) to Section 2(a)(3)(D). ''Remote Affiliate'' means any person described in Section 57(e) in respect of any Regulated Entity (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[24] For purposes of the requested Order, any KCM Company that is not advised by an Adviser is itself deemed to be an Adviser for purposes of this Condition 7(a) and Conditions 8(a), 9(a) and 10(a).

[25] In the case of any Disposition, proportionality will be measured by each participating Regulated Entity's and Affiliated Investor's outstanding investment in the security in question immediately preceding the Disposition.

Eligible Directors, and the Regulated Entity will participate in such disposition, solely to the extent that a Required Majority determines that:

(i) the disposition complies with Condition 2(c)(i), (ii), (iii)(A) and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 or Rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) The Disposition may only be completed in reliance on the Order if:

(i) Each Regulated Entity has the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Investors and any other Regulated Entity;

(ii) All of the Affiliated Investors' and Regulated Entities' investments in the issuer are Pre-Boarding Investments;

(iii) Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iv) All Regulated Entities and Affiliated Investors that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Entities and Affiliated Investors hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (i) any Regulated Entity's or Affiliated Investor's holding of a different class of securities (including for this purpose a security with a different maturity date) is Immaterial [26] in amount, including Immaterial relative to the size of the issuer; and (ii) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) The Affiliated Investors, the other Regulated Entities and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the 1940 Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the 1940 Act).

9. (a) If any Regulated Entity or Affiliated Investor desires to make a Follow-On Investment in a portfolio company whose securities were acquired by the Regulated Entity and the Affiliated Investor in a Co-Investment Transaction, the applicable Adviser(s) will:

(i) notify the Regulated Entity of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by the Regulated Entity.

(b) A Regulated Entity may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) the proposed participation of each Regulated Entity and each Affiliated Investor in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[27] immediately preceding the Follow-On Investment and (B) the Regulated Entity's Board has approved as being in the best interests of such Regulated Entity the ability to participate in Follow-On Investments on a *pro rata* basis (as described in greater detail in this Application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) In all other cases, the Adviser to the Regulated Entity will provide their written recommendation as to such Regulated Entity's participation to the Eligible Directors, and the Regulated Entity will participate in such Follow-On Investment solely to the extent that the Required Majority determines that it is in such Regulated Entity's best interests. If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition, the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) If, with respect to any Follow-On Investment:

(i) the amount of a Follow-On Investment is not based on the Regulated Entities' and the Affiliated Investors' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Adviser to a Regulated Entity to be invested by the Regulated Entity in the Follow-On Investment, together with the amount proposed to be invested by the other participating Regulated Entities and the Affiliated Investors in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them *pro rata* based on each participant's Available Capital for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(e) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the Application.

10. (a) If any Regulated Entity or Affiliated Investor desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Entities and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) the Adviser to each such Regulated Entity or Affiliated Investor will notify each Regulated Entity that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Entity that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Entity; and

(iii) the Advisers will provide to the Board of each Regulated Entity that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Entities and Affiliated Investors, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this condition.

[26] In determining whether a holding is ''Immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

[27] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Entities and Affiliated Investors, proportionality will be measured by each participating Regulated Entity's and Affiliated Investor's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Entities or Affiliated Investors, proportionality will be measured by each participating Regulated Entity's and Affiliated Investor's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

(b) The Adviser will provide its written recommendation as to the Regulated Entity's participation to the Eligible Directors, and the Regulated Entity will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Entity determines that the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) The Follow-On Investment may only be completed in reliance on the Order if:

(i) all of the Affiliated Investors' and Regulated Entities' investments in the issuer are Pre-Boarding Investments; and

(ii) independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iii) all Regulated Entities and Affiliated Investors that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Entities and Affiliated Investors hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (i) any Regulated Entity's or Affiliated Investor's holding of a different class of securities (including for this purpose a security with a different maturity date) is Immaterial in amount, including Immaterial relative to the size of the issuer; and (ii) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) the Affiliated Investors, the other Regulated Entities and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the 1940 Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the 1940 Act); and

(d) If, with respect to any such Follow-On Investment:

(i) the amount of the opportunity proposed to be made available to any Regulated Entity is not based on the Regulated Entities' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Entities and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them *pro rata* based on each participant's Available Capital for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(e) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in this Application.

11. The Independent Directors of each Regulated Entity will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Entities or Affiliated Investors that a Regulated Entity considered but declined to participate in, so that the Independent Directors may determine whether all investments made during the preceding quarter, including those investments which the Regulated Entity considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Directors will consider at least annually (a) the continued appropriateness for such Regulated Entity of participating in new and existing Co-Investment Transactions and (b) the continued appropriateness of any Board-Established Criteria.

12. Each Regulated Entity will maintain the records required by Section 57(f)(3) of the 1940 Act as if each of the Regulated Entities were a BDC and each of the investments permitted under these conditions were approved by a Required Majority under Section 57(f).

13. No Independent Director of a Regulated Entity will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the 1940 Act) of any Affiliated Investor.

14. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) shall, to the extent not payable by the applicable Adviser(s) under their respective advisory agreements with the Regulated Entities and the Affiliated Investors, be shared by the Regulated Entities and the Affiliated Investors in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

15. Any transaction fee (including break-up or commitment fees but excluding broker's fees contemplated by Section 17(e) or 57(k) of the 1940 Act, as applicable) [28] received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Entities and Affiliated Investors on a *pro rata* basis based on the amount they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1) of the 1940 Act, and the account will earn a competitive rate of interest that will also be divided *pro rata* among the participating Regulated Entities and Affiliated Investors based on the amount they invest in the Co-Investment Transaction. None of the other Regulated Entities, Affiliated Investors, the applicable Adviser(s) nor any affiliated person of the Regulated Entities or the Affiliated Investors will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Entities and the Affiliated Investors, the *pro rata* transaction fees described above and fees or other compensation described in condition 2(c)(iii)(B) and (b) in the case of the Advisers, investment advisory fees paid in accordance with the Regulated Entities' and the Affiliated Investors' investment advisory agreements).

16. The Advisers to the Regulated Entities and Affiliated Investors will maintain written policies and

[28] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

procedures reasonably designed to ensure compliance with the foregoing conditions. These policies and procedures will require, among other things, that each of the Advisers to each Regulated Entity will be notified of all Potential Co-Investment Transactions that fall within such Regulated Entity's then-current Objectives and Strategies and Board-Established Criteria and will be given sufficient information to make its independent determination and recommendations under conditions 1, 2(a), 7, 8, 9 and 10.

17. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Entity, then the Holders will vote such Shares in the same percentages as the Regulated Entity's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the 1940 Act or applicable state law affecting the Board's composition, size or manner of election.

18. Each Regulated Entity's chief compliance officer, as defined in Rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Entity's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16458 Filed 8–1–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95379; File No. SR–FINRA–2022–019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Supplementary Material .19 (Residential Supervisory Location) Under FINRA Rule 3110 (Supervision)

July 27, 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 July15, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt new Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) that would align FINRA's definition of an office of supervisory jurisdiction (''OSJ'') and the classification of a location that supervises activities at non-branch locations with the existing residential exclusions set forth in the branch office definition to treat a private residence at which an associated person engages in specified supervisory activities as a non-branch location, subject to safeguards and limitations. In accordance with Rule 3110(c), as a non-branch location, a Residential Supervisory Location would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years,[3] rather than an annual inspection requirement required of OSJs and other supervisory branch offices.[4]

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are bracketed.

* * * * *

3100. SUPERVISORY RESPONSIBILITIES

3110. Supervision

(a) through (f) No Change.

• • • Supplementary Material: ----------

.01 through .17 No Change.

.18 Reserved.

.19 Residential Supervisory Location

(a) Residential Supervisory Location. Notwithstanding any other provisions of Rule 3110(f), and subject to paragraph (b) of this Supplementary Material, a location that is the associated person's private residence where supervisory activities are conducted, including those described in Rule 3110(f)(1)(D) through (G) or in Rule 3110(f)(2)(B), shall be considered for those activities a non-branch location, provided that:

(1) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

(2) the location is not held out to the public as an office;

(3) the associated person does not meet with customers or prospective customers at the location;

(4) any sales activity that takes place at the location complies with the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii);

(5) neither customer funds nor securities are handled at that location;

(6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;

(7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule;

(8) all electronic communications by the associated person at that location are made through the member's electronic system;

(9) a list of the residence locations is maintained by the member; and

(10) all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location.

(b) Ineligible Locations

A location shall not be eligible for designation as a non-branch location in accordance with Rule 3110.19 if:

(1) the member is designated as a Restricted Firm under Rule 4111;

(2) the member is designated as a Taping Firm under Rule 3170;

(3) the member is currently undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location;

(4) one or more associated persons at such location is a designated supervisor

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* FINRA Rules 3110(c)(1)(C) and 3110.13.

[4] SEC staff and FINRA have interpreted FINRA rules to require member firms to conduct on-site inspections of branch offices and unregistered offices (*i.e.,* non-branch locations) in accordance with the periodic schedule described under Rule 3110(c)(1). *See* SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011), *https://www.sec.gov/about/offices/ocie/riskalert-bdbranchinspections.pdf,* and *Regulatory Notice* 11–54 (November 2011) (joint SEC and FINRA guidance stating, a ''broker-dealer must conduct on-site inspections of each of its office locations; [OSJs] and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.'') (footnote defining an OSJ omitted). *See also* SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (''SLB 17'') (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or ''for cause'' inspections of those offices), *https://www.sec.gov/interps/legal/mrslb17.htm.*

who has less than one year of direct supervisory experience with the member;

(5) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04;

(6) one or more associated persons at such location is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency;

(7) one or more associated persons at such location is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under paragraph (b)(6) of this Supplementary Material or otherwise as a condition to approval or permission for such association;

(8) one or more associated persons at such location has an event in the prior three years that required a ''yes'' response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4; or

(9) one or more associated persons at such location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, a self-regulatory organization, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the MSRB.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Early in 2020, the COVID–19 pandemic prompted FINRA and other regulators to provide temporary relief to member firms from certain regulatory requirements to address the public health crisis.[5] In response to the pandemic, many private and government employers closed their offices and allowed their employees to work from alternative worksites (*e.g.,* an employee's residence). As jurisdictions scale back pandemic-related restrictions,[6] many member firms are moving towards a blended workforce model, whereby employees work both on-site in a conventional office setting and remotely in an alternative location such as a private residence. Based on feedback from member firms, FINRA believes this model will endure, irrespective of the state of the pandemic. The pandemic accelerated reliance on technological advances in surveillance and monitoring capabilities and prompted significant changes in lifestyles and work habits, including the growing expectation for workplace flexibility. These dynamics have persuaded FINRA to review aspects of Rule 3110 that may benefit from modernization.[7] The changes brought forth by the pandemic merit a reevaluation of the regulatory benefit of requiring firms to designate a private residence where lower risk activities are conducted as an OSJ or branch office. In recognition of the significant technology and industry changes that are impacting workplace arrangements, FINRA is proposing to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location that would be treated as a non-branch location (*i.e.,* an unregistered office), subject to specified investor protection safeguards and limitations. The most significant regulatory effect of the proposed rule change would be that, as a non-branch location, a Residential Supervisory Location would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years, rather than an annual inspection requirement required of OSJs and other supervisory branch offices.[8]

Evolution of OSJ and Branch Office Definitions

FINRA has periodically assessed the manner in which firms may effectively and efficiently carry out their supervisory responsibilities considering evolving business models and practices, advances in technology, and regulatory

[5] Among the temporary regulatory relief provided, FINRA adopted relief pertaining to branch office registration requirements through Form BR (Uniform Branch Office Registration Form) and FINRA Rule 3110(c) inspection requirements. Specifically, FINRA temporarily suspended the requirement for member firms to submit branch office applications on Form BR for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic. *See Regulatory Notice* 20–08 (March 2020) (''*Notice* 20–08''). With respect to inspection obligations, FINRA adopted temporary Rule 3110.16 that provided additional time for member firms to complete their calendar year 2020 inspection obligations. *See* Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–019). In response to the ongoing public health crisis, FINRA subsequently adopted temporary FINRA Rule 3110.17, providing member firms the option to conduct inspections of their branch offices and non-branch locations remotely, subject to specified terms therein. *See* Securities Exchange Act Release No. 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–040). FINRA Rule 3110.17 expires on December 31, 2022. *See* Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–001).

[6] *See, e.g.,* Government of the District of Columbia, Mayor's Order 2022–029 (February 14, 2022) (announcing the end of the indoor mask mandate at certain venues effective March 1, 2022; and the end of the requirement for certain private venues to check vaccination status effective February 14, 2022); State of New York, ''Winter Toolkit for New Phase of COVID Response: Keep New York Safe, Open and Moving Forward'' (Governor Kathy Hochul lifting the statewide indoor business mask-or-vaccine requirement starting on February 10, 2022, and remaining optional for businesses, local governments and counties to enforce) (February 9, 2022), *https://www.governor.ny.gov/news/governor-hochul-announces-winter-toolkit-new-phase-covid-response-keep-new-york-safe-open-and;* and State of California, Office of Governor Gavin Newsom, ''Governors Newsom, Brown and Inslee Announce Updated Health Guidance,'' (announcing that on March 11, 2022, California, Oregon and Washington to adopt new indoor mask policies and move from mask requirements to mask recommendations in schools) (February 28, 2022).

[7] In general, FINRA has had a longstanding practice of periodically reviewing its rules to ensure that they continue to promote their intended investor protection objectives in a manner that is effective and efficient, without imposing undue burdens, particularly in light of technological, industry and market changes. *See generally Special Notices to Members* 01–35 (May 2001) (''*Notice* 01–35'') (requesting comment on steps that can be taken to streamline FINRA rules) and 02–10 (January 2002) (''Notice 02–10'') (requesting information on steps that can be taken to streamline FINRA rules). *See also Regulatory Notice* 14–14 (April 2014) (requesting comment on the effectiveness and efficiency of FINRA's communications with the public rules) and *Regulatory Notice* 14–15 (April 2014) (requesting comment on the effectiveness and efficiency of FINRA's gifts, gratuities and non-cash compensation rules), both launching FINRA's Retrospective Rule Review Program.

[8] *See* note 3, *supra.*

benefits. As detailed below, since the late 1980s, the OSJ and branch office definitions have undergone several revisions to address regulatory need and efficiency (*e.g.,* rule alignment with other regulators, access to more robust information), evolving with technological and industry changes while also remaining focused on promoting investor protection.

Under FINRA's (then NASD's) Rules of Fair Practice,[9] an OSJ was defined as ''any office designated as directly responsible for the review of the activities of registered representatives or associated persons in such office and/or any other offices of the member[,]'' and a branch office was one that was ''owned or controlled by a member, and which is engaged in the investment banking or securities business.'' [10] Further, a place of business of a member firm's associated person was considered a branch office if the member: ''(1) directly or indirectly contributes a substantial portion of the operating expenses of any place used by a person associated with a member who is engaged in the investment banking or securities business, whether it be commercial office space or a residence. Operating expenses, for purposes of this standard, shall include items normally associated with the cost of operating the business such as rent and taxes.'' [11] In addition, such location was a branch office if the member ''authorizes a listing in any publication or any other media, including a professional dealer's digest or a telephone directory, which listing designates a place as an office or if the member designates a place as an office or if the member designates any such place with an organization as an office.'' [12] The term ''branch office'' was established ''merely to designate and identify for registration purposes the various offices of a member other than the main office and as such [were] required to be registered and as to which a registration fee should be paid.'' [13]

Over the years, these terms have undergone several modifications, driven by changes in regulatory need and business models. In particular, the subsequent amendments focused on providing regulators robust information when conducting examinations that readily identified the appropriate individuals and records at a firm. In response to such changes, the OSJ and branch office definitions were refined and exemptions from branch office registration were added.

In 1988, as part of several supervisory enhancements, the OSJ and branch office definitions were significantly amended in response to general concerns about member firms' associated persons engaging in the offer and sale of securities to the public without adequate ongoing supervision and regular examination by member firms.[14] The amendments substantially expanded the specificity of FINRA Rule 3110 (formerly, Article III, Section 27 of the NASD Rules of Fair Practice) with respect to a member's supervisory obligations and the new standards focused on ''the creation of a supervisory 'chain of command,' in which qualified supervisory personnel are appointed to carry out the firm's supervisory obligations[.]'' [15] The newly amended OSJ definition focused on an office at which ''the approval [of specified functions] that constitutes formal action by the member takes place.'' [16] The amendments also added more prescriptive requirements with respect to OSJs such as requiring a firm to designate as an OSJ an office that meets the OSJ definition and any other location for which such designation would be appropriate; designate one or more registered principals in each OSJ; maintain written supervisory procedures describing the supervisory system implemented and listing the titles, registration status, and locations of the required supervisory personnel and the specific responsibilities associated with each; and keep and maintain the firm's supervisory procedures, or the relevant parts thereof, at each OSJ and at each other location where supervisory activities are conducted on behalf of the firm.[17]

With respect to the branch office definition, the amendments also refined it from any location ''owned or controlled by a member, and which [was] engaged in the investment banking or securities business'' [18] to ''any business location held out to the public or customers by any means as a location at which the investment banking or securities business is conducted on behalf of the member, excluding any location identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the member responsible for supervising the activities of the identified location.'' [19]

These definitional amendments were intended to address concerns about the absence of on-site supervision by registered principals at a firm's business location.[20] The amendments required a ''minimum supervisory structure that facilitate[d] closer supervision by principals with clear responsibilities.'' [21] In addition, the revisions required OSJ designation for ''any office at which the approval that constitutes formal action by the member takes place.'' [22] Further, FINRA noted that the enhancements to the supervisory practices and definitions reflected its ''continuing commitment to facilitate more effective supervision by members while accommodating their diverse modes of operation.'' [23] FINRA believes the definitional amendments brought focus to where final approval of certain functions was occurring so both the firm and regulators would be able to readily identify the principal who was designated to review a specific function and also where original books and records related to such supervision would be kept. At that time, books and records (*e.g.,* account documents, communications, order tickets, trade blotters) were generally made and preserved in hard copy paper format,

[9] FINRA (then NASD) adopted Rules of Fair Practice when it was founded in 1939 under provisions of the 1938 Maloney Act amendments to the Exchange Act.

[10] *See Notice to Members* 87–41 (June 1987) (''*Notice* 87–41'') (setting forth the proposed rule text changes to Article III, Section 27 of the NASD Rules of Fair Practice for the OSJ definition and Article I, Section (c) of the NASD By-Laws for the branch office definition, among other provisions).

[11] *See Notice* 87–41.

[12] *See Notice* 87–41.

[13] *See Notice* 87–41.

[14] *See* Securities Exchange Act Release No. 26177 (October 13, 1988), 53 FR 41008 (October 19, 1988) (Order Approving File No. SR–NASD–88–31). *See also Notice to Members* 88–84 (November 1988) (''*Notice* 88–84'') (announcing SEC approval of File No. SR–NASD–88–31).

[15] *See Notice to Members* 88–11 (February 1988) (''*Notice* 88–11'') (requesting comments on proposed amendments to Article III, Section 27 of the NASD Rules of Fair Practice regarding supervision and the OSJ and branch office definitions).

[16] *See Notice* 88–11. Largely similar to current Rule 3110(f)(1)(A) through (G), the specified functions were: ''(1) Order execution and/or market making; (2) Structuring of public offerings or private placements; (3) Maintaining custody of customers' funds and/or securities; (4) Final acceptance (approval) of new accounts on behalf of the member, (5) Review and endorsement of customer orders pursuant to the provisions of proposed Article III, Section 27(d); (6) Final approval of advertising or sales literature for use by persons associated with the member, pursuant to Article III, Section 35(b)(l) of the Rules of Fair Practice; or (7) Responsibility for supervising the activities of persons associated with the member at one or more other offices of the member.'' *See Notice* 88–84.

[17] *See Notice* 88–84. *See generally* Rule 3110(a) and (b).

[18] *See Notice* 87–41.

[19] *See Notice* 88–84.

[20] *See Notice* 87–41.

[21] *See Notice* 87–41.

[22] *See Notice* 88–11.

[23] *See Notice* 88–11.

not electronically, and stored in files at such offices.

In 1992, FINRA further amended the branch office definition to allow additional locations that were not being held out to the public to be exempt from branch office registration.[24] FINRA noted that the exclusions were intended as a reasonable accommodation to member firms with widely dispersed sales personnel selling limited product lines such as variable contracts and mutual funds.[25] In the approval order, the Commission recognized that the amended definition would eliminate the requirement to register as a branch office unless the securities activity at the office required ''continuous and direct supervision of a principal, or the location is being held out to the public as a place where a full range of securities activity is being conducted. Having considered the proposal, the Commission believe[d] the rule change will assist [FINRA] members in meeting their obligation to supervise off-site registered representatives under applicable securities laws, regulations and [FINRA] rules.'' [26]

In 2001, FINRA launched an initiative to modernize its rules.[27] Based on input from member firms, FINRA identified the branch office definition as a rule that could benefit from modernization in light of the SEC's amendment to the term ''office'' in the SEC's Books and Records Rules,[28] the branch office definition used by the New York Stock Exchange (''NYSE'') and state regulators, new business practices that were developing based on technological innovations, and the potential to create a uniform branch office registration system.[29] FINRA expressly noted that a factor to be considered in modernizing rules included instances ''where the regulatory burden of a rule significantly outweigh[ed] the benefit, or the rule no longer work[ed] efficiently given new technologies.'' [30]

Until 2005, member firms were required to complete Schedule E to the Form BD (''Schedule E'') to register or report branch offices to the SEC, FINRA, and the state in which they conducted a securities business that required branch office registration. While Schedule E captured certain data with respect to branch offices, it did not adequately fulfill the evolving needs of regulators. For example, Schedule E did not link an individual registered representative with a particular branch office, which made it more difficult for regulators to track the appropriate individuals for examinations.

As technology advanced and business models changed, FINRA continued its commitment to modernizing the rule while preserving investor protections. By 2005, this initiative led to the establishment of a national standard, a uniform definition of a branch office, that was the product of a coordinated effort among regulators to reduce inconsistencies in the definitions used by the SEC, FINRA, the NYSE, the North American Securities Administrators Association, and state securities regulators to identify locations where broker-dealers conduct securities or investment banking business.[31] Moreover, the adoption of a uniform definition facilitated the development of a centralized branch office registration system through the Central Registration Depository and the creation of a uniform form to register or report branch offices electronically with multiple regulators.[32] With the launch of this new technology, firms and regulators could efficiently identify each branch location, which would be assigned a unique branch office number by the system, the individuals assigned to such location, and the designated supervisor(s) for such location. This new centralized branch office registration system allowed firms and regulators to efficiently locate offices and individuals, and moreover closed gaps in information, created significant efficiencies and lessened the burden on firms and regulators.

By the 1990s, technology had progressed with the advent of faster internet, wifi, the emergence of web-based platforms, and more portable computers to enhance workplace connectivity that allowed for expanded remote work options. In recognition of the evolving and growing trend in the financial industry and workforce generally to work from home, the uniform branch office definition adopted numerous exclusions, including the current primary residence exclusion. The limitations on use of a primary residence closely tracks the limitations on the use of a private residence in the SEC's Books and Records Rules,[33] which provide that a broker-dealer is not required to maintain records at an office that is a private residence if only one associated person (or multiple associated persons if members of the same family) regularly conducts business at the office, the office is not held out to the public as an office, and neither customer funds nor securities are handled at the office. At the same time, FINRA adopted IM–3010–1 (Standards for Reasonable Review) (now Rule 3110.12 (Standards for Reasonable Review)), as a further safeguard. It clarified the high standards firms must observe regarding supervisory obligations and emphasized the requirement that members already had to establish reasonable supervisory procedures and conduct reviews of locations taking into consideration, among other things: the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, and the disciplinary history of the registered person.

During the almost two decades since the adoption of the uniform branch office definition and its related exclusions, regulators have utilized advancements in technology to support their examinations and otherwise further investor protections, and firms have embraced and adopted numerous technologies to enhance their regulatory and compliance programs. The rapid explosion of new technologies in the last 20 years, and the widespread use such of technology (*e.g.,* computers, email, mobile phones, electronic communication systems with audio and visual capabilities, cloud storage of books and records), and the ability to use risk-based surveillance and compliance tools and systems, have fundamentally altered the landscape of how the broker-dealer business is conducted.

These earlier amendments evidence the need to keep the regulatory

[24] In general, these amendments codified interpretations pertaining to the branch office definitions and their exclusions by clarifying that the address and telephone number of the appropriate OSJ or branch office must be provided in advertisements and sales literature, not the address of a non-branch location. *See* Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936 (March 31, 1992) (Order Approving File No. SR–NASD–91–42).

[25] *See Notice to Members* 92–18 (April 1992) (announcing SEC approval of File No. SR–NASD–91–42).

[26] *See* Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936, 10937 (March 31, 1992) (Order Approving File No. SR–NASD–91–42).

[27] *See Notice* 01–35.

[28] 17 CFR 240.17a–3 and 240.17a–4. *See generally Notice to Members* 01–80 (December 2001) (describing amendments to the SEC Books and Records Rules).

[29] *See Notice* 02–10.

[30] *See Notice* 01–35.

[31] *See* Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (Order Approving File No. SR–NASD–2003–104).

[32] *See* Form BR.

[33] *See* note 28, *supra.*

framework current. FINRA believes that with evolving changes in business models and the significant advance of technological tools that are now readily available, some functions can be exempt from registration, subject to specified conditions, without compromising a reasonably designed supervisory system. Moreover, FINRA believes the proposed rule change to classify some private residences as non-branch locations, subject to specified controls, will not result in a loss of the important regulatory information that the rules were designed, in part, to provide regarding the locations or associated persons. That information will continue to be collected through our regulatory requirements and systems such as the branch office registration system and Form BR (Uniform Branch Office Registration Form) and other uniform registration forms.[34]

FINRA Rule 3110 and Current Requirements To Register and Inspect Offices

Rule 3110 requires a member firm, regardless of size or type, to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and FINRA rules. The rule sets forth the minimum requirements of a member firm's supervisory system that includes registering a location as an OSJ or branch office that meets the definitions under Rule 3110(f) and inspecting all offices and locations in accordance with Rule 3110(c). The rule categorizes offices or locations as an OSJ or supervisory branch office, a non-supervisory branch office, or a non-branch location.[35] The requirements to register, inspect and have a principal on-site vary based on the categorization. Specifically, the rule requires the registration and designation as an OSJ or branch office of each location, including the main office, that meets their respective definition under paragraphs (f)(1) and (f)(2) of Rule 3110, as described in more detail below.[36]

OSJs are a subset of branch offices. Rule 3110(f)(2) defines a ''branch office'' as ''any location where one or more associated persons of a member firm regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such[.]'' [37] In addition, any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is a branch office (*i.e.,* a supervisory branch office).[38] A location registered as a branch office must have one or more appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.[39]

Depending upon the functions occurring at a branch office, it may be further classified as an OSJ, which Rule 3110(f)(1) defines as a member's business location at which any one or more of the following functions take place: (1) order execution or market making; (2) structuring of public offerings or private placements; (3) maintaining custody of customers' funds or securities; (4) final acceptance (approval) of new accounts on behalf of the member; (5) review and endorsement of customer orders, pursuant to Rule 3110(b)(2); [40] (6) final approval of retail communications for use by persons associated with the member, pursuant to Rule 2210(b)(1), except for an office that solely conducts final approval of research reports; [41] or (7) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member. An office designated as an OSJ must have an appropriately registered principal on-site at the location, and must be inspected at least annually.[42]

However, subject to specified conditions, an office or location may be deemed a ''non-branch location,'' and excluded from registration as a branch office. Currently, Rule 3110(f)(2)(A) sets forth seven exclusions—often referred to as unregistered offices or non-branch locations—of which two pertain to residential locations.[43] One such exclusion appears under Rule 3110(f)(2)(A)(ii) and exempts from registration as a branch office an associated person's primary residence subject to the following express conditions: (1) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location; (2) the location is not held out to the public as an office and the associated person does not meet with customers at the location; (3) neither customer funds nor securities are handled at that location; (4) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person; (5) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with the Rule; (6) electronic communications (*e.g.,* email) are made through the member's electronic system; (7) all orders are entered through the designated branch office or an electronic

[34] For example, under Form U4 (Uniform Application for Securities Industry Registration or Transfer), if an individual's ''Office of Employment Address'' is an unregistered location, the firm must report the address of such location as the individual's ''located at'' address and must report the branch office that supervises that non-registered location as the ''supervised from'' location. *See* Form U4, Section 1 (General Information). Similar to Form BR, Form U4 solicits information about an individual's other business activities. *See* Form U4, Section 13 (Other Business) and Form BR, Section 3 (Other Business Activities/Names/Websites). Form BD (Uniform Application for Broker-Dealer Registration) captures the types of business in which a firm is engaged. *See* Form BD, Item 12; see also Form BR, Section 2 (Registration/Notice Filing/Type of Office/Activities), Item D.

[35] *See* FINRA Rule 3110(c).

[36] *See* FINRA Rules 3110(a)(3) and 3110.01. Currently, firms are required to register each branch office and indicate, among other things, whether it is an OSJ, by filing Form BR. *See* Section 2 of Form BR, requiring the applicant to indicate whether an office is a ''FINRA OSJ'' or ''non-OSJ branch,'' *https://www.finra.org/sites/default/files/web-crd-form-br-filing.pdf.*

[37] *See* FINRA Rule 3110(f)(2)(A).

[38] *See* FINRA Rule 3110(f)(2)(B).

[39] *See* FINRA Rule 3110(a)(4), and FINRA Rule 3110(c)(1)(A) and (B).

[40] FINRA Rule 3110(b)(2) pertains to the review of a member's investment banking and securities business and provides that ''[t]he supervisory procedures required by [Rule 3110(b) (Written Procedures)] shall include procedures for the review by a registered principal, evidenced in writing, of all transactions relating to the investment banking or securities business of the member.''

[41] In general, with some exceptions, paragraph (b)(1) of Rule 2210 (Communications with the Public) requires that an appropriately qualified registered principal approve each retail communication prior to use or filing with FINRA.

[42] *See* FINRA Rules 3110(a)(4) and 3110(c)(1)(A).

[43] *See generally* FINRA Rule 3110(f)(2)(A) which, in addition to the primary residence and the non-primary residence exclusions that are further described, excludes the following from the definition of ''branch office'': (1) any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (2) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; (3) any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; (4) the Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or (5) a temporary location established in response to the implementation of a business continuity plan.

system established by the member that is reviewable at the branch office; (8) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and (9) a list of the residence locations is maintained by the member (''primary residence exclusion'').[44] The second exclusion that pertains to a residential location appears under Rule 3110(f)(2)(A)(iii) and is any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided that the member complies with the conditions described in (1) through (8) above (''non-primary residence exclusion''). In general, the non-primary residence exclusion typically refers to a vacation or second home.[45] A non-branch location must be inspected on a periodic schedule, presumed to be at least every three years.[46]

Notwithstanding either of these two residential exclusions or the other exclusions listed under Rule 3110(f)(2)(A),[47] a primary or non-primary residence location that is responsible for either the supervisory activities set forth in the OSJ definition or for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered an OSJ or (supervisory) branch office, respectively.[48] Consequently, such residential supervisory offices are subject to registration, an annual inspection and, in some cases, additional licensing requirements.[49]

As noted above, the branch office definition and its exclusions, including the conditions for the primary residence and non-primary residence exclusions, is a uniform definition FINRA developed in coordination with the NYSE and other self-regulatory organizations (''SROs''), and state securities regulators, and it has been in place since 2005 (collectively, the ''uniform branch office definition'').[50] The codification of the seven exclusions from registration in the uniform branch office definition recognized both practical situations and advances in technology used to conduct and monitor business, the evolving nature of business models, and changing lifestyle and work practices while also preserving investor protection through specified safeguards and limitations such as those appearing in the primary residence exclusion.[51] In the approval order for the uniform branch office definition, the Commission noted that the limitations for the primary residence exclusion ''closely track the limitations on the use of a private residence in the Books and Records Rules.'' [52] The Commission also stated that the seven exclusions ''recognize current business, lifestyle, and surveillance practices and provide associated persons with additional flexibility. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office while providing certain safeguards and limitations to protect investors.'' [53] Further, the Commission stated that ''[g]iven the continued advances in technology used to conduct and monitor businesses and changes in the structure of broker-dealers and in the lifestyles and work habits of the workforce, the Commission believes it is reasonable and appropriate for [FINRA] to reexamine how it determines whether business locations need to be registered as branch offices of broker-dealer members.'' [54] Finally, the Commission expressed the view that the uniform branch office definition ''strikes the right balance between providing flexibility to broker-dealer firms to accommodate the needs of their associated persons, while at the same time setting forth parameters that should ensure that all locations, including home offices, are appropriately supervised.'' [55] FINRA believes that the Commission's statements about advances in technology and evolving workplace conventions, and the safeguards and limitations of the primary residence exclusion are apt for this proposed rule change as well.

Impact of New Workplace Models

As noted above, many employers closed their offices and moved to a broad remote work environment to contend with the public health crisis. In response, FINRA requested comment regarding pandemic-related issues and questions, including the comment process in connection with the temporary amendments to Rule 3110,[56] and discussions with FINRA's advisory committees and other industry representatives. Firms responded that they relied extensively on technology to support their effective transition to the remote work environment and enhance the supervision of geographically dispersed associated persons, many of whom have been working from home since early 2020 and may continue to do so in some manner in the current environment.[57] These technological tools facilitating their supervisory practices include surveillance systems, electronic tracking programs or applications, and electronic communications, including video conferencing tools.[58] In addition, some firms have further noted that the flexibility remote work offers has made a positive impact in attracting more diverse talent, and retaining existing talent.[59]

As pandemic-related restrictions are easing,[60] many member firms are moving towards a blended workforce model for their employees, consisting of working on-site in a conventional office

[44] *See* FINRA Rule 3110(f)(2)(ii)a. through i.

[45] *See Notice to Members* 06–12 (March 2006) (''*Notice* 06–12'').

[46] *See* note 3, *supra.*

[47] *See* note 43, *supra.*

[48] *See* FINRA Rule 3110(f)(1)(D) through (G) and FINRA Rule 3110(f)(2)(B).

[49] *See* note 42, *supra.*

[50] *See* note 31, *supra.*

[51] *See generally Notice to Members* 05–67 (October 2005).

[52] *See* 70 FR 54782, 54783 (citation omitted).

[53] *See* 70 FR 54782, 54787. *See also* Securities Exchange Act Release No. 52402 (September 9, 2005), 70 FR 54788, 54795 (September 16, 2005) (Order Approving File No. SR–NYSE–2002–34) (stating, ''the Commission believes that the seven proposed exceptions to registering as a branch office constitute a reasonable approach to recognize current business, lifestyle, and surveillance practices and provide associated persons with flexibility with respect to where they perform their jobs. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office.'').

[54] *See* 70 FR 54782, 54787.

[55] *See* note 53, *supra.*

[56] *See, e.g.,* Submitted Comments to Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–001), *https://www.sec.gov/comments/sr-finra-2022-001/srfinra2022001.htm;* and Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–019), *https://www.sec.gov/comments/sr-finra-2020-019/srfinra2020019.htm.*

[57] *See generally Regulatory Notice* 21–44 (December 2021).

[58] *See generally Regulatory Notice* 20–16 (May 2020); *see also* FINRA White Paper, Technology Based Innovations for Regulatory Compliance (''RegTech'') in the Securities Industry (September 2018) (reporting, among other things, that as financial services firms seek to keep pace with regulatory compliance requirements, they are turning to new and innovative regulatory tools to assist them in meeting their obligations in an effective and efficient manner), *https://www.finra.org/sites/default/files/2018_RegTech_Report.pdf.*

[59] *See generally* Submitted Comments to *Regulatory Notice* 20–42 (December 2020), *https://www.finra.org/rules-guidance/notices/20-42#comments.*

[60] *See* note 6, *supra.*

setting and working remotely in an alternative location such as a private residence. Similar to the changed environment underlying the Commission's approval order of the uniform branch office definition that codified the existing seven exclusions, FINRA believes that the structural and lifestyle changes for member firms and their workforce catalyzed by the pandemic—along with advances in technology—merit reevaluation of some aspects of the branch office registration and inspection requirements. Specifically, FINRA believes the regulatory benefit of requiring firms to designate a private residence as an OSJ or branch office should now be reconsidered where the risk profile of these offices can be effectively controlled through practically based safeguards and limitations. FINRA is therefore proposing to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location as a non-branch location, subject to specified safeguards and limitations. This proposed new non-branch location would target the subset of residential locations that have many of the attributes contained in the primary residence exclusion, but must be registered as an OSJ or branch office because of the supervisory functions taking place there.

Proposed Residential Supervisory Location as a Non-Branch Location

The proposed definition of a Residential Supervisory Location would be based largely on several existing aspects of Rule 3110(f). In particular, FINRA is proposing to incorporate the existing supervisory functions appearing in the OSJ definition (Rule 3110(f)(1)) and branch office definition (Rule 3110(f)(2)(B)) with the existing residential exclusions set forth in the branch office definition to classify a Residential Supervisory Location as a non-branch location. Currently, a private residence at which these supervisory functions occur must be registered and designated as a branch office or OSJ under Rule 3110(a)(3), and inspected at least annually under Rule 3110(c)(1)(A). By treating such location as a non-branch location, the private residence would become subject to inspections on a regular periodic schedule under Rule 3110(c)(1)(C), presumed to be every three years.[61]

Proposed Rule 3110.19 would incorporate some existing safeguards and limitations firms must already satisfy to rely on the primary residence exclusion[62] as FINRA believes that several of these conditions are also appropriate for the proposed Residential Supervisory Location. FINRA intends for the terms underlying the proposed Residential Supervisory Location to be interpreted consistently with their meaning in Rule 3110(f) and existing related guidance.[63] In addition, FINRA is proposing to further augment the safeguards and limitations to describe the locations that would be ineligible to rely on proposed Rule 3110.19.

A. Safeguards and Conditions To Rely on the Residential Supervisory Location Exclusion (Proposed Rule 3110.19(a))

As described above, FINRA is proposing to adopt Rule 3110.19 to establish a Residential Supervisory Location as a new non-branch location, but subject to specified conditions, most of which are derived from those currently required for the primary residence and non-primary residence exclusions. FINRA is proposing to add one new condition to a Residential Supervisory Location: a restriction from maintaining original books and records at such location.

Under proposed Rule 3110.19(a), any such location would be considered a non-branch location (and thus excluded from branch office registration), provided that: (1) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location (proposed Rule 3110.19(a)(1));[64] (2) the location is not held out to the public as an office (proposed Rule 3110.19(a)(2));[65] (3) the associated person does not meet with customers or prospective customers at the location (proposed Rule 3110.19(a)(3));[66] (4) no sales activity takes place at the location other than as permitted and subject to the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii) (proposed Rule 3110.19(a)(4));[67] (5) neither customer funds nor securities are handled at that location (proposed Rule 3110.19(a)(5));[68] (6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person (proposed Rule 3110.19(a)(6));[69] (7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3110 (proposed Rule 3110.19(a)(7));[70] (8) all electronic communications by the associated person at that location are made through the member's electronic system (proposed Rule 3110.19(a)(8));[71] (9) a list of the residence locations is maintained by the member (proposed Rule 3110.19(a)(9));[72] and (10) all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location (proposed Rule 3110.19(a)(10)).

FINRA notes that the proposed conditions are substantially similar to those applied to the current primary and non-primary residence exclusions, and are supplemented by a proposed additional condition that would preclude a firm from maintaining any books or records required to be made and preserved by the member under the federal securities laws or FINRA rules at the Residential Supervisory Location. FINRA believes that this proposed new limitation would strengthen a firm's ability to monitor the supervisory activities occurring at a Residential Supervisory Location and act to lower the overall risks associated with such location because the books and records required to be made and preserved by the member under the federal securities laws or FINRA rules cannot be maintained on-site. Moreover, FINRA notes that sales activities would be permissible at a Residential Supervisory Location to the same extent sales activities are permitted currently under such exclusions. As previously noted,

[61] *See* note 3, *supra.*

[62] *See* Rule 3110(f)(2)(A)(ii)a., b., c., d., e., f, and i.

[63] *See, e.g., Notice* 06–12.

[64] *See* Rule 3110(f)(2)(A)(ii)a. (''Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location[.]'').

[65] *See* Rule 3110(f)(2)(A)(ii)b. (''The location is not held out to the public as an office and the associated persons does not meet with customers at the location[.]'').

[66] *See* note 65, *supra.*

[67] An associated person's private residence, other than a primary residence, remains subject to the less than 30-business-day in any calendar year limitation on use for securities business.

[68] *See* Rule 3110(f)(2)(A)(ii)c. (''Neither customer funds nor securities are handled at the location[.]'').

[69] *See* Rule 3110(f)(2)(A)(ii)d. (''The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person[.]'').

[70] *See* Rule 3110(f)(2)(A)(ii)e. (''The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule[.]'').

[71] *See* Rule 3110(f)(2)(A)(ii)f. (''Electronic communications (*e.g.,* email) are made through the member's electronic system[.]'').

[72] *See* Rule 3110(f)(2)(A)(ii)i. (''A list of the residence locations is maintained by the member[.]'').

the conditions for the current primary and non-primary residence exclusions, which align with the SEC's Books and Records Rules, were developed in coordination with other SROs and state securities regulators and such exclusions have been in place since 2005.[73] As such, firms have developed experience with monitoring and supervising these conditions, and FINRA believes member firms will be able to rely on such experience to reasonably supervise similar conditions for proposed Residential Supervisory Locations. As with any non-branch location, a Residential Supervisory Location would be subject to an inspection on a periodic schedule, presumed to be at least every three years.[74]

B. Ineligible Locations (Proposed Rule 3110.19(b))

FINRA is further proposing several location categories that are ineligible for designation as a Residential Supervisory Location. The nine proposed categories of ineligibility are events or activities of a member firm or its associated persons that FINRA believes are more likely to raise investor protection concerns based on FINRA rules, an associated person's level of supervisory experience with the member firm or qualifications, or an associated person's record of specified regulatory or disciplinary events.

1. Member Firm Ineligibility

Under proposed Rule 3110.19(b), a location would be ineligible for designation as a Residential Supervisory Location, non-branch location, in accordance with Rule 3110.19 if: (i) the member is designated as a ''Restricted Firm'' under Rule 4111 (Restricted Firm Obligations) [75] (proposed Rule 3110.19(b)(1)); (ii) the member is designated as a ''Taping Firm'' under Rule 3170 (Tape Recording of Registered Persons by Certain Firms) [76] (proposed Rule 3110.19(b)(2)); or (iii) the member is currently undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location [77] (proposed Rule 3110.19(b)(3)). These rules expressly account for firms that pose higher risks, and for that reason, would be ineligible to rely on proposed Rule 3110.19(a).

2. Associated Person Ineligibility

In addition, under proposed Rule 3110.19(b), a location would be ineligible for designation as a Residential Supervisory Location, a non-branch location, in accordance with proposed Rule 3110.19 where: (i) one or more associated persons at such location is a designated supervisor who has less than one year of direct supervisory experience with the member (proposed Rule 3110.19(b)(4)); (ii) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04 [78] (proposed Rule 3110.19(b)(5)); (iii) one or more associated persons at such location is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency (proposed Rule 3110.19(b)(6)); (iv) one or more associated persons at such location is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under paragraph (b)(6) of this Supplementary Material or otherwise as a condition to approval or permission for such association (proposed Rule 3110.19(b)(7)); (v) one or more associated persons at such location has an event in the prior three years that required a ''yes'' response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4 [79] (proposed Rule 3110.19(b)(8)); or (vi) one or more associated persons at a location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, an SRO, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board (proposed Rule 3110.19(b)(9)).

FINRA believes that an associated person designated at such location should have more than one year of supervisory experience with the member and have passed the appropriate principal level qualification examination before the associated person's private residence can be treated as a non-branch location under proposed Rule 3110.19(a). In addition, FINRA believes that the imposition of a mandatory heightened supervisory plan and the specified disclosures on Form U4 pertaining to criminal convictions and final regulatory action are indicia of increased risk to investors at some firms and locations such that they should not be treated as a non-branch location under the proposed supplementary material.

A private residence meeting the description of any one of the categories in proposed Rule 3110.19(b) would be ineligible for designation as a Residential Supervisory Location, even with the safeguards and limitations listed in proposed Rule 3110.19(a). A member firm would be required to designate such private residence as an OSJ or branch office, as applicable, unless the location meets a branch office exclusion under Rule 3110(f)(2). FINRA believes the proposed list of ineligibility categories is appropriately derived from existing rule-based criteria that already

[73] 17 CFR 240.17a–4(l); *see also* note 31, *supra.*

[74] *See* note 3, *supra.*

[75] In general, Rule 4111 requires member firms that are identified as ''Restricted Firms'' to deposit cash or qualified securities in a segregated, restricted account; adhere to specified conditions or restrictions; or comply with a combination of such obligations. *See generally Regulatory Notice* 21–34 (September 2021) (announcing FINRA's adoption of rules to address firms with a significant history of misconduct).

[76] In general, Rule 3170 requires a member firm to establish, enforce and maintain special written procedures supervising the telemarketing activities of all of its registered persons, including the tape recording of conversations, if the firm has hired more than a specified percentage of registered persons from firms that meet FINRA Rule 3170's definition of ''disciplined firm.'' *See generally Regulatory Notice* 14–10 (March 2014) (announcing FINRA's adoption of consolidated rules governing supervision).

[77] Rule 1017(a)(7) requires a member firm to file an application for continuing membership when a natural person seeking to become an owner, control person, principal or registered person of the member firm has, in the prior five years, one or more defined ''final criminal matters'' or two or more ''specified risk events'' unless the member firm has submitted a written request to FINRA seeking a materiality consultation for the contemplated activity. Rule 1017(a)(7) applies whether the person is seeking to become an owner, control person, principal or registered person at the person's current member firm or at a new member firm. *See generally Regulatory Notice* 21–09 (March 2021) (announcing FINRA's adoption of rules to address brokers with a significant history of misconduct).

[78] In general, Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) imposes an experience requirement (18 months of experience within the preceding five-year period) on those registered representatives who are designated by their firms to function in a principal capacity for a fixed 120-day period before having passed an appropriate principal qualification examination. *See generally Regulatory Notice* 17–30 (October 2017) (announcing FINRA's adoption of consolidated rules governing qualification and registration).

[79] Form U4's Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a) elicit reporting of criminal convictions, and Questions 14C, 14D, and 14E pertain to regulatory action disclosures.

have a process to identify firms that may pose greater concern (*e.g.,* Rules 4111 and 3170) or to identify associated persons that may pose greater concerns as supervisors due to the nature of disclosures of regulatory or disciplinary events on the uniform registration forms or where the firm has not yet had the opportunity to gauge such person's effectiveness as a supervisor due to their limited supervisory experience with the member firm. FINRA believes that these objective categorical restrictions strike the correct balance and are sensible and consistent with a reasonably designed supervisory system while still promoting investor protections.

FINRA acknowledges the shift towards a permanent blended or hybrid workforce model and therefore believes under the current environment, private residences responsible for the supervisory activities and subject to the conditions described above should not require registration as branch offices. The proposed Residential Supervisory Location is intended to reflect a pragmatic balance between the hybrid workforce model and the parameters that should ensure that all locations, including residential locations, are appropriately supervised. Separate and apart from the classification of the office or location and the attendant inspection obligations, firms will continue to have an ongoing obligation to supervise the activities of each associated person in a manner reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA emphasizes that member firms have a statutory duty to supervise their associated persons, regardless of their location, compensation or employment arrangement, or registration status, in accordance with the FINRA By-Laws and rules.[80]

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* The effective date will be no later than 90 days following the publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[81] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In recognition of the ongoing advances in compliance technology and evolving lifestyle and work practices, FINRA believes that the proposed rule change will reasonably account for evolving work models by excluding from branch office registration a Residential Supervisory Location at which lower risk activities occur, while retaining important investor protections with a set of safeguards and limitations derived largely from the primary residence exclusion. The proposed new non-branch location is intended to provide a practical and balanced way for firms to continue to effectively meet the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives.

1. Regulatory Need

As discussed above, in the wake of the pandemic, many member firms are developing hybrid workforce models for their employees. In these new ways of working, some employees may work permanently in an alternative location such as a private residence, other employees may spend some time in alternative locations and some time on-site in a conventional office setting, and some may work on-site full time.[82] Absent the proposed rule change, when the temporary relief from the requirement to submit branch office applications on Form BR for new office locations ends, many member firms would need to either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices. Either type of adjustment would create potentially significant costs. The proposed rule change would reduce, but not eliminate, the need for such adjustments since the activities conducted at some new residential locations would likely not meet the requirements of the proposed rule change.

[80] *See* Exchange Act Section 15(b)(4)(E), 15 U.S.C. 78*o*(b)(4)(E), and Exchange Act Section 15(b)(6)(A), 15 U.S.C. 78*o*(b)(6)(A).

[81] 15 U.S.C. 78*o*–3(b)(6).

[82] According to the Survey of Working Arrangements and Attitudes (SWAA), post-COVID, many employers are planning to allow employees to work from home between two and three days per week. *See* Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, SWAA April 2022 Updates (April 11, 2022), *https://wfhresearch.com/wp-content/uploads/2022/04/WFHResearch_updates-April-2022.pdf.* The number of expected work-from-home days post-pandemic has been increasing steadily since the January 2021 survey. The SWAA is monthly survey with respondents that are working-age persons in the United States that had earnings of at least $20,000 in 2019. Further details about this survey can be found at *https://wfhresearch.com.*

2. Economic Baseline

The economic baseline includes both current and foreseeable workforce arrangements and business practices, including those that were first developed during the pandemic and have been modified since in light of reduced health and safety concerns. In particular, the economic baseline includes the innovations, and investments in communication and surveillance technology, that have supported and continue to support supervision in the remote work environment.[83] These innovations and investments have depended in part on the temporary suspension of the requirement to submit branch office applications on Form BR for new office locations, provided in *Notice* 20–08. However, in order to provide a full accounting of the likely effects of the proposed rule change, the analysis considers the impact of the proposed rule change under the assumption that, going forward, the temporary suspension of the above requirement is no longer in effect. The current supervisory requirements of Rule 3110 will then apply, including the provisions of Rule 3110 that categorize an OSJ, branch office and non-branch location and that establish the supervisory and registration requirements of each office or location. As discussed above, a location registered as a branch office must have one or more appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.

As of April 30, 2022, FINRA's membership included 3,365 firms[84] with 151,463 registered branch offices. Of these branch offices, 18,290 (12%) are OSJs, with 1,910 of them identified as private residences.[85] There are 21,647 principal level registered persons serving as OSJ supervisors, with 1,775 (8%) working at OSJs identified as private residences.[86] Data on the number of residential locations at which supervisors are currently working full or part time may be incomplete, due to the temporary suspension of the Form BR requirement for new offices included in *Notice* 20–08. However, large member firms (500 or more registered persons) account for about 69% of OSJs. By type of business, diversified and retail firms account for 81% of OSJs. To the extent that these member firms account for most supervisory staff, they are potentially currently making broad use of hybrid workforce arrangements involving residential locations.

3. Economic Impacts

Absent the proposed rule change, if the temporary relief on registering new branches with Form BR, provided during the pandemic, ends, many member firms would likely need to either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices. This potential increase in office count would impact inspection obligations and in some cases, licensing requirements associated with individual locations. These additional requirements would hold even for office locations that bear lower risk characteristics and from which lower risk supervisory functions are conducted. The economic impacts of these changes would be mitigated by the proposed rule change.

Changes in the number of different types of offices and locations since the start of the pandemic, along with current data, can provide a rough indication of the potential impact of the proposed rule change on firms. As Table 1 below shows, the number of offices and locations has fallen except for non-branch locations. Residential non-branch locations have increased by 12,921 (53%). Some of these new residential non-branch locations would have needed to register as OSJs if not for the temporary suspension of the Form BR requirement and will need to register as OSJs unless the proposed rule change is adopted. Further, some of the 1,910 private residences that are currently registered as OSJs, described above, might be able to become Residential Supervisory Locations if the proposed rule change is adopted. The numbers suggest that the number of offices and locations that may benefit from the proposed rule change is in the thousands. While Form U4 and Form BR can be used to count numbers of work locations and identify high-level activities at registered branch offices, the number of residential locations that would meet the conditions of proposed Rule 3110.19(a) alone would depend on specific information about the activities at residential locations that these forms do not provide.[87]

TABLE 1—NUMBERS OF OFFICES AND LOCATIONS, PRE-PANDEMIC AND CURRENT

	December 31, 2019	April 30, 2022
Registered branch locations	152,682	151,463
OSJs	19,123	18,290
Non-OSJs	134,559	133,173
Non-branch locations	56,317	66,054
Residential non-branch locations	24,369	37,290

[83] The pandemic propelled increased reliance on technology solutions in the remote work environment. A McKinsey survey in late 2020 found that, overall, firms had accelerated their adoption of technology, with large accelerations in the implementation of changes to increase remote working and collaboration, as well the use of advanced technologies in operations. *See* McKinsey & Company, How COVID–19 has pushed companies over the technology tipping point—and transformed business forever, October 5, 2020, *https://mck.co/3nlK8b2*.

[84] This count excludes firms with membership pending approval, and withdrawn or terminated from membership.

[85] The number of branch offices and OSJs is derived from Form BR, a uniform form that a member firm uses to register with FINRA and as required by the relevant state jurisdictions or other SROs, the firm's location as a branch office. Form BR's Section 1 (General Information) provides a place for a firm to indicate whether the branch office is a private residence by checking a ''Private Residence Checkbox.'' The number of OSJs is derived from Form BR's Section 2 (Registration/Notice Filing/Type of Office/Activities), which requires a firm to indicate whether the branch office is an OSJ. Some OSJs have more than one supervisor, and some principals serve as supervisors for more than one OSJ. FINRA's records from Form U4 show that, altogether, there are about 138,035 registered persons with principal registration categories (including those in OSJ supervisory roles).

[86] In addition, FINRA member firms with a single branch account for 1,744 of these OSJs and 1,967 of the supervisors. Forty-three FINRA member firms do not have any branches registered; these firms are all small member firms and not counted among the 3,365 firms.

[87] Non-branch locations do not have to be registered with FINRA. The estimates for non-branch locations are obtained by reviewing Form U4. There may be some double counting of non-branch locations if members record the address differently on more than one Form U4 (*e.g.,* use ''St.'' on one and ''Street'' on another).

Anticipated Benefits

The proposed rule change would allow some of the work arrangements adopted during the pandemic to continue with only small additional compliance costs. Specifically, as long as the location is a private residence and is not otherwise ineligible under the rule, associated persons could continue to conduct work that meets the requirements of the proposed rule change. Not all new residential locations would qualify as Residential Supervisory Locations, so some would need to register as some type of branch location—and face higher compliance costs—or otherwise meet a branch office exclusion under Rule 3110(f)(2) or stop operating as a work location.

The proposed rule change, also creates an opportunity for continued innovation in workforce arrangements. The proposed rule change may lead to centralizing tasks in specific OSJs and restructuring of job functions to enable the use of a Residential Supervisory Location on a full or part time basis, and possibly an increase in the number of supervisors. Some current OSJs might qualify as Residential Supervisory Locations with no further adjustments, allowing members to reduce expenses on compliance. Firms would make use of these opportunities if they are beneficial to their operations, and not otherwise.

The proposed rule change would also support the competitiveness of the broker-dealer industry for educated individuals who seek professional positions.[88] The expectation of workplace flexibility and remote work by such individuals may lead them away from the broker-dealer industry if other segments of financial services or professional occupations offer more flexible workforce arrangements.

As noted above, the pandemic caused firms throughout the financial services sector to accelerate the adoption of technological solutions.[89] Technology has been used not only to make remote work possible but also to conduct a range of compliance and regulatory risk management activities. By facilitating hybrid work arrangements, the proposed rule change would support continued adoption and innovation in technological solutions and reductions in the cost of these solutions.

Finally, the proposed rule change would relieve member firms from paying FINRA branch office registration fees for locations that would be branch offices under the baseline but qualify as Residential Supervisory Locations. Member firms may also find that some existing branch locations become unnecessary given the proposed rule change and could reduce expenses attendant to those locations, including such fees. However, member firms would still need to pay branch office registration fees generally for new residential locations that meet the definition of a ''branch office,'' and are not covered by the proposed Residential Supervisory Location designation or do not meet a branch office exclusion under Rule 3110(f)(2).

Anticipated Costs

The proposed rule change provides firms with a new designation for work locations without removing any designations that are available under the baseline. Firms will therefore use the new Residential Supervisory Location designation only if doing so is beneficial to their operations relative to using one of the existing designations. The cost of complying with the requirements of the new designation for work locations is obviously a factor in this decision. Firms may incur a number of new one-time costs, such as adjusting staffing and activities at existing locations, to initially meet the requirements of proposed Rule 3110.19. Firms may also need to develop new written supervisory procedures and new trainings for staff at Residential Supervisory Locations, and deploy these trainings, so staff are aware of the compliance requirements. Firms may incur new ongoing costs to monitor for compliance and for adjusting staffing and designations if a Residential Supervisory Location becomes ineligible for this designation because an associated person incurs events or actions described in proposed Rule 3110.19(b).

Classifying residential locations that would otherwise need to register as OSJs or branch offices as Residential Supervisory Locations will remove certain compliance requirements. Depending on the type of branch, the reduction in compliance requirements may include no longer having to have one or more appropriately registered representatives or principals in each office or to conduct inspections annually or every three years. These reductions in compliance requirements may create risks to member firms and investors.

To mitigate these risks, the proposal excludes locations on the basis of inexperience or prior harmful conduct by individuals working at those locations, and limits the activities that can be performed at those locations. The designation of certain locations as ineligible provides minimum standards for staff that are eligible to work in such locations. FINRA expects that most firms would go beyond these minimum standards in selecting staff who would perform supervisory and other sensitive work at Residential Supervisory Locations, and in monitoring their conduct.

4. Alternatives Considered

FINRA is proposing to provide certain regulatory accommodations for the innovations in business organization and operations that occurred during the pandemic by modeling the Residential Supervisory Locations after the existing primary residence and non-primary residence exclusions, which have been in effect since 2005. FINRA considered adopting a proposed rule with just those exclusions and without the designation of certain locations as ineligible. More locations would qualify as Residential Supervisory Locations without the additional requirements. FINRA expects, however, that the proposed rule change provides a better balance of the potential benefits and the risks that could impose costs on members and investors.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 such proposed rule change, or

[88] *See* note 82, *supra*. *See also* Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, Why Working from Home Will Stick (NBER Working Paper 28731, April 2021), *https://wfhresearch.com/wp-content/uploads/2021/04/w28731-3-May-2021.pdf,* who point to a lasting effect of the pandemic on work arrangements, in particular for those with higher education and earnings; and Alexander Bick, Adam Blandin & Karel Mertens, Work from Home Before and After the COVID–19 Outbreak, (Working Paper, February 2022), *https://karelmertenscom.files.wordpress.com/2022/02/wfh_feb17_2022_paper.pdf* who find consistent results, with a higher adoption rate of work from home jobs in Finance and Insurance, relative to other industries, reflected in Figure 10.

[89] *See* note 83, *supra*.

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2022–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2022–019. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2022–019 and should be submitted on or before August 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[90]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16487 Filed 8–1–22; 8:45 am]

BILLING CODE 8011–01–P

[90] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95378; File No. SR–NYSE–2022–04]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 5P, 5.2(j)(8)(e), 8P, and 98

July 27, 2022.

I. Introduction

On January 14, 2022, New York Stock Exchange LLC (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the listing and trading of certain exchange-traded products (''ETPs'') that overlie one or more stocks listed on the Exchange. The proposed rule change was published for comment in the **Federal Register** on January 31, 2022.[3]

On March 9, 2022, 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 April 28, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On June 30, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed.[8] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 5P, 8P, 5.2(j)(8)(e) and 98 to permit the listing of certain Exchange Traded Products (''ETPs'') [9] that have a component NMS Stock listed on the Exchange or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange (an ''NYSE Component Security'' or, collectively, ''NYSE Component Securities''). The amendments would also permit the trading of those ETPs on the NYSE Trading Floor (''Trading Floor'' or ''Floor'').[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94053 (Jan. 25, 2022), 87 FR 4982 (''Notice''). The Commission has received one comment letter, which does not relate to the substance of the proposed rule change. The comment letter is available at *https://www.sec.gov/comments/sr-nyse-2022-04/srnyse202204-288838.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94392, 87 FR 14592 (Mar. 15, 2022). The Commission designated May 1, 2022 as the date by which it should approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 94814, 87 FR 26378 (May 4, 2022).

[8] Amendment No. 1 can be can be found on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2022-04/srnyse202204-20133423-303642.pdf.*

[9] Rule 1.1(l) defines ''Exchange Traded Product'' as a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Securities and Exchange Act of 1934 (the ''Act''). ETPs include, for example, securities listed and traded on the Exchange pursuant to the following Exchange rules: Rule 5.2(j)(3) (Investment Company Units); Rule 5.2(j)(5) (Equity Gold Shares); Rule 5.2 (j)(6)(Equity Index-Linked Securities); Rule 8.100 (Portfolio Depositary Receipts); Rule 8.200 (Trust Issued Receipts) (''TIR'')); Rule 8.201 (Commodity-Based Trust Shares); Rule 8.202 (Currency Trust Shares); Rule 8.203 (Commodity Index Trust Shares); Rule 8.204 (Commodity Futures Trust Shares); Rule 8.600 (Managed Fund Shares); and Rule 8.700 (Managed Trust Securities).

[10] The term ''Trading Floor'' is defined in Rule 6A to mean the restricted-access physical areas

Continued

Currently, Exchange rules do not permit the listing of an ETP that has underlying NYSE Component Securities. The proposed changes would permit the listing of ETPs that satisfy the composition and concentration requirements for equity-based products set forth in the listing criteria of (1) current Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(6) (Equity Index-Linked Securities), 8.100 (Portfolio Depositary Receipts), 8.600 (Managed Fund Shares), and (2) Rule 5.2(j)(8) as proposed to be amended to include requirements to ensure diversification, non-concentration, liquidity, and capitalization.

Accordingly, these ETPs would not be covered by the restrictions associated with the listing of ETPs that have an NYSE Component Security.

Background

Current Listing Rules

Currently, the Exchange trades securities, including ETPs, on its Pillar trading platform on an unlisted trading privileges (''UTP'') basis, subject to Pillar Platform Rules 1P–13P.[11] ETPs traded on a UTP basis on the Exchange are not assigned to a Designated Market Maker (''DMM'') and are available for Floor brokers to trade in Floor-based crossing transactions.[12] The Exchange does not have any restrictions on which ETPs may trade on a UTP basis on the Exchange.

The Exchange's rules permit it to list ETPs under Rules 5P and 8P. Specifically, Rules 5P (Securities Traded) and 8P (Trading of Certain Exchange Traded Products) provide for the listing of certain ETPs on the Exchange that (1) meet the applicable requirements set forth in those rules, and (2) do not hold NYSE Component Securities.[13] ETPs listed under Rules 5P and 8P are ''Tape A'' listings and are traded pursuant to the rules applicable to NYSE-listed securities. Accordingly, once an ETP is listed, it is assigned to a DMM pursuant to Rule 103B and the assigned DMM has obligations vis-à-vis such securities as specified in Rule 104, including facilitating the opening, reopening, and closing of, and trading in, such securities.[14]

The Exchange recently adopted a new Rule 5.2(j)(8)[15] establishing generic listing standards allowing the Exchange to list and trade Exchange-Traded Fund Shares.[16]

Relevant Commission Precedent

While the trading of an equity security and its related derivative product at the same physical location (''side-by-side trading'')[17] and the practice of the same person or firm making markets in an equity security and its related option (''integrated market making''[18]) has generally not been permitted, the Commission has approved integrated market making and side-by-side trading for ''broad-based'' exchange traded funds (''ETF'') and Trust-Issued Receipts (''TIR'') and related options.[19] The test for whether a product is ''broad-based,'' and therefore not readily susceptible to manipulation, is whether the individual components of the ETP are sufficiently liquid and well-capitalized and the product is not over-concentrated.[20] When these criteria are met, and the product can therefore can be considered ''broad-based,'' the Commission has explicitly permitted integrated market making and side-by-side trading in both the ETP and related options, with no additional requirement for information barriers or physical or organizational separation. In making these determinations, the Commission balanced the potential improvements in the quality of the markets for the securities and their related options against the competitive, regulatory, and surveillance concerns.[21]

In making a determination of whether an ETP is broad-based, the Commission has relied on an exchange's listing standards. For instance, in permitting integrated market making and side-by-side trading for two types of ETPs and their related options, the Commission looked to the then-American Stock Exchange LLC's listing standards that, as described below, are very similar to

designated by the Exchange for the trading of securities, commonly known as the ''Main Room'' and the ''Buttonwood Room.''

[11] ''UTP Security'' is defined as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. *See* Rule 1.1.

[12] *See* Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553, 13568 (March 29, 2018) (SR–NYSE–2017–36) (approving Exchange rules to trade securities on a UTP basis on the Pillar trading platform).

[13] ETPs listed under NYSE Rules 8.601 (Active Proxy Portfolio Shares) and 8.900 (Managed Portfolio Shares) are not subject to the prohibition in the preamble to Rule 8P. *See* Securities Exchange Act Release No. 90091 (October 5, 2020), 85 FR 64194, 64211 (October 9, 2020) (SR–NYSE–2020–77) (Notice); Securities Exchange Act Release No. 90526 (November 27, 2020), 85 FR 78157 (December 3, 2020) (SR–NYSE–2020–77) (Notice of Deemed Approval).

[14] *See* Securities Exchange Act Release No. 87056 (September 23, 2019), 84 FR 51205 (September 27, 2019) (SR–NYSE–2019–34) (order approving amendments to Rule 104 to specify DMM requirements for ETPs listed on the Exchange pursuant to Rules 5P and 8P).

[15] *See* Securities Exchange Act Release No. 91029 (February 1, 2021), 86 FR 8420 (February 5, 2021) (SR–NYSE–2020–86) (approval order).

[16] *See* Release Nos. 33–10695; IC–33646; File No. S7–15–18 (ETFs) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the ''Rule 6c–11 Release'').

[17] ''Side-by-side trading'' refers to the trading of an equity security and its related derivative product at the same physical location, though ''not necessarily by the same specialist or specialist firm.'' *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232, 48233 (July 23, 2002) (SR–Amex–2002–21) (''Release No. 46213'') (order approving side-by-side trading and integrated market making of broad index-based ETFs and related options); *see also* Securities Exchange Act Release No. 45454 (February 15, 2002), 67 FR 8567, 8568 n. 7 (February 25, 2002) (SR–NYSE–2001–43) (''Release No. 45454'') (order approving approved person of a specialist to act as a specialist or primary market maker with respect to an option on a stock in which the NYSE specialist is registered on the Exchange).

[18] ''Integrated market making'' refers to the practice of the same person or firm making markets in an equity security and its related option. *See* Release No. 45454, 67 FR at 8568 n. 7.

[19] *See* Release No. 46213, 67 FR at 48232 (approving side-by-side trading and integrated market making for certain ETFs and TIRs and related options); *see also* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–Amex–2010–31) (''Release No. 62479'') (order approving side-by-side trading and integrated market making in the QQQ ETF and certain of its component securities where the QQQs met the composition and concentration measures to be classified as a broad-based ETF).

[20] *See* Release No. 62479, 75 FR at 41272. The Commission has expressed its belief ''that, when the securities underlying an ETF consist of a number of liquid and well-capitalized stocks, the likelihood that a market participant will be able to manipulate the price of the ETF is reduced.'' *See id. See generally* Securities Exchange Act Release Nos. 56633 (October 9, 2007), 72 FR 58696 (October 16, 2007) (SR–ISE–2007–60) (order approving generic listing standards for ETFs based on both U.S. and international indices, noting they are ''sufficiently broad-based in scope to minimize potential manipulation.''); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86) (same); 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR–Amex–2006–78) (same); 57365 (February 21, 2008), 73 FR 10839 (February 28, 2008) (SR–CBOE–2007–109) (order approving generic listing standards for ETFs based on international indices, noting they are ''sufficiently broad-based in scope to minimize potential manipulation.''); 56049 (July 11, 2007), 72 FR 39121 (July 17, 2007) (SR–Phlx–2007–20) (same); 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR–NYSE–2006–101) (same); and 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR–Nasdaq–2006–50) (same). Although the relevant Commission precedents involved 1940 Act investment products, the underlying rationale applies with equal force to non-1940 Act products. Whether a product is sufficiently broad-based such that the product is not readily susceptible to manipulation should follow from an assessment of whether the listing criteria are designed to ensure the underlying individual components are sufficiently liquid and well-capitalized and not over-concentrated. Whether or not a product is issued by an investment company as defined by the 1940 Act is not relevant to this analysis.

[21] *See* Release No. 46213, 67 FR at 48234. In this regard, the Commission noted that it must consider whether a side-by-side trading or integrated market making proposal would permit market participants to possess ''undetectable, material non-public market information'' that could give certain market participants a trading advantage over other market participants. *See id.*

the Exchange's current listing standards.[22]

In particular, the Commission observed that the ETPs at issue, an ETF and a TIR, were securities based on ''groups of stocks'' whose prices were based on the prices of their component securities. As such, the Commission was of the view that a market participant's ability to manipulate the price of the ETPs or the related options would be ''limited.'' [23] Moreover, the Commission noted that the listing standards required (1) each product to have a minimum of 13 securities in the underlying portfolio, (2) that the most heavily weighted component securities could not exceed 25% of the weight of the portfolio, and (3) that the five most heavily weighted component securities could not exceed 65% of the weight of the portfolio. As the Commission concluded,

> [b]y limiting the proposal to broad-based ETFs and TIRs, concerns regarding informational advantages about individual securities are lessened.[24]

Finally, the Commission noted that the capitalization and liquidity requirements imposed by the listing standards—for example, the component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least $75 million and the component securities representing 90% of the weight of the portfolio each must have a minimum trading volume during each of the last six month of at least 250,000 shares—''should reduce the likelihood that any market participant has an unfair information advantage about the ETF, TIR, its related options, or its component securities, or that a market participant would not be able to manipulate the prices of the ETFs, TIRs, or their related options.'' [25]

Proposed Rule Change

Because listed securities are assigned to DMMs, trading is on the Floor of the Exchange and thus a listed ETP with one or more underlying NYSE Component Securities could be assigned to a DMM that is also assigned one or more NYSE Component Securities forming part of the underlying ETP index or portfolio. The Exchange believes that it would be consistent with the Act and with prior Commission actions with respect to both integrated market making and side-by-side trading for the Exchange to list certain ETPs that include NYSE Component Securities based on the broad-based listing criteria contained in the relevant listing rules.

Specifically, the Exchange proposes to permit the listing and trading of five types of ETPs that include one or more underlying NYSE Component Securities as long as the ETP independently satisfies the quantitative generic listing criteria set forth in the listing rules for those products. As discussed more fully below, four of the proposed ETPs would rely on existing listing criteria. For ETPs that have underlying NYSE Component Securities and that otherwise meet the criteria for listing of Rule 5.2(j)(8), the Exchange proposes additional broad-based listing criteria that must be satisfied in order for the ETP to be listed and traded on the Exchange. To accomplish this change, the Exchange proposes to specifically exclude these five types of ETPs from the current prohibition on listing products with underlying NYSE Component Securities in the preambles to Rules 5P and Rule 8P, respectively. The Exchange would also amend Rule 5P to provide that the Exchange may submit a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of an ETP that does not otherwise meet the specified listing standards. Finally, the Exchange proposes to amend Rule 98(b)(7) to exclude from the definition of ''related products'' the five types of ETPs that are excluded from the listing prohibition set forth in the preamble to Rule 5P or to Rule 8P.

Current Generic Listing Standards

The Exchange believes that four of its existing listing rules, together with proposed additional criteria for ETPs that meet the criteria for listing under Rule 5.2(j)(8), incorporate salient composition and concentration criteria designed to ensure that listed ETPs that have an NYSE Component Security would be sufficiently broad-based to address potential manipulation concerns. Specifically, the Exchange believes that ETPs that have underlying NYSE Component Securities and that would otherwise qualify for listing under the current criteria in Rule 5.2(j)(3), Supplementary Material .01(a), Rule 5.2(j)(6)(B)(I), Rule 8.100, Supplementary Material .01(a)(A), and Rule 8.600, Supplementary Material .01(a), could, by virtue of meeting the listing criteria, list and trade on the Exchange with no additional requirement for information barriers or physical or organizational separation based on the broad-based nature of the current listing criteria.

As discussed more fully below, the current listing standards for each product incorporate composition and concentration criteria that includes market cap, volume, weighting and minimum number of components requirements, as follows.

Rule 5.2(j)(3), Supplementary Material .01(a)—Investment Company Units (''Units'')

Units listed under Rule 5.2(j)(3), Supplementary Material .01(a)(A) based on an index or portfolio of only US Component Stocks [26] or US Component Stocks and cash underlying a series of listed Units must meet the following criteria on an initial and continued listing basis:

- The index or portfolio include a minimum of 13 component stocks; [27]
- Component stocks (excluding Units and securities defined in Section 2 of Rule 8P) that in the aggregate account for at least 90% of the weight of the US Component Stocks portion of the index or portfolio (excluding such Units and securities defined in Section 2 of Rule 8P) each will have a minimum market value of at least $75 million; [28]
- Component stocks (excluding Units and securities defined in Section 2 of Rule 8P) that in the aggregate account for at least 70% of the US Component Stocks portion of the weight of the index or portfolio (excluding such Exchange Traded Products) each will have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months; [29] and
- The most heavily weighted component stock component (excluding Units and securities defined in Section 2 of Rule 8P) will not exceed 30% of the US Component Stocks portion of the weight of the index or portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Exchange Traded Products) will not exceed 65% of the US Component Stocks portion of the weight of the index or portfolio.[30]

[22] The American Stock Exchange LLC is now NYSE American, LLC.

[23] Release No. 46213, 67 FR at 48235.

[24] *Id.*

[25] *Id.*

[26] For purposes of Rule 5.2(j)(3), ''US Component Stock'' means an equity security that is registered under Sections 12(b) or 12(g) of the Act or an American Depositary Receipt (''ADR''), the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act. *See* NYSE Rule 5.2(j)(3).

[27] *See* Rule 5.2(j)(3).01(a)(A)(4). The rule provides that there shall be no minimum number of component stocks if (a) one or more series of Units or Portfolio Depositary Receipts (as defined in Section 2 of Rule 8P) constitute, at least in part, components underlying a series of Units, or (b) one or more series of ETPs account for 100% of the US Component Stocks portion of the weight of the index or portfolio.

[28] *See* Rule 5.2(j)(3).01(a)(A)(1).

[29] *See* Rule 5.2(j)(3).01(a)(A)(2).

[30] *See* Rule 5.2(j)(3).01(a)(A)(3).

Similarly, Units listed under Rule 5.2(j)(3), Supplementary Material .01(a)(B) based on an index or portfolio of both US Component Stocks and Non-US Component Stocks [31] or US Component Stocks, Non-US Component Stocks and cash, must meet the following criteria on an initial and continued listing basis:

- The index or portfolio include a minimum of 20 component stocks; [32]
- Component stocks (similarly excluding Units and securities defined in Section 2 of Rule 8P) that in the aggregate account for at least 90% of the weight of the combined US and Non-US Component Stocks portions of the index or portfolio (excluding such Units and securities defined in Section 2 of Rule 8P) each will have a minimum market value of at least $100 million; [33]
- Component stocks (excluding Units and securities defined in Section 2 of Rule 8P) that in the aggregate account for at least 70% of the combined US and Non-US Component Stocks portions of the weight of the index or portfolio (excluding such Exchange Traded Products) each will have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; [34] and
- The most heavily weighted component stock component (excluding Units and securities defined in Section 2 of Rule 8P) will not exceed 25% of the combined US and Non-US Component Stocks portions of the weight of the index or portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Exchange Traded Products) will not exceed 60% of the combined US and Non-US Component Stocks portions of the weight of the index or portfolio.[35]

These listing requirements for Units are generally comparable to the listing requirements described above in the relevant precedents for assessing whether a product is sufficiently broad-based to address potential manipulation concerns.

First, the index or portfolio underlying Units must have the same minimum number (13) of component stocks. For an index or portfolio underlying Units listed under Rule 5.2(j)(3), Supplementary Material .01(a)(B), based on an index or portfolio of both US Component Stocks and Non-US Component Stocks or US Component Stocks, Non-US Component Stocks and cash, the minimum component requirement is even stricter (20 component stocks).[36]

Second, the component stocks in an index or portfolio underlying Units must meet comparable capitalization and liquidity requirements, *i.e.,* at least 90% of the weight of the US Component Stocks portion of the index or portfolio each must have a minimum market value of at least $75 million. For an index or portfolio underlying Units listed under Rule 5.2(j)(3), Supplementary Material .01(a)(B), the minimum market value requirement is $100 million.

Third, the component stocks in an index or portfolio underlying Units must also meet comparable minimum trading volume requirements, *i.e.,* component stocks in an index or portfolio accounting for at least 70% of the US Component Stocks portion of the weight of the index or portfolio each must have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months. Although the Exchange's listing standard does not require 90% of the of the weight of the index or portfolio to each have the same minimum monthly trading volume of 250,000 shares, the Exchange believes that the 70% requirement is still significant enough to reduce the likelihood that any market participant would be able to engage in price manipulation. The Exchange notes that in approving the current listing requirements, the Commission was satisfied that the these standards met the statutory requirements of the Act and were designed, among other things, to prevent manipulation. Moreover, the Exchange believes that the current requirements, coupled with the Exchange's rigorous regulation and surveillance of trading activity by DMMs and other Floor-based market participants discussed below, are also sufficient to prevent potential manipulation.

Finally, the concentration requirements for Units are also generally comparable. Indeed, for Units based on an index or portfolio of only US Component Stocks or US Component Stocks and cash, the requirement that the most heavily weighted component stock not exceed 30% of the US Component Stocks portion of the weight of the index or portfolio is arguably stricter.

In the case of Units based on an index or portfolio of both US Component Stocks and Non-US Component Stocks or US Component Stocks, Non-US Component Stocks and cash, the requirement that the most heavily weighted component stock not exceed 25% of the combined US and Non-US Component Stocks portion of the weight of the index or portfolio is also arguably comparable. The Exchange believes that the difference between this requirement and the 30% standard set forth in the relevant precedents is not sufficiently material to warrant the conclusion that the Exchange's current standard would be insufficient to deter potential manipulation, especially when considered in combination with the other current requirements for Units, some of which are arguably stricter. The requirement that the five most heavily weighted component stocks (excluding Units and securities defined in Section 2 of Rule 8P) not exceed 60% of the combined US and Non-US Component Stocks portions of the weight of the index or portfolio is slightly less than the relevant precedent, the Exchange believes the difference would not be material given that the index or portfolio could also contain non-Exchange listed US Component Stocks as well as Non-US Component Stocks. As noted, in approving the current listing requirements, the Commission was satisfied that the these standards met the statutory requirements of the Act and were designed, among other things, to prevent manipulation. Moreover, the Exchange believes that the current requirements, coupled with the Exchange's rigorous regulation and surveillance of trading activity by DMMs and other Floor-based market participants discussed below, are also sufficient to prevent potential manipulation.

Based on the foregoing, the Exchange believes Units with an NYSE Component Security listing under the existing listing criteria would be sufficiently broad-based to address potential manipulation concerns and could thus list without additional requirements for information barriers or physical or organizational separation.

[31] The term ''Non-U.S. Component Stock'' means an equity security that is not registered under Sections 12(b) or 12(g) of the Act and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts (REITS) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). *See* Rule 5.2(j)(3).

[32] *See* Rule 5.2(j)(3).01(a)(B)(4). The rule provides that there shall be no minimum number of component stocks if (a) one or more series of Units or Portfolio Depositary Receipts constitute, at least in part, components underlying a series of Units, or (b) one or more series of Exchange Traded Products account for 100% of the weight of the combined US and Non-US Component Stocks portions of the index or portfolio.

[33] *See* Rule 5.2(j)(3).01(a)(B)(1).

[34] *See* Rule 5.2(j)(3).01(a)(B)(2).

[35] *See* Rule 5.2(j)(3).01(a)(B)(3).

[36] *See* Rule 5.2(j)(3).01(a)(B)(4).

Rule 5.2(j)(6)(B)(I)—Equity Index-Linked Securities

Equity Index-Linked Securities (''ETN'') based on an index or indexes of, among other things, equity securities listed under Rule 5.2(j)(6)(B)(I) must meet the following initial listing criteria:

- Each underlying index has at least ten (10) component securities; [37]
- Each component security (excluding Derivative Securities Products and Index-Linked Securities) has a minimum market value of at least $75 million; [38]
- Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the weight of the index (excluding Derivative Securities Products and Index-Linked Securities) each must have a minimum global monthly trading volume of 1,000,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; [39]
- No underlying component security (excluding Derivative Securities Products and Index-Linked Securities) will represent more than 25% of the dollar weight of the index, and, to the extent applicable, the five highest dollar weighted component securities in the index (excluding Derivative Securities Products and Index-Linked Securities) will not in the aggregate account for more than 50% of the dollar weight of the index (60% for an index consisting of fewer than 25 component securities); [40] and
- 90% of the index's numerical value (excluding Derivative Securities Products and Index-Linked Securities) and at least 80% of the total number of component securities (excluding Derivative Securities Products and Index-Linked Securities) will meet the then current criteria for standardized option trading set forth in NYSE Arca Rule 5.3–O.[41]

These listing requirements for ETNs are comparable to the requirements described above in the relevant precedents for assessing whether a product is sufficiently broad-based to address potential manipulation concerns.

First, indexes underlying ETNs must have a minimum of 10 component securities. Although the precedents discussed above cited a minimum of 13 components, the Exchange does not believe the small difference translates into less meaningful diversification to obviate potential manipulation concerns, especially when considered in light of the heightened market value and volume requirements for listed ETNs, discussed below.

Second, each component security of the ETN's underlying index must have a minimum market value of at least $75 million, which is stricter than the requirement that only component securities that in the aggregate account for at least 90% of the weight of the portfolio have such a minimum market value.

Third, ETN component stocks that in the aggregate account for at least 90% of the weight of the index must each have a minimum global monthly trading volume of 1,000,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months, far in excess of the 250,000 shares noted in the Commission precedents.

Fourth, no underlying component security can represent more than 25% of the dollar weight of the index, which is comparable, although the five highest dollar weighted component securities in the index cannot in the aggregate account for more than 50% of the dollar weight of the index (60% for an index consisting of fewer than 25 component securities), which is less than the 65% of the weight of the portfolio noted in the Commission precedents. The Exchange believes that the lower weighting for the five highest dollar weighted component securities does not significantly dilute the requirement since the weighting still comprises half of an index with 25 or more component securities and 60% for an index composed of 25 or few securities. As with the minimum component requirement, the Exchange believes that the stricter market capitalization and volume requirements for listed ETNs along with the other current requirements would mean that the securities underlying the index would be larger and more liquid, and therefore generally more difficult to manipulate.

Based on the foregoing, the Exchange believes ETNs that have an NYSE Component Security and that list under the existing listing criteria would be sufficiently broad-based to address potential manipulation concerns and could thus list without additional requirements for information barriers or physical or organizational separation.

8.100, Supplementary Material .01(a)(A)—Portfolio Depositary Receipts

Rule 8.100, Supplementary Material 01(a)(A) provides that the components of an index or portfolio of only US Component Stocks [42] underlying a series of Portfolio Depositary Receipts must meet the following criteria on an initial and continued listing basis:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each will have a minimum market value of at least $75 million;
- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each will have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;
- The most heavily weighted component stock will not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks will not exceed 65% of the weight of the index or portfolio;
- The index or portfolio will include a minimum of 13 component stocks; and
- All securities in the index or portfolio will be US Component Stocks listed on a national securities exchange and will be NMS Stocks as defined in

[37] *See* Rule 5.2(j)(6)(B)(I)(1)(a). The rule provides that there shall be no minimum of component securities if one or more issues of Derivative Securities Products (*i.e.,* Investment Company Units (as described in Rule 5.2(j)(3)) and securities described in Section 2 of Rule 8P) or Index-Linked Securities (as described in Rule 5.2(j)(6)), constitute, at least in part, component securities underlying an issue of Equity Index-Linked Securities.

[38] *See* Rule 5.2(j)(6)(B)(I)(1)(b)(i). For each of the lowest dollar weighted component securities in the index that in the aggregate account for no more than 10% of the dollar weight of the index (excluding Derivative Securities Products and Index-Linked Securities), the rule provides that the market value can be at least $50 million.

[39] *See* Rule 5.2(j)(6)(B)(I)(1)(b)(ii).

[40] *See* Rule 5.2(j)(6)(B)(I)(1)(b)(iii).

[41] *See* Rule 5.2(j)(6)(B)(I)(1)(b)(iv). The ETN listing requirements also contain two requirements that did not figure in the SEC's analysis of the hallmarks of a broad-based ETP. First, 90% of the index's numerical value (excluding Derivative Securities Products and Index-Linked Securities) and at least 80% of the total number of component securities (excluding Derivative Securities Products and Index-Linked Securities) will meet the then current criteria for standardized option trading set forth in NYSE Arca Rule 5.3–O. *See* Rule 5.2(j)(6)(B)(I)(1)(b)(iv). An index will not be subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index (excluding Derivative Securities Products and Index-Linked Securities) and (b) the index has a minimum of 20 components (excluding Derivative Securities Products and Index-Linked Securities). *See id.* In addition, all component securities must be, among others, securities (other than foreign country securities and ADRs) that are issued by a reporting company under the Act or by an investment company registered under the 1940 Act, which in each case is listed on a national securities exchange, and an ''NMS stock'' (as defined in Rule 600 of Regulation NMS). *See* Rule 5.2(j)(6)(B)(I)(1)(b)(v).

[42] For purposes of Rule 8.100, the term ''US Component Stock'' means an equity security that is registered under Sections 12(b) or 12(g) of the Act or an ADR, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act. *See* Rule 8.100(a)(3).

Rule 600 of Regulation NMS under the Act.

These listing requirements for Portfolio Depositary Receipts are the same as the listing requirements described above in the relevant precedents for assessing whether a product is sufficiently broad-based to address potential manipulation concerns.

First, the index or portfolio for Portfolio Depositary Receipts must have the same minimum number (13) of component stocks.

Second, the component stocks of Portfolio Depositary Receipts must have the same capitalization and liquidity requirements, *i.e.,* at least 90% of the weight of the US Component Stocks portion of the index or portfolio each will have a minimum market value of at least $75 million.

Third, component stocks of Portfolio Depositary Receipts must also have the same minimum trading volume, *i.e.,* must in the aggregate account for at least 90% of the US Component Stocks portion of the weight of the index or portfolio each will have a minimum monthly trading volume of 250,000 shares, during the last six months.

Finally, the concentration requirements are also comparable, requiring heavily weighted component stocks to not exceed 25% of the US Component Stocks portion of the weight of the index or portfolio, and, to the extent applicable, the five most heavily weighted component stocks not to exceed 65%.

Based on the foregoing, the Exchange believes Portfolio Depositary Receipts that have an NYSE Component Security and that list under the existing listing criteria would be sufficiently broad-based to address potential manipulation concerns and could thus list without additional requirements for information barriers or physical or organizational separation.

Rule 8.600, Supplementary Material .01(a)—Managed Fund Shares

Supplementary Material .01(a) of Rule 8.600 provides that the component stocks of the equity portion of a portfolio of Managed Fund Shares that are U.S. Component Stocks [43] shall meet the following criteria initially and on a continuing basis:

- Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least $75 million;
- Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;
- The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;
- Where the equity portion of the portfolio does not include Non-U.S. Component Stocks,[44] the equity portion of the portfolio shall include a minimum of 13 component stocks; [45]
- Except as provided in the Rule, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act; and
- ADRs in a portfolio may be exchange-traded or non-exchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.

These listing requirements for Managed Fund Shares are either the same as or generally comparable to the listing requirements described above in the relevant precedents for assessing whether a product is sufficiently broad-based to address potential manipulation concerns.

First, the portfolio for Managed Fund Shares where the equity portion of the portfolio does not include Non-U.S. Component Stocks must include the same minimum number (13) of component stocks. Where the equity portion of a portfolio of Managed Fund Shares includes Non-U.S. Component Stocks, the equity portion of the portfolio must include a minimum of 20 component stocks, which is a stricter requirement.

Second, the component stocks of Managed Fund Shares must meet the same capitalization and liquidity requirements, *i.e.,* at least 90% of the weight of the US Component Stocks portion of the index or portfolio each must have a minimum market value of at least $75 million.

Third, component stocks of Managed Fund Shares must also meet comparable minimum trading volume requirements, *i.e.,* must in the aggregate account for at least 70% of the US Component Stocks portion of the weight of the index or portfolio each will have a minimum monthly trading volume of 250,000 shares, during the last six months. Once again, although the Exchange's listing standard does not require 90% of the weight of the index or portfolio to each have the same minimum monthly trading volume of 250,000 shares, the Exchange believes that the 70% requirement is significant enough to meaningfully reduce the likelihood that any market participant would be able to engage in price manipulation. The Exchange notes that in approving the current listing requirements, the Commission was satisfied that the these standards met the statutory requirements of the Act and were designed, among other things, to prevent manipulation. Moreover, the Exchange believes that the 70% requirement, coupled with the Exchange's rigorous regulation and surveillance of trading activity by DMMs and other Floor-based market participants discussed below, is also sufficient to prevent potential manipulation.

Finally, the concentration requirements are somewhat stricter, requiring heavily weighted component stocks to not exceed 30% (not 25%) of the US Component Stocks portion of the weight of the index or portfolio, and, to the extent applicable, the five most heavily weighted component stocks must not exceed 65%.

Based on the foregoing, the Exchange believes Managed Fund Shares that have an NYSE Component Security and that list under the existing listing criteria would be sufficiently broad-based to address potential manipulation concerns and could thus list without additional requirements for information barriers or physical or organizational separation.

* * * * *

As the foregoing discussion demonstrates, by virtue of the

[43] Rule 8.600, Supp. Material .01(a) notes that ''U.S. Component Stocks'' are the same as described in Rule 5.2(j)(3). *See* note 20 [sic], *supra.*

[44] *See* note 26, *supra.*

[45] *See* Rule 8.600, Supp. Material .01(a)(1)(D). The rule provides that there shall be no minimum number of component stocks if (1) one or more series of Exchange Traded Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (2) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares.

composition and concentration requirements in the Exchange's generic listing standards for equities-based products relating to market cap, trading volume, and diversity requirements, among others, that the underlying components must meet to list on the Exchange, the generic listing standards are, among other things,

> intended to reduce the potential for manipulation by assuring that the ETP is sufficiently broad-based, and that the components of an index or portfolio underlying an ETP are adequately capitalized, sufficiently liquid, and that no one stock dominates the index.[46]

Accordingly, the Exchange believes that ETPs meeting these existing listing criteria would be sufficiently broad-based to allow integrated market making and side-by-side trading in both the ETP and the NYSE Component Securities without more, and therefore should be excluded from the preambles to Rules 5P and 8P.

Proposed Broad-Based Generic Listing Standards for Exchange Traded Fund Shares

The Exchange further believes that Exchange Traded Fund Shares eligible to list under Rule 5.2(j)(8) that have underlying NYSE Component Securities should be eligible to list and trade on the Exchange if such Exchange Traded Fund Shares meet similar broad-based requirements as those specified in Rules 5.2(j)(3), 5.2(j)(6), 8.100, and 8.600 described above. To allow for listing of Exchange Traded Fund Shares with NYSE Component Securities, the Exchange proposes to add a new subsection e.1.B. to Rule 5.2(j)(8) to provide for additional listing requirements for such Exchange Traded Fund Shares. As with the ETPs discussed above, Exchange-Traded Fund Shares with NYSE Component Securities meeting the proposed composition and concentration measures proposed in Rule 5.2(j)(8)(e)(1)(B) would be permitted to list with no additional requirement for information barriers or physical or organizational separation, and would be excluded from the preamble to Rule 5P.

As proposed, Rule 5.2(j)(8)(e)(1)(B) would provide that if a portfolio of an actively managed series of Exchange-Traded Fund Shares or the index underlying a series of index-based Exchange-Traded Fund Shares has NYSE Component Securities, the component securities of the equity portion of such portfolio or index must satisfy specified requirements upon initial listing and on a continuing basis that would be designed to ensure that broad-based Exchange Traded Fund Shares with underlying NYSE Component Securities would be listed and traded on the Exchange.

First, proposed Rule 5.2(j)(8)(e)(1)(B)(1) would provide that the portfolio or index must include a minimum of 13 equity component securities. This proposed requirement is substantively the same as listing rules for ETPs that similarly require a minimum of 13 equity component securities. For example, as set forth in Supplementary Material .01 of Rule 5.2(j)(3) and discussed above, the index components underlying Units consisting solely of US Component Stocks[47] or US Component Stocks and cash—*i.e.,* where the equity portion of the portfolio does not include Non-US Component Stocks—must include a minimum of 13 component stocks.[48] In addition, Portfolio Depositary Receipts and Rule 8.100 and Managed Fund Shares under Rule 8.600 also require a minimum of 13 component securities if the equity portion of the portfolio does not include Non-U.S. Component Stocks.[49] The Exchange believes that the proposed 13 equity component requirement for a series of Exchange Traded Fund Shares with an NYSE Component Securities would similarly ensure significant portfolio breadth such that the potential for manipulation or coordinated trading is significantly attenuated.

Second, proposed Rule 5.2(j)(8)(e)(1)(B)(2) provides that no one single component security may exceed 30% of the equity weight of the portfolio or index. Third, proposed Rule 5.2(j)(8)(e)(1)(B)(3) would provide that the five most heavily weighted component securities may not exceed 65% of the equity weight of the portfolio or index. Both of these proposed requirements are substantively identical to current generic listing requirements for Investment Company Units under Supplementary Material .01 of Rule 5.2(j)(3), which provides that the most heavily weighted component stock (excluding Investment Company Units and securities defined in Section 2 of Rule 8P) cannot exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Units and securities defined in Section 2 of Rule 8P) cannot exceed 65% of the equity weight of the portfolio.[50] Portfolio Depositary Receipts and Managed Fund Shares have similar requirements.[51]

Third, proposed Rule 5.2(j)(8)(e)(1)(B)(4) provides that component securities that in the aggregate account for at least 90% of the equity weight of the portfolio or index each must have a minimum market value of at least $75 million. The proposed requirements are substantively similar to the current generic listing requirements for Units under Supplementary Material .01 of Rule 5.2(j)(3), which provides that component stocks in the aggregate account for at least 90% of the weight of the US Component Stocks portion of the index or portfolio (excluding Units and securities defined in Section 2 of Rule 8P) each shall have a minimum market value of at least $75 million.[52]

Finally, proposed Rule 5.2(j)(8)(e)(1)(B)(5) would provide that component securities that in the aggregate account for at least 70% of the equity weight of the index or portfolio each must have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months. The proposed requirement is also substantively identical to Supplementary Material .01 of Rule 5.2(j)(3), which provides that component stocks (excluding Units and securities defined in Section 2 of Rule 8P) that in the aggregate account for at least 70% of the US Component Stocks portion of the weight of the index or portfolio (excluding Derivative Securities Products) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six

[46] *See* Securities Exchange Act Release No. 80189 (March 9, 2017), 82 FR 13889, 13892 (March 15, 2017) (SR–NYSEArca–2017–01) (order approving amendment of NYSE Arca Rule 5 and 8 Series to add specific continued listing standards for ETPs and to specify the delisting procedures for these products). *See generally id.* n. 28 & authorities cited therein.

[47] *See* Rule 5.2(j)(3) & note 19, *infra.*

[48] *See* Rule 5.2(j)(3), Supp. Material .01(a)(A)(4). As previously noted, there is no minimum number of component stocks if (a) one or more series of Units or Portfolio Depositary Receipts (as defined in Section 2 of Rule 8P) constitute, at least in part, components underlying a series of Managed Fund Units, or (b) one or more series of such ETPs account for 100% of the US Component Stocks portion of the weight of the index or portfolio. *See id.*

[49] *See* Rule 8.100, Supp. Material .01(a)(A)(4) & Rule 8.600, Supp. Material .01(a)(1)(D).

[50] *See* Rule 8.100, Supp. Material .01(a)(A)(3).

[51] *See* Rule 8.100, Supp. Material .01(a)(A)(1)–(3) & Rule 8.600, Supp. Material .01 (a)(1)(A)–(C).

[52] *See* Rule 5.2(j)(3), Supp. Material .01(a)(A)(1). As proposed, Rule 5.2(j)(8)(e)(1)(B) would not, unlike Rule 5.3(j)(3), Supp. Material .01(a)(A)(1)–(3), exclude Units and securities defined in Section 2 of Rule 8P when calculating the weight of the portfolio, thereby ensuring a stricter percentage requirement for indices or portfolios containing NYSE Component Securities.

months.[53] Although the Exchange's proposed listing standard does not require 90% of the of the weight of the index or portfolio to each have the same minimum monthly trading volume of 250,000 shares, the Exchange believes that the 70% requirement is still significant enough to reduce the likelihood that any market participant would be able to engage in price manipulation. The Exchange believes that the current requirements, coupled with the Exchange's rigorous regulation and surveillance of trading activity by DMMs and other Floor-based market participants discussed below, are also sufficient to prevent potential manipulation. Moreover, the Exchange notes that the alternative minimum notional volume traded per month of $25,000,000, averaged over the last six months, is the same as that in current Exchange listing standards that also incorporate a 70% and not a 90% weight requirement, such as that for Units, and that the Commission was satisfied that the Exchange's current listing standards met the statutory requirements of the Act and were designed, among other things, to prevent manipulation.

The Exchange believes that these proposed additional initial and continued listed requirements for a series of Exchange Traded Fund Shares with one or more NYSE Component Securities mirror existing generic listing standards for equities-based products and are consistent with the listing requirements described above that the Commission determined were sufficiently broad-based to address potential manipulation concerns. Accordingly, the Exchange believes that the proposed requirements would ensure that a portfolio of a series of Exchange Traded Fund Shares listed under Rule 5.2(j)(8) with one or more NYSE Component Securities would not be unduly concentrated.

The Exchange believes that requiring Exchange Traded Fund Shares with underlying NYSE Component Securities to meet enhanced criteria is designed to ensure that the Exchange Traded Fund Shares listed on the Exchange would be broad-based and would mitigate potential issues raised by the trading of Exchange Traded Fund Shares on the same physical trading floor as one or more component securities.

Proposed Changes to Rules 5P and 8P

To effect the above-described changes, the Exchange proposes to amend the preambles following both Rule 5P and Rule 8P.

For Rule 5P, the Exchange proposes to add ''Listed and'' before ''Traded'' in the heading. The Exchange also proposes to add the defined term ''NYSE Component Securities,'' which would mean the existing Rule 5P definition of ''any component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange.'' The Exchange further proposes to amend Rule 5P to exclude from the listing prohibition an Exchange Traded Product listed under NYSE Rules 5.2(j)(3), Supplementary Material .01(a); 5.2(j)(6)(B)(I); or 5.2(j)(8) (e)(1)(B). Finally, for the avoidance of doubt, the Exchange proposes to add text to the heading of Rule 5P providing that the Exchange may submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of an ETP that does not otherwise meet the above standards.

The Exchange similarly proposes to amend the heading of Rule 8P to add ''Listing and'' before ''Trading.'' The Exchange also proposes to replace the text ''component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange'' with the proposed newly defined term of ''NYSE Component Securities.'' Use of this new defined term would not make any substantive changes to the Rule and is designed to streamline the rule text. Finally, the Exchange would amend Rule 8P to add language similar to that proposed for Rule 5P that would exclude from the listing prohibition an Exchange Traded Product listed under Rules 8.100, Supplementary Material .01(a)(A) or 8.600, Supplementary Material .01(a).

Proposed Changes to Rule 98

Rule 98 governs the operation of DMM units and imposes certain restrictions on DMM trading. With respect to integrated market making, the Commission has approved changes to Rule 98 that permit a DMM unit to engage in integrated market making with off-Floor market making units in related products.[54] Rule 98(c)(6) prohibits DMM units from operating as a specialist or market maker on the Exchange in related products, unless specifically permitted in Exchange rules. Rule 98(b)(7) defines ''related products'' as ''any derivative instrument that is related to a DMM security.''[55] Accordingly, consistent with the proposal, the Exchange proposes to amend Rule 98(b)(7) to specifically exclude from the definition of ''related products'' the ETPs that are excluded from the listing prohibition set forth in the preamble to Rule 5P or to Rule 8P.

With the proposed changes above, the Exchange would be able to list ETPs that include NYSE Component Securities and are listed under Rules 5.2(j)(3), Supplementary Material .01(a); 5.2(j)(6)(B)(I); 5.2(j)(8)(e)(1)(B); 8.100, Supplementary Material .01(a)(A); or 8.600 Supplementary Material .01(a). The proposed change would also provide that ETPs listed under these rules would be excluded from the Rule 98 definition of ''related products.'' In addition, this proposed change would clarify that ETPs listed under Rules 8.601 (Active Proxy Portfolio Shares) and 8.900 (Managed Portfolio Shares), which are currently excluded from the preamble to Rule 8P, would also be excluded from the Rule 98 definition of ''related products.''[56]

As discussed above, for each of the ETPs proposed to be excluded from the definition of ''related security,'' integrated market making and side-by-side trading in both the ETP and any underlying NYSE Component Securities would be appropriate with no additional requirement for information barriers or physical or organizational separation.

Safeguards Against Informational Advantages

In addition to the reasons why specific products present a reduced risk of manipulation, the Exchange believes that there are significant structural and regulatory safeguards in place that both minimize the amount of material nonpublic information available to DMMs and prevent the potential misuse of that information by DMMs to give themselves a competitive or trading advantage over other market participants.[57] As discussed below, the evolution of NYSE trading away from Floor-based manual executions toward an electronic market has made trading on the Exchange more transparent. In addition, the increasingly automated

[53] *See* Rule 5.2(j)(3), Supp. Material .01(a)(A)(2).

[54] *See* Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008) (SR–NYSE–2008–45) (order approving amendments to Rule 98 that permit specialist firms to integrate with off-Trading Floor trading desks that trade in ''related products,'' as that term is defined in Rule 98).

[55] Under Rule 98(b)(7), derivative instruments include options, warrants, hybrid securities, single-stock futures, security-based swap agreement, a forward contract, or ''any other instrument that is exercisable into or whose price is based upon or derived from a security traded at the Exchange.''

[56] *See* note 8, *supra.*

[57] *See, e.g.,* Release No. 46213, 67 FR at 48234.

logic for executions—including for interest entered by both Floor brokers and DMMs—has severely circumscribed the amount of non-public information that is only available to DMMs. Moreover, Rule 98 requires and enforces procedures that are designed to restrict trading by DMMs when in possession of material non-public information, thereby minimizing the potential for manipulative and improper trading conduct by DMMs when trading the proposed specific products with underlying NYSE Component Securities.[58]

Market Structure Evolution

Over the years, the Exchange has enhanced the transparency of its marketplace and significantly reduced the amount of material, non-public information available to DMMs.

One of the most significant evolutions has been in the technology and the manner in which DMMs close securities. Since 2014, DMMs have had the ability to close securities manually or electronically.[59] When this functionality was introduced, to close a security electronically, a DMM needed to be physically present on the Trading Floor. With the transition to the Pillar trading platform, a DMM can now close a security electronically even when not present on the Trading Floor. Further, since 2015, the Exchange has had the ability to facilitate the close of trading for one or more securities when the DMM is unable to do so.[60] As a result, DMMs can efficiently and effectively algorithmically close their assigned securities without being physically present on the Floor.

In addition, the Exchange has significantly enhanced the transparency of its marketplace. For instance, the Exchange disseminates Closing Auction Imbalance Information beginning 10 minutes before the scheduled end of Core Trading Hours, which provides updated imbalance information and indicative closing prices. In 2019, in connection with the transition to the Pillar trading platform, the Exchange amended its rules to provide that Floor Broker Interest (*i.e.,* interest verbalized in the trading crowd by a Floor Broker) would be included in Closing Auction Imbalance Information. Further, beginning in 2020, the Exchange temporarily suspended the availability of Floor Broker Interest to be eligible to participate in the Closing Auction, as defined in Rule 7.35. In 2021, the Exchange permanently excluded Floor Broker Interest from the Closing Auction and requires all Floor brokers to enter orders for the Closing Auction electronically during Core Trading Hours.[61] Because of the absence of Floor Broker Interest in the Closing Auction, any remaining information advantage that DMMs might have had with respect to orders from Floor brokers—even after such interest was included in the Closing Auction Imbalance Information—was eliminated.

Given their unique role to facilitate the close of trading, DMMs at the point of sale continue to have display-only access to aggregated buying and selling interest that is eligible to participate in the Closing Auction at each price point.[62] DMM unit algorithms, however, are not provided access to such non-public information until after the end of Core Trading Hours, and only in connection with messaging for the DMM to electronically facilitate the close of trading. Moreover, pursuant to Rule 104(h)(iii), Floor brokers may request that a DMM provide them with the information that is available to the DMM at the post, including such aggregated buying and selling interest for the Closing Auction. Moreover, pursuant to current Rule 104(h)(ii), a DMM may not use any information provided by Exchange systems in a manner that would violate Exchange rules or federal securities laws or regulations.

The Exchange believes that as a result of the cumulative effect of these changes, the non-public interest available to Floor participants has been meaningfully and materially reduced such that no market participant on the Trading Floor has an unfair competitive advantage over any other market participant on the Trading Floor.

Rule 98 Restrictions

In addition to the prohibitions contained in Rule 104(h), Rule 98 contains narrowly tailored restrictions to address the fact that DMMs while on the Floor may have access to certain Floor-based non-public information and requires DMM units to maintain procedures and controls to prevent the misuse of material, non-public information that are effective and appropriate for that member organization.

Specifically, under Rule 98(c)(2), a member organization seeking approval to operate a DMM unit pursuant to Rule 98 must maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such member organization's business, (1) to prevent the misuse of material, non-public information by such member organizations or persons associated with such member organization, and (2) to ensure compliance with applicable federal laws and regulations and with Exchange rules.[63] Further, Rule 98(c)(3)(A) provides that a member organization shall protect against the misuse of Floor-based non-public order information and that only the Trading Floor-based employees of the DMM unit and individuals responsible for the direct supervision of the DMM unit's Floor-based operations may have access (as permitted pursuant to Rule 104) to Floor-based non-public order information. Rule 98(c)(3)(B) specifies the restrictions applicable to employees of the DMM unit while on the Trading Floor. Rule 98(c)(3)(C) also provides that a Floor-based employee of a DMM unit who moves to a location off the Trading Floor, or any person who provides risk management oversight or supervision of the Floor-based operations of the DMM unit and becomes aware of Floor-based non-public order information, shall not (1) make such information available to customers, (2) make such information available to individuals or systems responsible for making trading decisions in DMM securities in away markets or

[58] *See id.,* 67 FR at 48235.

[59] *See* Securities Exchange Act Release No. 71086 (December 16, 2013), 78 FR 77186 (December 20, 2013) (SR–NYSE–2013–79) (Notice of filing and immediate effectiveness of proposed rule change amending Rules 104 and 123C to specify that closings may be effectuated manually or electronically).

[60] *See* Securities Exchange Act Release No. 74006 (January 6, 2015), 80 FR 1567 (January 12, 2015) (SR–NYSE–2014–73) (Notice of filing and immediate effectiveness of proposed rule change amending Rule 123C to specify that Exchange systems may close one or more securities electronically).

[61] *See* Securities Exchange Act Release No. 92480 (July 23, 2021), 86 FR 40885 (July 29, 2021) (SR–NYSE–2020–95) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2, To Make Permanent Commentaries to Rule 7.35A and Commentaries to Rule 7.35B and To Make Related Changes to Rules 7.32, 7.35C, 46B, and 47).

[62] *See* Rules 104(a)(3) and 104(b)(3). The information available at each price point is not available in the Auction Imbalance Information. However, such information is used to calculate the Continuous Book Clearing Price, which is disseminated via Auction Imbalance Information.

[63] Rule 98(c)(2) provides examples of conduct that would constitute the misuse of material, non-public information, including, but not limited to: (1) trading in any securities issued by a corporation, or in any related product, while in possession of material-non-public information concerning the issuer; or (2) trading in a security or related product, while in possession of material non-public information concerning imminent transactions in the security or related product; or (3) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related product for the purpose of facilitating the possible misuse of such material, non-public information. *See* Rule 98(c)(2)(A)–(C).

related products, or (3) use any such information in connection with making trading decisions in DMM securities in away markets or related products. The rule covers an individual that leaves the Floor, as well as a manager providing oversight or supervision of the Floor-based operations of the DMM unit. Submission and approval of a DMM unit's written policies and procedures addressing the requirements of Rule 98 is a prerequisite to operating a DMM unit on the Floor. The Exchange notes that all member organizations currently operating DMM units already have in place written policies and procedures to comply with Rule 98.

Regulation and Surveillance of Floor Trading

Trading on the Exchange is subject to a comprehensive regulatory program that includes a suite of surveillances that review trading by DMMs and other market participants on the Floor, including surveillances designed to monitor for trading ahead and manipulative activity. To assist Exchange surveillance of DMM trading activity, a member organization operating a DMM unit must daily provide the Exchange with net position information in DMM securities by the DMM unit and any independent trading unit of which it is part for such times and in the manner prescribed by the Exchange pursuant to Rule 98(c)(5). Moreover, DMM units and individual DMMs must produce trading and other records relating to ETP trading (including books and records with respect to which such DMM unit or DMM has access and control) to the Exchange on demand and can be subject to disciplinary action for failing to do so.[64] In addition, routine examinations are conducted consistent with the current exam-based regulatory program associated with Rule 98 that reviews member organizations operating DMM units for compliance with the above-described policies and procedures to protect against the misuse of material nonpublic information. On a day-to-day basis, the physical activity at DMM posts is also under visual surveillance by Floor-based regulatory staff.

In today's marketplace, the Exchange believes that primarily electronic DMM market-making activity is not materially different from market-making on other exchanges. DMMs, who have not been agents for the Exchange's limit order book for many years and whose trading activity on the Exchange is limited to proprietary trading, do not have a unique ability to direct or influence trading or control intra-day prices. In addition, no single exchange has more than 20% of the market, and the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.[65] Based on the foregoing, the Exchange believes that DMMs have no unique opportunities to engage in improper conduct trading ETPs with underlying NYSE Component Securities that would create unfair advantages for DMMs and would be ''hard, if not impossible'' for the Exchange to surveil.[66] The Exchange accordingly believes that its existing programs are reasonably designed to address any regulatory issues that may be raised by the trading of the specified listed ETPs.

Finally, the Exchange believes that the proposal would provide benefits to the marketplace.[67] Like other securities traded on the Exchange, ETPs with underlying NYSE Component Securities would benefit from a market model featuring an assigned DMM that has unique responsibilities to actively make markets (*i.e.,* quote bids and offers) throughout the trading day, both at inside market prices and throughout the order book, that adds significantly to the quality of markets made in those assigned securities. Because DMMs are also responsible for executing the NYSE opening and closing auctions and are obligated to ensure all marketable auction orders receive an execution, obligations that other markets do not apply to market makers, the Exchange believes that the quality of auctions in these products would also be enhanced, to the benefit of all market participants. Given reduced potential for manipulation and improper trading conduct for the reasons described above, the Exchange believes that the potential improvements to liquidity and quality of the markets outweigh the potential regulatory concerns.[68]

For all of the reasons stated above, the proposal is therefore consistent with the requirements of the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[69] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[70] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that listing and trading ETPs that have underlying NYSE Component Securities and that also meet the composition and concentration requirements set forth in the listing criteria of Rules 5.2(j)(3), Supplementary Material .01(a); 5.2(j)(6)(B)(I); 8.100, Supplementary Material .01(a)(A); and 8.600, Supplementary Material .01(a) as well as those proposed under Rule 5.2(j)(8)(e)(1)(B), would remove impediments to and perfect the mechanism of a free and open market and a national market system by facilitating the listing and trading of a broader range of ETPs consistent with the Exchange's current structure to trade listed securities. The Exchange believes that permitting [sic] the ETPs that have underlying NYSE Component Securities and that meet the criteria of the specified listing rules (including as amended) would meet the type of listing criteria previously identified by the Commission as sufficiently broad-based and well-diversified to protect against potential manipulation. The Exchange believes that these safeguards would continue to serve to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest from concerns that may be associated with integrated market making and any possible misuse of non-public information. In addition to the reasons why these specific products present a reduced risk of manipulation, the Exchange believes that there are significant structural and regulatory safeguards in place that both minimize the amount of material nonpublic information available to DMMs and prevent the potential misuse of that information by DMMs to give themselves a competitive or trading advantage over other market participants. Taken together, the Exchange believes these factors sufficiently minimize the risk of potential manipulation and improper trading conduct. Moreover, as also discussed above, the Exchange believes

[64] *See, e.g.,* Rule 8210 & 476(a)(11).

[65] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[66] *See, e.g.,* Release No. 45454, 67 FR at 8568. *See also note* 16, *supra.*

[67] *See id.,* 67 FR at 8569.

[68] *See, e.g., id.,* 67 FR at 8569.

[69] 15 U.S.C. 78f(b).

[70] 15 U.S.C. 78f(b)(5).

there would be potential improvements in the quality of the markets for the ETPs with underlying NYSE Component Securities traded on the Exchange. The Exchange accordingly believes that these benefits outweigh the reduced regulatory risks and that integrated market making and side-by-side trading in both the listed ETP and underlying listed NMS stock components is appropriate with no additional requirement for information barriers or physical or organizational separation.

The Exchange believes that the proposed changes to Rule 98 to exclude any ETPs listed on the Exchange from the definition of ''related products'' would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would facilitate the assignment of listed ETPs, which would include ETPs that have underlying NYSE Component Securities and that meet the specified listing rules in Rules 5P and 8P, to DMMs and permit DMMs to trade such listed ETPs consistent with existing Rules governing DMM trading, including, for example, Rule 104.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[71] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing of additional ETPs on the Exchange by allowing such securities to trade no differently than other securities listed on the Exchange, including assigning such securities to a DMM, which would enable the Exchange to further compete with unaffiliated exchange competitors that also list and trade ETPs. The proposed rule changes would also provide issuers with greater choice in potential listing venues for their ETP products to include an exchange model that includes a DMM assigned to their security and related benefits to an issuer as a result of the Exchange's high-touch trading model. The Exchange accordingly believes that the proposed change would promote competition by facilitating the listing and trading of a broader range of ETPs on the Exchange.

[71] 15 U.S.C. 78f(b)(8).

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. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the Exchange's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[72] 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 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.

A. Background

Currently, NYSE Rules 5P and 8P generally prohibit the Exchange from listing shares of an ETP that has any component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange.[73] Additionally, current NYSE Rule 98(c)(6) prohibits DMM units from operating as a specialist or market maker on the Exchange in ''related products'' unless specifically permitted in Exchange rules. NYSE assigns each of securities it lists to a DMM, and trading is on the floor of the Exchange. Integrated market making could be implicated if NYSE starts listing ETPs with an underlying NYSE Component Security because each ETP would be assigned to a DMM and that DMM may be assigned one or more NYSE Component Securities that underlie the ETP's underlying index or portfolio.

Previously, the Commission explained that the concerns raised by side-by-side trading and integrated market making are that such practices could result in the unfair use of non-public market information by and an unfair competitive advantage for market participants that engage in such practices because of their access to and ability to use non-public market information.[74] More recently however, finding that informational advantage concerns about individual securities are lessened for ''broad based'' ETFs and TIRs,[75] the Commission approved integrated market making and side-by-side trading for ''broad-based'' ETFs and TIRs and related options.[76] In determining whether a product is broad based, the Commission analyzed the listing criteria for each product. Specifically, the Commission considered the diversification, capitalization, and liquidity requirements in evaluating the likelihood that a market participant would be able to manipulate the prices of the ETFs, TIRs, or their related options. In approving these practices, the Commission also stated that the listing exchange's surveillance procedures should be adequate ''to ensure that market participants do not engage in manipulative or improper trading practices.'' [77]

B. Discussion of the Proposal

The Exchange proposes to amend its rules regarding side-by-side trading. Specifically, the Exchange proposes to exclude from its listing prohibitions in NYSE Rules 5P and 8P shares of an ETP that independently satisfies the quantitative generic listing criteria set forth in NYSE Rules 5.2(j)(3), Supplementary Material .01(a), NYSE Rule 5.2(j)(6)(B)(I); or proposed Rule 5.2(j)(8)(e)(1)(B), as well as shares of an ETP that independently satisfies the generic listing criteria set forth in NYSE Rules 8.100, Supplementary Material

[72] 15 U.S.C. 78f(b)(5).

[73] A NMS Stock is defined in Rule 600 of Regulation NMS, 17 CFR 242.600(b)(48), as ''any NMS security other than an option.'' A ''NMS Security'' is any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' 17 CFR 242.600(b)(47). ''NMS Security'' refers to ''exchange-listed equity securities and standardized options, but does not include exchange-listed debt securities, securities futures, or open-end mutual funds, which are not currently reported pursuant to an effective transaction reporting plan.'' *See* Question 1.1 in the ''Responses to Frequently Asked Questions Concerning Large Trader Reporting,'' available at: *https://www.sec.gov/divisions/marketreg/large-trader-faqs.htm*.

[74] Release No. 46213, *supra* note 17, 67 FR at 48234. As an example, the Commission explained how ''in a side-by-side trading environment or integrated market making environment on a single exchange floor, floor members, by virtue of their positions on the floor of an exchange, are able to react instantaneously to market information by executing orders before the information is publicly disseminated.'' *Id.*

[75] *Id.* at 48235.

[76] *See id.* at 48236; *see also* Release No. 62479, *supra* note 19.

[77] Release No. 46213, *supra* note 17, 67 FR at 48235.

.01(a)(A) or 8.600, Supplementary Material .01(a) (collectively, ''Specified ETP Listing Rules'').[78] The Exchange seeks to list and trade shares of these types of ETPs with no additional requirement for information barriers or physical or organizational separation because the current listing criteria provide that they overlie a sufficiently broad-based underlying portfolio or reference asset (as applicable).

The Exchange also proposes to amend its rule regarding integrated market making. The Exchange proposes to narrow the definition of ''related products'' to exclude derivative instruments that overlie ETPs listed under NYSE Rule 8.900, which governs the listing and trading of Managed Portfolio Shares on the Exchange,[79] or that satisfy the generic listing criteria of one of the Specified ETP Listing Rules.

1. The Listing Criteria for the ETPs

The Exchange proposes to exclude from its listing prohibitions in NYSE Rules 5P and 8P shares of an ETP that independently satisfies the quantitative generic listing criteria set forth in the Specified ETP Listing Rules.

The Commission believes that the proposed rule change permitting side-by-side trading and integrated market making of shares of the specified types of ETPs and their related options is consistent with section 6(b)(5) of the Exchange Act because the quantitative generic listing criteria set forth in the Specified ETP Listing Rules reduce the susceptibility to manipulation of such shares and correspondingly their related options. The Commission previously, has found the quantitative generic listing criteria included in the Specified ETP Listing Rules to be consistent with section 6(b)(5) of the Exchange Act and to be designed to prevent manipulation of the price of the ETP shares.[80] Additionally, the quantitative generic listing criteria included in the Specified ETP Listing Rules are generally consistent with the Amex listing requirements that the Commission found to be broad-based.[81] Although the minimum trading volume criterion for Portfolio Depositary Receipts is lower than the threshold in Amex's rules, the Commission has found that the generic listing criteria for Portfolio Depositary Receipts are consistent with Section 6(b)(5) of the Exchange Act and are designed to prevent the manipulation of generically listed Portfolio Depositary Receipts.[82] Coupled with the Exchange's surveillance procedures and the requirements applicable to DMMs described below, the Commission believes that the quantitative generic listing criteria applicable to Portfolio Depositary Receipts are adequate to prevent manipulation in the context of side-by-side trading and integrated market making by DMMs on the Exchange.

2. DMMs and the Exchange's Surveillance Procedures

The primary risk posed by integrated market making and side-by-side trading is that a DMM might improperly utilize its informational advantage. The DMMs' historical informational advantage over other market participants has been decreased through a series of rule changes by the Exchange. For example, the evolution of the Exchange's trading floor from a floor-based model to a primarily electronic market has increased the transparency of trading on the Exchange, automated logic for executions has circumscribed the amount of non-public information available to DMMs, and DMM units have been required to implement policies and procedures to prevent the misuse of material non-public information.

To ensure that DMMs do not improperly use any remaining informational advantage, the Exchange utilizes a regulatory program that reviews trading by DMMs and other market participants on the Floor, including surveillances designed to monitor for trading ahead and manipulative activity. Additionally, a member organization operating a DMM unit must daily provide the Exchange with net position information in DMM securities by the DMM unit and any independent trading unit of which it is part for such times and in the manner prescribed by the Exchange pursuant to Rule 98(c)(5). The Exchange also requires DMM units and individual DMMs to produce trading and other records relating to ETP trading (including books and records with respect to which such DMM unit or DMM has access and control) to the Exchange on demand, and DMM units and individuals can be subject to disciplinary action for failing to do so.[83] In addition, the Exchange conducts routine examinations, consistent with the current exam-based regulatory program associated with Rule 98, to review member organizations operating DMM units for compliance with the above-described policies and procedures to protect against the misuse of material nonpublic information. Lastly, the Exchange states that Floor-based regulatory staff visually monitor DMM physical activity daily. The Commission believes that the Exchange's regulation and surveillance of DMM trading activity, and its examination procedures regarding DMMs, adequately mitigate the risk that DMMs might engage in manipulative or improper trading practices in connection with side-by-side trading and integrated market making for ETPs under the Specified ETP Listing Rules.

3. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act[84] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 1 is consistent with the Exchange Act. Comments may be

[78] Shares of Active Proxy Portfolio Shares and Managed Portfolio Shares, which are issued by funds whose portfolios are not fully transparent, already are exempted from the general prohibition. *See* NYSE Rule 8P.

[79] A defining characteristic of Managed Portfolio Shares is that their portfolio holdings are disclosed within at least 60 days following the end of every fiscal quarter. *See* NYSE Rule 8.900(c)(1). Instead of disclosing its portfolio on a daily basis, each issue of Managed Portfolio Shares disseminates to all market participants at the same time a Verified Intraday Indicative Value in one-second intervals during the Core Trading Session. *See* NYSE Rule 8.900(d)(2)(A). Unlike DMMs for transparent ETPs, a DMM for an issue of Managed Portfolio Shares does not know whether any component NMS Stock that is listed on the Exchange is a component of the fund's portfolio. Therefore, the concern underlying the historical prohibitions against side-by-side trading and integrated market making is not implicated with respect to DMMs for Managed Portfolio Shares (*i.e.,* they do not have any informational advantage).

[80] The Commission approved NYSE's adoption of the Specified ETP Listing Rules, which are substantively identical to the rules of other exchanges, as consistent with Section 6(b)(5) of the Exchange Act. *See* Securities Exchange Act Release Nos. 80214 (March 10, 2017), 82 FR 14050, 14052–53 (March 16, 2017) (SR–NYSE–2016–44) and 91029, *supra* note 15, 86 FR at 8423–24. In approving the substantively identical rules of other exchanges, the Commission found that the generic listing criteria, including the quantitative requirements that must be satisfied to permit side-by-side trading and integrated market, are designed to prevent manipulation. *See, e.g.,* Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320, 49327 (July 27, 2016) (finding that the generic listing criteria for Managed Fund Shares should promote the listing only of Managed Fund Shares that are not susceptible to manipulation).

[81] *See* Release No. 46213, *supra* note 17.

[82] *See* Securities Exchange Act Release No. 54739, *supra* note 20.

[83] *See, e.g.,* Exchange Rules 8210 & 476(a)(11).

[84] 15 U.S.C. 78f(b)(5).

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–2022–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–04. 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–2022–04 and should be submitted on or before August 23, 2022.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange (among other things) clarified its proposed rule text and supplemented its discussion of why its proposal is consistent with the Exchange Act. Specifically, the Exchange analyzed the requirements of the Specified ETP Listing Rules that address the potential for manipulation and its DMM surveillance regime. This additional information in Amendment No. 1 assisted the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Exchange Act. Amendment No. 1 does not raise any novel legal issue. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[85] to approve the proposed rule change, as modified by Amendment No. 1 on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[86] that the proposed rule change (SR–NYSE–2022–04), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16483 Filed 8–1–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0419]

Balance Point Capital Partners, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 01/01–0419 issued to Balance Point Capital Partners, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Bailey G. DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2022–16494 Filed 8–1–22; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Invention, Innovation, and Entrepreneurship Advisory Committee

AGENCY: Small Business Administration (SBA).

ACTION: Notice of the establishment of the Invention, Innovation, and Entrepreneurship Advisory Committee.

SUMMARY: The SBA announces the establishment of the Invention, Innovation, and Entrepreneurship Advisory Committee. The Administrator has determined that establishing the Invention, Innovation, and Entrepreneurship Advisory Committee is necessary and in the public interest.

DATES: The Invention, Innovation, and Entrepreneurship Advisory Committee will operate for two years after the filing date of its charter that will meet the 15-days requirements of the **Federal Register** Notice, unless otherwise renewed in accordance with FACA.

FOR FURTHER INFORMATION CONTACT: Invention, Innovation, and Entrepreneurship Advisory Committee Designated Federal Officer, Jennifer Shieh, Director of Ecosystem Development, Office of Investment and Innovation, 202–205–6817, *IIEAC@sba.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the establishment of the Invention, Innovation, and Entrepreneurship Advisory Committee as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. 2) to provide information, advice, and recommendations to the Administrator on matters broadly related the U.S. startup and small business innovation ecosystem, and more specifically supporting innovation across the U.S.; developing and/or evolving SBA programs and services to address commercialization hurdles; addressing vulnerabilities and gaps in funding domestic invention and innovation; facilitating and enabling broad access and participation in federal innovation support and funding programs. The Committee is tasked with examining the issues, challenges, and obstacles facing U.S. innovation economy stakeholders in these subject areas. The Committee will only

[85] 15 U.S.C. 78s(b)(2).

[86] *Id.*

[87] 17 CFR 200.30–3(a)(12).

undertake tasks assigned to it by the Administrator. The **Federal Register** Notice will be published 15 days prior to filing the charter with Congress. This notice is provided in accordance with the Federal Advisory Committee Act.

Dated: July 25, 2022.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2022–16247 Filed 8–1–22; 8:45 am]

BILLING CODE P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting, Notice

AGENCY: State Justice Institute

ACTION: Notice of meeting.

SUMMARY: The SJI Board of Directors will be meeting on Monday, August 29, 2022 at 1:00 p.m. CT. The purpose of this meeting is to consider grant applications for the 4th quarter of FY 2022, and other business.

ADDRESSES: Administrative Office of the Illinois Courts, 222 N. LaSalle Street, Chicago, IL, 60601.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 12700 Fair Lakes Circle, Suite 340, Fairfax, VA 22033, 703–660–4979, *contact@sji.gov.*

Authority: 42 U.S.C. 10702(f).

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2022–16526 Filed 8–1–22; 8:45 am]

BILLING CODE 6820–SC–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2022–0612]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Bipartisan Infrastructure Law Airport Terminal and Tower Project Information

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 6, 2022. The collection involves soliciting project information for the Bipartisan Infrastructure Law (BIL) Airport Terminal and Tower Programs. The information to be collected will be used to determine projects to be awarded BIL competitive discretionary grants.

DATES: Written comments should be submitted by September 1, 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: Robin K. Hunt, Manager, BIL Implementation Team, by email at: *9-ARP-BILAirports@faa.gov;* phone: (202) 267–3831.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0806.

Title: Bipartisan Infrastructure Law Airport Terminal and Tower Project Information.

Form Numbers: 5100–144.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 6, 2022 (87 FR 27200). The FAA will use this collection to solicit the information necessary to evaluate and select airport terminal and tower projects for funding under the Bipartisan Infrastructure Law (BIL), signed on November 15, 2021. The BIL provides about $1,020,000,000 annually, for five years, to award competitive discretionary grants for airport terminal and tower development. Of this amount, about $1,000,000,000 annually, for five years, is for the Airport Terminal Program, and $20,000,000 annually, for five years, is for an Airport-owned Contract Tower Program (referred to collectively as ''Airport Terminal and Towers Programs''). The information collected is based on grant considerations and priorities outlined in the BIL. Project consideration areas include increasing terminal capacity and passenger access; replacing aging infrastructure; achieving compliance with the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*) and expanding accessibility for persons with disabilities; improving airport access for historically disadvantaged populations; improving energy efficiency, including upgrading environmental systems, upgrading plant facilities, and achieving Leadership in Energy and Environmental Design (LEED) accreditation standards; improving airfield safety through terminal relocation; encouraging actual and potential competition; and creating good paying jobs. The information FAA is collecting will include general airport information, a project overview, and narratives on project consideration areas as outlined in the BIL. Airport owners and managers who want to pursue funding and obtain benefits from the BIL Airport Terminal and Tower Programs will submit information via FAA Form 5100–144 to compete for grants. Approximately 3,075 airports are eligible to participate in the BIL Airport Terminal Program and about 170 for Tower programs, but FAA expects only a small subset of eligible airports to submit project information through this competitive discretionary grant process.

Respondents: Approximately 755 submissions.

Frequency: Annually.

Estimated Average Burden per Response: 6 Hours.

Estimated Total Annual Burden: 4,530 hours for all submissions.

Issued in Washington, DC.

Robin K. Hunt,

Manager, BIL Implementation Team, Office of Airports.

[FR Doc. 2022–16462 Filed 8–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2022–0017]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA33

NATIONAL CREDIT UNION ADMINISTRATION

[Docket ID NCUA–2022–0123]

Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts

AGENCY: Office of the Comptroller of the Currency, Treasury; Federal Deposit Insurance Corporation; and National Credit Union Administration.

ACTION: Proposed policy statement with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA) (the agencies), in consultation with state bank and credit union regulators, are inviting comment on an updated policy statement for prudent commercial real estate loan accommodations and workouts, which would be relevant to all financial institutions supervised by the agencies. This updated policy statement would build on existing guidance on the need for financial institutions to work prudently and constructively with creditworthy borrowers during times of financial stress, update existing interagency guidance on commercial real estate loan workouts, and add a new section on short-term loan accommodations. The updated statement also would address relevant accounting changes on estimating loan losses and provide updated examples of how to classify and account for loans modified or affected by loan accommodations or loan workout activity.

DATES: Comments must be received by October 3, 2022.

ADDRESSES: Interested parties are encouraged to submit written comments to any or all of the agencies listed below. The agencies will share comments with each other. Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal, if possible. Please use the title ''Interagency Policy Statement on Prudent Commercial Real Estate Loan Workouts'' to facilitate the organization and distribution of the comments. *Federal eRulemaking Portal—''Regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2022–0017'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.

- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2022–0017'' in your comment.

In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

Viewing Comments Electronically: Go to *www.regulations.gov.* Enter ''Docket ID OCC–2022–0017'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FDIC: You may submit comments, identified by FDIC RIN 3064–ZA33, by any of the following methods:

- *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the Agency website.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments RIN 3064–ZA33, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m., ET.
- *Email: comments@fdic.gov.* Include the RIN 3064–ZA33 in the subject line of the message.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.*

Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

NCUA: You may submit comments by any one of the following methods (please send comments by one method only):

- *Federal rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You can view all public comments on the Federal eRulemaking Portal at *http://www.regulations.gov* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual

opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT:

OCC: Beth Nalyvayko, Credit Risk Specialist, Bank Supervision Policy, (202) 649–6670; or Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FDIC: Thomas F. Lyons, Associate Director, Risk Management Policy, *tlyons@fdic.gov,* (202) 898–6850; Peter A. Martino, Senior Examination Specialist, Risk Management Policy, *pmartino@fdic.gov,* (813) 973–7046 x8113, Division of Risk Management Supervision; Gregory Feder, Counsel, *gfeder@fdic.gov,* (202) 898–8724; or Kate Marks, Counsel, *kmarks@fdic.gov,* (202) 898–3896, Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation; 550 17th Street NW, Washington, DC 20429.

NCUA: Simon Hermann, Senior Credit Specialist, Naghi H. Khaled, Director of Credit Markets, Office of Examination and Insurance, (703) 518–6360; Ian Marenna, Associate General Counsel, Ariel Pereira, Senior Staff Attorney, Office of General Counsel, (703) 518–6540; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 2009, the agencies, along with the Board of Governors of the Federal Reserve System (Board), the Federal Financial Institutions Examination Council (FFIEC) State Liaison Committee, and the former Office of Thrift Supervision, adopted the Policy Statement on Prudent Commercial Real Estate Loan Workouts, which was issued by the FFIEC (2009 Statement).[1] The agencies view the 2009 Statement as being useful for both agency staff and financial institutions in understanding risk management and accounting practices for commercial real estate (CRE) loan workouts.

The agencies are proposing to update and expand the 2009 Statement by incorporating recent policy guidance on loan accommodations and accounting developments for estimating loan losses (proposed Statement). In developing the proposed Statement, the agencies consulted with state bank and credit union regulators. If finalized, the proposed Statement would supersede the 2009 Statement for all supervised financial institutions.[2]

II. Overview of the Proposed Statement

The proposed Statement discusses the importance of working constructively with CRE borrowers who are experiencing financial difficulty and would be appropriate for all supervised financial institutions engaged in CRE lending that apply U.S. generally accepted accounting principles (GAAP).[3] The proposed Statement addresses supervisory expectations with respect to a financial institution's handling of loan accommodations and loan workouts on matters including (1) risk management elements, (2) classification of loans, (3) regulatory reporting, and (4) accounting considerations. While focused on CRE loans, the proposed Statement includes general principles that are relevant to a financial institution's commercial loans that are collateralized by either real property or other business assets (*e.g.,* furniture, fixtures, or equipment) of a borrower. Additionally, the proposed Statement would include updated references to supervisory guidance,[4] and would revise language to incorporate current industry terminology.

Prudent CRE loan accommodations and workouts are often in the best interest of both the financial institution and the borrower. As such, and consistent with safety and soundness standards, the proposed Statement reaffirms two key principles from the 2009 Statement: (1) financial institutions that implement prudent CRE loan accommodation and workout arrangements after performing a comprehensive review of a borrower's financial condition will not be subject to criticism for engaging in these efforts, even if these arrangements result in modified loans that have weaknesses that result in adverse credit classification; and (2) modified loans to borrowers who have the ability to repay their debts according to reasonable terms will not be subject to adverse classification solely because the value of the underlying collateral has declined to an amount that is less than the loan balance.

The proposed Statement includes the following changes: (1) a new section on short-term loan accommodations; (2) information about changes in accounting principles since 2009; and (3) revisions and additions to examples of CRE loan workouts.

Short-Term Loan Accommodations

The agencies recognize that financial institutions may benefit from the proposed Statement's inclusion of a discussion on the use of short-term and less complex CRE loan accommodations before a loan requires a longer term or more complex workout scenario. The proposed Statement would identify short-term loan accommodations as a tool that can be used to mitigate adverse effects on borrowers and would encourage financial institutions to work prudently with borrowers who are or may be unable to meet their contractual payment obligations during periods of financial stress. This section of the proposed Statement would incorporate principles consistent with existing interagency guidance on accommodations.[5]

Accounting Changes

The proposed Statement also would reflect changes in GAAP since 2009, including those in relation to current expected credit losses (CECL).[6] The discussion would align with existing regulatory reporting guidance and instructions that have also been updated to reflect current accounting requirements under GAAP.[7] In

[1] *See FFIEC Press Release, October 30, 2009, available at: https://www.ffiec.gov/press/pr103009.htm; See* OCC Bulletin 2009–32 (October 30, 2009); FDIC Financial Institution Letter FIL–61–2009 (October 30, 2009); Federal Reserve Supervision and Regulation (SR) letter 09–7 (October 30, 2009); NCUA Letter to Credit Unions 10–CU–07 (June 2010).

[2] For purposes of this guidance, financial institutions are those supervised by the FDIC, NCUA, or OCC.

[3] Federally insured credit unions with less than $10 million in assets are not required to comply with GAAP, unless the credit union is state-chartered and GAAP compliance is mandated by state law (86 FR 34924, July 1, 2021).

[4] Supervisory guidance outlines the agencies' supervisory practices or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area. The agencies have each adopted regulations setting forth Statements Clarifying the Role of Supervisory Guidance. *See* 12 CFR 4, subpart F (OCC); 12 CFR 302, appendix A (FDIC); and 12 CFR 791, subpart D (NCUA).

[5] *See Joint Statement on Additional Loan Accommodations Related to COVID–19.* FIL–74–2020 (FDIC), and Bulletin 2020–72 (OCC). *See also Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working With Customers Affected by the Coronavirus (Revised);* FIL–36–2020 (FDIC); Bulletin 2020–35 (OCC); and Joint Press Release April 7, 2020 (NCUA).

[6] The Financial Accounting Standards Board's (FASB's) Accounting Standards Update 2016–13, Financial *Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* and subsequent amendments issued since June 2016 are codified in Accounting Standards Codification (ASC) Topic 326, *Financial Instruments—Credit Losses* (FASB ASC Topic 326). FASB ASC Topic 326 revises the accounting for the allowances for credit losses (ACLs) and introduces CECL.

[7] For FDIC-insured depository institutions, the FFIEC Consolidated Reports of Condition and

particular, the section for Regulatory Reporting and Accounting Considerations would be modified to include CECL references. Appendices 5 and 6 of the proposed Statement would address the relevant accounting and regulatory guidance on estimating loan losses for financial institutions that use the CECL methodology, or incurred loss methodology, respectively.

The agencies also note that the Financial Accounting Standards Board (FASB) has issued ASU 2022–02, ''Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures,'' which amended ASC Topic 326, Financial Instruments—Credit Losses. Once adopted, ASU 2022–02 will eliminate the need for financial institutions to identify and account for loan modifications as troubled debt restructuring (TDR) and will enhance disclosure requirements for certain modifications by creditors when a borrower is experiencing financial difficulty.[8] The agencies plan to remove the TDR determination from the examples once all financial institutions are required to report in accordance with ASU 2022–02 and ASC Topic 326 by year-end 2023. In the interim, the agencies have modified sections of the proposed Statement to reflect updates that have occurred pertaining to TDR accounting since 2009, for financial institutions that are still required to report TDRs.

CRE Workout Examples

The proposed Statement would include updated information about current industry loan workout practices and revisions to examples of CRE loan workouts. The examples in the proposed Statement are intended to illustrate the application of existing guidance on (1) credit classification, (2) determination of nonaccrual status, and (3) determination of TDR status. The proposed Statement also would revise the 2009 Statement to provide Appendix 2, which contains an updated summary of selected references to relevant supervisory guidance and accounting standards for real estate lending, appraisals, restructured loans, fair value measurement, and regulatory reporting matters such as a loan's nonaccrual status.

The proposed Statement would retain information in Appendix 3 about valuation concepts for income-producing real property included in the 2009 Statement. Further, Appendix 4 of the proposed Statement restates the agencies' long-standing special mention and classification definitions that are referenced and applied in the examples in Appendix 1.

The proposed Statement would be consistent with the *Interagency Guidelines Establishing Standards for Safety and Soundness* issued by the FDIC and OCC,[9] which articulate safety and soundness standards for insured depository institutions to establish and maintain prudent credit underwriting practices and to establish and maintain systems to identify problem assets and manage deterioration in those assets commensurate with a financial institution's size and the nature and scope of its operations. The NCUA is issuing this proposed Statement pursuant to its regulation in 12 CFR part 723, governing member business loans and commercial lending, 12 CFR 741.3(b)(2) on written lending policies that cover loan workout arrangements and nonaccrual standards, and appendix B to 12 CFR part 741, regarding nonaccrual policy, and regulatory reporting of TDRs.[10]

III. Request for Comment

The agencies request comments on all aspects of the proposed Statement and responses to the questions set forth below:

Question 1: To what extent does the proposed Statement reflect safe and sound practices currently incorporated in a financial institution's CRE loan accommodation and workout activities? Should the agencies add, modify, or remove any elements, and, if so, which and why?

Question 2: What additional information, if any, should be included to optimize the guidance for managing CRE loan portfolios during all business cycles and why?

Question 3: Some of the principles discussed in the proposed Statement are appropriate for Commercial & Industrial (C&I) lending secured by personal property or other business assets. Should the agencies further address C&I lending more explicitly, and if so, how?

Question 4: What additional loan workout examples or scenarios should the agencies include or discuss? Are there examples in Appendix 1 of the proposed statement that are not needed, and if so, why not? Should any of the examples in the proposed Statement be revised to better reflect current practices, and if so, how?

Question 5: To what extent do the TDR examples continue to be relevant in 2023 given that ASU 2022–02 eliminates the need for a financial institution to identify and account for a new loan modification as a TDR?

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies have determined that this proposed Policy Statement does not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

V. Proposed Guidance

The text of the proposed Statement is as follows:

Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts

The agencies [1] recognize that financial institutions [2] face significant challenges when working with commercial real estate (CRE) [3] borrowers who are

Income (FFIEC Call Report); and for credit unions, the NCUA 5300 Call Report.

[8] Financial institutions may only early adopt ASU 2022–02 if ASC Topic 326 is adopted. Financial institutions that have not adopted ASC Topic 326 will continue to report TDRs and will only report in accordance with ASU 2022–02 concurrently with the adoption of ASC Topic 326.

[9] 12 CFR part 30, appendix A (OCC); and 12 CFR part 364 appendix A (FDIC).

[10] Additional guidance is available in NCUA letter to credit unions 10–CU–02 ''Current Risks in Business Lending and Sound Risk Management Practices,'' issued January 2010, and in the Commercial and Member Business Loans section of the NCUA *Examiner's Guide.*

[1] The Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies). This Policy Statement was developed in consultation with state bank and credit union regulators.

[2] For the purposes of this statement, financial institutions are those supervised by the FDIC, NCUA, or OCC.

[3] Consistent with the FDIC and OCC joint guidance on *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices* (December 2006), CRE loans include loans secured by multifamily property, and nonfarm nonresidential property where the primary source of repayment is derived from rental income associated with the property (that is, loans for which 50 percent or more of the source of repayment comes from third party, nonaffiliated, rental income) or the proceeds of the sale, refinancing, or permanent financing of the property. CRE loans also include land development and construction loans (including 1- to 4-family residential and commercial construction loans), other land loans, loans to real estate investment trusts (REITs), and unsecured loans to developers. For credit unions, ''commercial real estate loans'' refers to ''commercial loans,'' as defined in Section

Continued

experiencing diminished operating cash flows, depreciated collateral values, prolonged sales and rental absorption periods, or other issues that may hinder repayment. While borrowers may experience deterioration in their financial condition, many continue to be creditworthy and have the willingness and capacity to repay their debts. In such cases, financial institutions may find it beneficial to work constructively with borrowers. Such constructive efforts may involve loan accommodations [4] or more extensive loan workout arrangements.[5]

This statement provides a broad set of principles relevant to CRE loan accommodations and workouts in all business cycles, particularly in challenging economic environments. A variety of factors can drive challenging economic environments, including economic downturns, natural disasters, and local, national, and international events. This statement also describes how examiners will review CRE loan accommodation and workout arrangements and provides examples of CRE workout arrangements as well as useful references in the appendices.

The agencies have found that prudent CRE loan accommodations and workouts are often in the best interest of the financial institution and the borrower. Examiners are expected to take a balanced approach in assessing the adequacy of a financial institution's risk management practices for loan accommodation and workout activities. Consistent with the *Interagency Guidelines Establishing Standards for Safety and Soundness*,[6] (safety and soundness standards), financial institutions that implement prudent CRE loan accommodation and workout arrangements after performing a comprehensive review of a borrower's financial condition will not be subject to criticism for engaging in these efforts, even if these arrangements result in modified loans that have weaknesses that result in adverse classification. In addition, modified loans to borrowers who have the ability to repay their debts according to reasonable terms will not be subject to adverse classification solely because the value of the underlying collateral has declined to an amount that is less than the outstanding loan balance.

I. Purpose

Consistent with the safety and soundness standards, this statement updates and supersedes existing supervisory guidance to assist financial institutions' efforts to modify CRE loans to borrowers who are, or may be, unable to meet a loan's current contractual payment obligations or fully repay the debt.[7] This statement is intended to promote supervisory consistency among examiners, enhance the transparency of CRE loan accommodation and workout arrangements, and ensure that supervisory policies and actions do not inadvertently curtail the availability of credit to sound borrowers.

This statement addresses prudent risk management practices regarding short-term accommodations, risk management elements for loan workout programs, long-term loan workout arrangements, classification of loans, and regulatory reporting and accounting requirements and considerations. The statement also includes selected references and materials related to regulatory reporting.[8] The statement does not, however, affect existing regulatory reporting requirements or guidance provided in relevant interagency statements issued by the agencies or accounting requirements under U.S. generally accepted accounting principles (GAAP). Certain principles in this statement are also generally applicable to commercial loans that are secured by either real property or other business assets of a commercial borrower.

Six appendices are incorporated into this statement:

- Appendix 1 contains examples of CRE loan workout arrangements illustrating the application of this statement to classification of loans, and determination of accrual treatment.
- Appendix 2 lists selected relevant rules as well as supervisory and accounting guidance for real estate lending, appraisals, allowance methodologies,[9] restructured loans, fair value measurement, and regulatory reporting matters such as nonaccrual status. This statement is intended to be used in conjunction with materials identified in Appendix 2 to reach appropriate conclusions regarding loan classification and regulatory reporting.
- Appendix 3 discusses valuation concepts for income-producing real property.[10]
- Appendix 4 provides the classification definitions used by the FDIC and OCC.[11]
- Appendices 5 and 6 address the relevant accounting and supervisory guidance on estimating loan losses for financial institutions that use the current expected credit losses (CECL) methodology, or incurred loss methodology, respectively.

II. Short-Term Loan Accommodations

The agencies encourage financial institutions to work prudently with borrowers who are, or may be, unable to meet their contractual payment obligations during periods of financial stress. Such actions may entail loan accommodations that are generally short-term or temporary in nature but occur before a loan reaches a workout scenario. These actions can mitigate long-term adverse effects on borrowers by allowing them to address the issues affecting repayment capacity and are often in the best interest of financial institutions and their borrowers.

When entering into an accommodation with a borrower, it is prudent for the financial institution to provide clear, accurate, and timely information about the arrangement to the borrower and any guarantor. Any such accommodation must be consistent with applicable laws and regulations. Further, a financial institution should employ prudent risk management practices and appropriate internal controls over such accommodations. Failed or imprudent risk management practices and internal controls can adversely affect borrowers, and expose a financial institution to increases in

723.2 of the NCUA Rules and Regulations, secured by real estate.

[4] For the purposes of this statement, an accommodation includes any agreement to defer one or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract or provide other assistance or relief to a borrower who is experiencing a financial challenge.

[5] Workouts can take many forms, including a renewal or extension of loan terms, extension of additional credit, or a restructuring with or without concessions.

[6] 12 CFR part 30, appendix A (OCC); 12 CFR part 364 appendix A (FDIC); and 12 CFR part 741.3(b)(2), 12 CFR 741, appendix B, 12 CFR 723, and NCUA letters to credit unions 10–CU–02 ''Current Risks in Business Lending and Sound Risk Management Practices'' issued January 2010. Credit unions should also refer to the Commercial and Member Business Loans section of the NCUA Examiner's Guide.

[7] This statement replaces the interagency *Policy Statement on Prudent Commercial Real Estate Loan Workouts* (October 2009).

[8] For banks, the FFIEC Consolidated Reports of Condition and Income (FFIEC Call Report), and for credit unions, the NCUA 5300 Call Report.

[9] The allowance methodology refers to the allowance for credit losses (ACL) under Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 326, *Financial Instruments—Credit Losses;* or allowance for loan and lease losses (ALLL) under ASC 310, *Receivables* and ASC Subtopic 450–20, *Contingencies—Loss Contingencies,* as applicable.

[10] Valuation concepts applied to regulatory reporting processes also should be consistent with ASC Topic 820, *Fair Value Measurement.*

[11] Credit unions must apply a relative credit risk score (*i.e.,* credit risk rating) to each commercial loan as required by 12 CFR part 723 Member Business Loans; Commercial Lending (see Section 723.4(g)(3)) or the equivalent state regulation as applicable.

credit, compliance, operational, or other risks. Imprudent practices that are widespread at a financial institution may also pose risk to its capital adequacy.

Prudent risk management practices and internal controls will enable financial institutions to identify, measure, monitor, and manage the credit risk of accommodated loans. Prudent risk management practices include developing appropriate policies and procedures, updating and assessing financial and collateral information, maintaining appropriate risk grading, and ensuring proper tracking and accounting for loan accommodations. Prudent internal controls related to loan accommodations include comprehensive policies and practices, proper management approvals, and timely and accurate reporting and communication.

III. Loan Workout Programs

When short-term accommodation measures are not sufficient or have not been successful to address credit problems, the financial institutions could proceed into longer-term or more complex loan arrangements with borrowers under a formal workout program. Loan workout arrangements can take many forms, including, but not limited to:

- Renewing or extending loan terms;
- Granting additional credit to improve prospects for overall repayment; or
- Restructuring [12] with or without concessions.

A financial institution's risk management practices for implementing workout arrangements should be appropriate for the scope, complexity, and nature of the financial institution's lending activity. Further, these practices should be consistent with safe-and-sound lending policies and guidance, real estate lending standards,[13] and relevant regulatory reporting requirements. Examiners will evaluate the effectiveness of practices, which typically address:

- A prudent workout policy that establishes appropriate loan terms and amortization schedules and that permits the financial institution to reasonably adjust the workout plan if sustained repayment performance is not demonstrated or if collateral values do not stabilize; [14]
- Management infrastructure to identify, measure, and monitor the volume and complexity of workout activity;
- Documentation standards to verify a borrower's creditworthiness, including financial condition, repayment capacity, and collateral values;
- Management information systems and internal controls to identify and track loan performance and risk, including impact on concentration risk and the allowance;
- Processes designed to ensure that the financial institution's regulatory reports are consistent with regulatory reporting requirements;
- Loan collection procedures;
- Adherence to statutory, regulatory, and internal lending limits;
- Collateral administration to ensure proper lien perfection of the financial institution's collateral interests for both real and personal property; and
- An ongoing credit risk review function.

IV. Long-Term Loan Workout Arrangements

An effective loan workout arrangement should improve the lender's prospects for repayment of principal and interest, be consistent with sound banking and accounting practices, and comply with applicable laws and regulations. Typically, financial institutions consider loan workout arrangements after analyzing a borrower's repayment capacity, evaluating the support provided by guarantors, and assessing the value of any collateral pledged.

Consistent with safety and soundness standards, while loans in workout arrangements may be adversely classified, a financial institution will not be criticized for engaging in loan workout arrangements so long as management has:

- For each loan, developed a well-conceived and prudent workout plan that supports the ultimate collection of principal and interest and that is based on key elements such as:
  - ➢ Updated and comprehensive financial information on the borrower, real estate project, and all guarantors and sponsors;
  - ➢ Current valuations of the collateral supporting the loan and the workout plan;
  - ➢ Appropriate loan structure (*e.g.,* term and amortization schedule), covenants, and requirements for curtailment or re-margining; and
  - ➢ Appropriate legal analyses and agreements, including those for changes to loan terms;
- Analyzed the borrower's global debt [15] service coverage that reflects a realistic projection of the borrower's available cash flow;
- Analyzed the available cash flow of guarantors;
- Demonstrated the willingness and ability to monitor the ongoing performance of the borrower and guarantor under the terms of the workout arrangement;
- Maintained an internal risk rating or loan grading system that accurately and consistently reflects the risk in the workout arrangement; and
- Maintained an allowance methodology that calculates (or measures) an allowance in accordance with GAAP for loans that have undergone a workout arrangement and recognizes loan losses in a timely manner through provision expense and enacting appropriate charge-offs.[16]

A. Supervisory Assessment of Repayment Capacity of Commercial Borrowers

The primary focus of an examiner's review of a CRE loan, including binding commitments, is an assessment of the borrower's ability to repay the loan. The major factors that influence this analysis are the borrower's willingness and capacity to repay the loan under reasonable terms and the cash flow potential of the underlying collateral or business. When analyzing a commercial borrower's repayment ability, examiners should consider the following factors:

- The borrower's character, overall financial condition, resources, and payment history;
- The nature and degree of protection provided by the cash flow from business operations or the collateral on a global basis that considers the borrower's total debt obligations;
- Market conditions that may influence repayment prospects and the cash flow potential of the business operations or underlying collateral; and
- The prospects for repayment support from guarantors.

[12] A restructuring involves a formal, legally enforceable modification in the loan's terms.

[13] 12 CFR part 34, subpart D (OCC); and 12 CFR part 365 (FDIC). For NCUA, refer to 12 CFR part 723 for member business loan and commercial loan regulations which addresses commercial real estate lending and 12 CFR part 741, Appendix B, which addresses loan workouts, nonaccrual policy, and regulatory reporting of troubled debt restructurings.

[14] Federal credit unions are reminded that in making decisions related to loan workout arrangements, they must take into consideration any applicable maturity limits (12 CFR 701.21(c)(4)).

[15] Global debt represents the aggregate of a borrower's or guarantor's financial obligations, including contingent obligations.

[16] Additionally, if applicable, financial institutions should recognize in other liabilities an allowance for estimated credit losses on off-balance sheet credit exposures related to restructured loans (*e.g.,* loan commitments) and should reverse interest accruals on loans that are deemed uncollectible.

B. Supervisory Assessment of Guarantees and Sponsorships

Examiners should review the financial attributes of guarantees and sponsorships in considering the loan classification. The presence of a legally enforceable guarantee from a financially responsible guarantor may improve the prospects for repayment of the debt obligation and may be sufficient to preclude classification or reduce the severity of classification. A financially responsible guarantor possesses the financial capacity, the demonstrated willingness, and the incentive to provide support for the loan through ongoing payments, curtailments, or re-margining.

Examiners also review the financial attributes and economic incentives of sponsors that support a loan. Even if not legally obligated, financially responsible sponsors are similar to guarantors in that they may also possess the financial capacity, the demonstrated willingness, and may have an incentive to provide support for the loan through ongoing payments, curtailments, or re-margining.

Financial institutions that have sufficient information on the guarantor's global financial condition, income, liquidity, cash flow, contingent liabilities, and other relevant factors (including credit ratings, when available) are better able to determine the guarantor's financial capacity to fulfill the obligation. An effective assessment includes consideration of whether the guarantor has the financial capacity to fulfill the total number and amount of guarantees currently extended by the guarantor. A similar analysis should be made for any material sponsors that support the loan.

Examiners should consider whether a guarantor has demonstrated the willingness to fulfill all current and previous obligations, has sufficient economic incentive, and has a significant investment in the project. An important consideration is whether any previous performance under its guarantee(s) was voluntary or the result of legal or other actions by the lender to enforce the guarantee(s).

C. Supervisory Assessment of Collateral Values

As the primary sources of loan repayment decline, the importance of collateral value as another repayment source increases when analyzing credit risk and developing an appropriate workout plan. Examiners will analyze real estate collateral values based on the financial institution's original appraisal or evaluation, any subsequent updates, additional pertinent information (*e.g.,* recent inspection results), and relevant market conditions. An examiner will assess the major facts, assumptions, and valuation approaches in the collateral valuation and their influence in the financial institution's credit and allowance analyses.

The appraisal regulations of the Federal financial institution supervisory agencies [17] require financial institutions to review appraisals for compliance with the Uniform Standards of Professional Appraisal Practice.[18] As part of that process, and when reviewing evaluations, financial institutions should ensure that assumptions and conclusions used are reasonable. Further, financial institutions typically have policies [19] and procedures that dictate when collateral valuations should be updated as part of their ongoing credit monitoring processes, as market conditions change, or as a borrower's financial condition deteriorates.[20]

CRE loans in workout arrangements consider current project plans and market conditions in a new or updated appraisal or evaluation, as appropriate. In determining whether to obtain a new appraisal or evaluation, a prudent financial institution considers whether there has been material deterioration in the following factors: the performance of the project; conditions for the geographic market and property type; variances between actual conditions and original appraisal assumptions; changes in project specifications (*e.g.,* changing a planned condominium project to an apartment building); loss of a significant lease or a take-out commitment; or increases in pre-sale fallout. A new appraisal may not be necessary when an evaluation prepared by the financial institution appropriately updates the original appraisal assumptions to reflect current market conditions and provides a reasonable estimate of the collateral's fair value.[21] If new money is advanced, financial institutions should refer to the Federal financial institution supervisory agencies' appraisal regulations to determine whether a new appraisal is required.[22]

The market value provided by an appraisal and the fair value for accounting purposes are based on similar valuation concepts.[23] The analysis of the collateral's market value reflects the financial institution's understanding of the property's current ''as is'' condition (considering the property's highest and best use) and other relevant risk factors affecting value. Valuations of commercial properties may contain more than one value conclusion and could include an ''as is'' market value, a prospective ''as complete'' market value, and a prospective ''as stabilized'' market value.

Financial institutions typically use the market value conclusion (and not the fair value) that corresponds to the workout plan objective and the loan commitment. For example, if the financial institution intends to work with the borrower so that a project will achieve stabilized occupancy, then the financial institution can consider the ''as stabilized'' market value in its collateral assessment for credit risk grading after confirming that the appraisal's assumptions and conclusions are reasonable. Conversely, if the financial institution intends to foreclose, then it is more appropriate for the financial institution to use the fair value (less costs to sell) [24] of the property in its current ''as is'' condition in its collateral assessment.

If weaknesses are noted in the financial institution's supporting documentation or appraisal or evaluation review process, examiners should direct the financial institution to address the weaknesses, which may

[17] The Board of Governors of the Federal Reserve System (Board), FDIC, NCUA, and OCC.

[18] *See* 12 CFR part 34, subpart C (OCC); 12 CFR part 323 (FDIC); and 12 CFR part 722 (NCUA).

[19] *See* 12 CFR 34.62(a) (OCC); and 12 CFR 365.2(a) (FDIC). For NCUA, refer to 12 CFR part 723 for member business loan and commercial loan regulations that address commercial real estate lending and 12 CFR part 741, appendix B, which addresses loan workouts, nonaccrual policy, and regulatory reporting of troubled debt restructurings.

[20] For further reference, see *Interagency Appraisal and Evaluation Guidelines,* 75 FR 77450 (December 10, 2010).

[21] According to the FASB ASC Master Glossary, ''fair value'' is ''the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.''

[22] *See* footnote 18.

[23] The term ''market value'' as used in an appraisal is based on similar valuation concepts as ''fair value'' for accounting purposes under GAAP. For both terms, these valuation concepts about the real property and the real estate transaction contemplate that the property has been exposed to the market before the valuation date, the buyer and seller are well informed and acting in their own best interest (that is, the transaction is not a forced liquidation or distressed sale), and marketing activities are usual and customary (that is, the value of the property is unaffected by special financing or sales concessions). The market value in an appraisal may differ from the collateral's fair value if the values are determined as of different dates or the fair value estimate reflects different assumptions from those in the appraisal. This may occur as a result of changes in market conditions and property use since the ''as of'' date of the appraisal.

[24] Costs to sell are used when the loan is dependent on the sale of the collateral. Costs to sell are not used when the collateral-dependent loan is dependent on the operation of the collateral.

require the financial institution to obtain a new collateral valuation. However, if the financial institution is unable or unwilling to address deficiencies in a timely manner, examiners will have to assess the degree of protection that the collateral affords when analyzing and classifying the loan. In performing this assessment of collateral support, examiners may adjust the collateral's value to reflect current market conditions and events. When reviewing the reasonableness of the facts and assumptions associated with the value of an income-producing property, examiners evaluate:

- Current and projected vacancy and absorption rates;
- Lease renewal trends and anticipated rents;
- Effective rental rates or sale prices, considering sales and financing concessions;
- Time frame for achieving stabilized occupancy or sellout;
- Volume and trends in past due leases;
- Net operating income of the property as compared with budget projections, reflecting reasonable operating and maintenance costs; and
- Discount rates and direct capitalization rates (refer to Appendix 3 for more information).

Assumptions, when recently made by qualified appraisers (and, as appropriate, by the financial institution) and when consistent with the discussion above, should be given reasonable deference by examiners. Examiners should also use the appropriate market value conclusion in their collateral assessments. For example, when the financial institution plans to provide the resources to complete a project, examiners can consider the project's prospective market value and the committed loan amount in their analysis.

Examiners generally are not expected to challenge the underlying assumptions, including discount rates and capitalization rates, used in appraisals or evaluations when these assumptions differ only marginally from norms generally associated with the collateral under review. The estimated value of the collateral may be adjusted for credit analysis purposes when the examiner can establish that any underlying facts or assumptions are inappropriate and when the examiner can support alternative assumptions.

Many CRE borrowers may have their commercial loans secured by owner occupied real estate or other business assets, such as inventory and accounts receivable, or may have CRE loans also secured by furniture, fixtures, and equipment. For these loans, the financial institution should have appropriate policies and practices for quantifying the value of such collateral, determining the acceptability of the assets as collateral, and perfecting its security interests. The financial institution also should have appropriate procedures for ongoing monitoring of this type of collateral and the financial institution's interests and security protection.

V. Classification of Loans

Loans that are adequately protected by the current sound worth and debt service capacity of the borrower, guarantor, or the underlying collateral generally are not adversely classified.[25] Similarly, loans to sound borrowers that are modified in accordance with prudent underwriting standards should not be adversely classified unless well-defined weaknesses exist that jeopardize repayment. However, such loans could be flagged for management's attention or other designated ''watch lists'' of loans that management is more closely monitoring.

Further, examiners should not adversely classify loans solely because the borrower is associated with a particular industry that is experiencing financial difficulties. When a financial institution's loan modifications are not supported by adequate analysis and documentation, examiners are expected to exercise reasonable judgment in reviewing and determining loan classifications until such time as the financial institution is able to provide information to support management's conclusions and internal loan grades. Refer to Appendix 4 for the classification definitions.

A. Loan Performance Assessment for Classification Purposes

The loan's record of performance to date should be one of several considerations when determining whether a loan should be adversely classified. As a general principle, examiners should not adversely classify or require the recognition of a partial charge-off on a performing commercial loan solely because the value of the underlying collateral has declined to an amount that is less than the loan balance. However, it is appropriate to classify a performing loan when well-defined weaknesses exist that jeopardize repayment.

One perspective of loan performance is based upon an assessment as to whether the borrower is contractually current on principal or interest payments. For many loans, this definition is sufficient and accurately portrays the status of the loan. In other cases, being contractually current on payments can be misleading as to the credit risk embedded in the loan. This may occur when the loan's underwriting structure or the liberal use of extensions and renewals masks credit weaknesses and obscures a borrower's inability to meet reasonable repayment terms.

For example, for many acquisition, development, and construction projects, the loan is structured with an ''interest reserve'' for the construction phase of the project. At the time the loan is originated, the lender establishes the interest reserve as a portion of the initial loan commitment. During the construction phase, the lender recognizes interest income from the interest reserve and capitalizes the interest into the loan balance. After completion of the construction, the lender recognizes the proceeds from the sale of lots, homes, or buildings for the repayment of principal, including any of the capitalized interest. For a commercial construction loan where the property has achieved stabilized occupancy, the lender uses the proceeds from permanent financing for repayment of the construction loan or converts the construction loan to an amortizing loan.

However, if the development project stalls and management fails to evaluate the collectability of the loan, interest income may continue to be recognized from the interest reserve and capitalized into the loan balance, even though the project is not generating sufficient cash flows to repay the loan. In such cases, the loan will be contractually current due to the interest payments being funded from the reserve, but the repayment of principal may be in jeopardy, especially when leases or sales have not occurred as projected and property values have dropped below the market value reported in the original collateral valuation. In these situations, adverse classification of the loan may be appropriate.

A second perspective for assessing a loan's classification is to consider the borrower's expected performance and ability to meet its obligations in accordance with the modified terms

[25] The NCUA does not require credit unions to adopt a uniform regulatory classification schematic of loss, doubtful, or substandard. A credit union must apply a relative credit risk score (*i.e.,* credit risk rating) to each commercial loan as required by 12 CFR part 723, Member Business Loans; Commercial Lending, or the equivalent state regulation as applicable (see Section 723.4(g)(3)). Adversely classified refers to loans more severely graded under the credit union's credit risk rating system. Adversely classified loans generally require enhanced monitoring and present a higher risk of loss. Refer to the NCUA's Examiner's Guide for further information on credit risk rating systems.

over the loan's tenure. Therefore, the loan classification is meant to measure risk over the term of the loan rather than just reflecting the loan's payment history. As a borrower's expected performance is dependent upon future events, examiners' credit analyses should focus on:

- The borrower's financial strength as reflected by its historical and projected balance sheet and income statement outcomes; and
- The prospects for a CRE property in light of events and market conditions that reasonably may occur during the term of the loan.

B. Classification of Renewals or Restructurings of Maturing Loans

Loans to commercial borrowers can have short maturities, including short-term working capital loans to businesses, financing for CRE construction projects, or loans to finance recently completed CRE projects for the period to achieve stabilized occupancy. When there has been deterioration in collateral values, a borrower with a maturing loan amid an economic downturn may have difficulty obtaining short-term financing or adequate sources of long-term credit, despite their demonstrated and continued ability to service the debt. In such cases, financial institutions may determine that the most appropriate course is to restructure or renew the loans. Such actions, when done prudently, are often in the best interest of both the financial institution and the borrower.

A restructured loan typically reflects an elevated level of credit risk, as the borrower may not be, or has not been, able to perform according to the original contractual terms. The assessment of each loan should be based upon the fundamental characteristics affecting the collectability of that loan. In general, renewals or restructurings of maturing loans to commercial borrowers who have the ability to repay on reasonable terms will not automatically be subject to adverse classification by examiners. However, consistent with safety and soundness standards, such loans are identified in the financial institution's internal credit grading system and may warrant close monitoring. Adverse classification of a renewed or restructured loan would be appropriate, if, despite the renewal or restructuring, well-defined weaknesses exist that jeopardize the orderly repayment of the loan pursuant to reasonable modified terms.

C. Classification of Troubled CRE Loans Dependent on the Sale of Collateral for Repayment

As a general classification principle for a troubled CRE loan that is dependent on the sale of the collateral for repayment, any portion of the loan balance that exceeds the amount that is adequately secured by the fair value of the real estate collateral less the costs to sell should be classified ''loss.'' This principle applies to loans that are collateral dependent based on the sale of the collateral in accordance with GAAP and there are no other available reliable sources of repayment such as a financially capable guarantor.[26]

The portion of the loan balance that is adequately secured by the fair value of the real estate collateral less the costs to sell generally should be adversely classified no worse than ''substandard.'' The amount of the loan balance in excess of the fair value of the real estate collateral, or portions thereof, should be adversely classified ''doubtful'' when the potential for full loss may be mitigated by the outcomes of certain pending events, or when loss is expected but the amount of the loss cannot be reasonably determined. If warranted by the underlying circumstances, an examiner may use a ''doubtful'' classification on the entire loan balance. However, examiners should use a ''doubtful'' classification infrequently and for a limited time period to permit the pending events to be resolved.

D. Classification and Accrual Treatment of Restructured Loans With a Partial Charge-Off

Based on consideration of all relevant factors, an assessment may indicate that a loan has well-defined weaknesses that jeopardize collection in full of all amounts contractually due and may result in a partial charge-off as part of a restructuring. When well-defined weaknesses exist and a partial charge-off has been taken, the remaining recorded balance for the restructured loan generally should be classified no more severely than ''substandard.'' A more severe classification than ''substandard'' for the remaining recorded balance would be appropriate if the loss exposure cannot be reasonably determined. Such situations may occur where significant remaining risk exposures are identified but are not quantified, such as bankruptcy or a loan collateralized by a property with potential environmental concerns.

A restructuring may involve a multiple note structure in which, for example, a troubled loan is restructured into two notes. Lenders may separate a portion of the current outstanding debt into a new, legally enforceable note (*i.e.,* Note A) that is reasonably assured of repayment and performance according to prudently modified terms. This note may be placed back on accrual status in certain situations. In returning the loan to accrual status, sustained historical payment performance for a reasonable time prior to the restructuring may be taken into account. Additionally, a properly structured and performing ''Note A'' generally would not be adversely classified by examiners. The portion of the debt that is not reasonably assured of repayment (*i.e.,* Note B) must be adversely classified and charged-off.

In contrast, the loan should remain on, or be placed on, nonaccrual status if the lender does not split the loan into separate notes, but internally recognizes a partial charge-off. A partial charge-off would indicate that the financial institution does not expect full repayment of the amounts contractually due. If facts change after the charge-off is taken such that the full amounts contractually due, including the amount charged off, are expected to be collected and the loan has been brought contractually current, the remaining balance of the loan may be returned to accrual status without having to first receive payment of the charged-off amount.[27] In these cases, examiners should assess whether the financial institution has well-documented support for its credit assessment of the borrower's financial condition and the prospects for full repayment.

VI. Regulatory Reporting and Accounting Considerations

Financial institution management is responsible for preparing regulatory reports in accordance with GAAP and regulatory reporting requirements. Management also is responsible for establishing and maintaining an

[26] Under ASC Topic 310, applicable for financial institutions reporting an ALLL, a loan is collateral dependent if repayment of the loan is expected to be provided solely by sale or operation of the collateral. Under ASC Topic 326, applicable for financial institutions reporting an ACL, a loan is collateral dependent when the repayment is expected to be provided substantially through the operation or sale of the collateral when the borrower is experiencing financial difficulty based on the entity's assessment as of the reporting date.

[27] The charged-off amount should not be reversed or re-booked, under any condition, to increase the recorded investment in the loan or its amortized costs, as applicable, when the loan is returned to accrual status. However, expected recoveries, prior to collection, are a component of management's estimate of the net amount expected to be collected for a loan under ASC Topic 326. Refer to relevant regulatory reporting instructions for guidance on returning a loan to accrual status.

appropriate governance and internal control structure over the preparation of regulatory reports. The agencies have observed this governance and control structure commonly includes policies and procedures that provide clear guidelines on accounting matters. Accurate regulatory reports are critical to the transparency of a financial institution's financial position and risk profile and imperative for effective supervision. Decisions related to loan workout arrangements may affect regulatory reporting, particularly interest accruals, and loan loss estimates. Therefore, it is important that loan workout staff appropriately communicate with the accounting and regulatory reporting staff concerning the financial institution's loan restructurings and that the reporting consequences of restructurings are presented accurately in regulatory reports.

In addition to evaluating credit risk management processes and validating the accuracy of internal loan grades, examiners are responsible for reviewing management's processes related to accounting and regulatory reporting. While similar data are used for loan risk monitoring, accounting, and reporting systems, this information does not necessarily produce identical outcomes. For example, loss classifications may not be equivalent to the associated allowance measurements.

A. Allowance for Credit Losses

Examiners need to have a clear understanding of the differences between credit risk management and accounting and regulatory reporting concepts (such as accrual status, restructurings, and the allowance) when assessing the adequacy of the financial institution's reporting practices for on- and off-balance sheet credit exposures. Refer to the appropriate Appendix that provides a summary of the allowance standards under the incurred loss methodology (Appendix 6) or the CECL methodology for institutions that have adopted ASC Topic 326, *Financial Instruments—Credit Losses* (Appendix 5). Examiners should also refer to regulatory reporting instructions in the FFIEC Call Report and the NCUA 5300 Call Report guidance and applicable GAAP for further information.

B. Implications for Interest Accrual

A financial institution needs to consider whether a loan that was accruing interest prior to the loan restructuring should be placed in nonaccrual status at the time of modification to ensure that income is not materially overstated. Consistent with Call Report Instructions, a loan that has been restructured so as to be reasonably assured of repayment and performance according to prudent modified terms need not be placed in nonaccrual status. Therefore, for a loan to remain on accrual status, the restructuring and any charge-off taken on the loan have to be supported by a current, well-documented credit assessment of the borrower's financial condition and prospects for repayment under the revised terms. Otherwise, in accordance with outstanding Call Report instructions, the restructured loan must be placed in nonaccrual status.

A restructured loan placed in nonaccrual status should not be returned to accrual status until the borrower demonstrates a period of sustained repayment performance for a reasonable period prior to the date on which the loan is returned to accrual status. A sustained period of repayment performance generally would be a minimum of six months and would involve payments of cash or cash equivalents. It may also include historical periods prior to the date of the loan restructuring. While an appropriately designed restructuring should improve the collectability of the loan in accordance with a reasonable repayment schedule, it does not relieve the financial institution from the responsibility to promptly charge off all identified losses. For more detailed instructions about placing a loan in nonaccrual status and returning a nonaccrual loan to accrual status, refer to the instructions for the FFIEC Call Report and the NCUA 5300 Call Report.

Appendix 1

Examples of CRE Loan Workout Arrangements

The examples in this Appendix are provided for illustrative purposes only and are designed to demonstrate an examiner's analytical thought process to derive an appropriate classification and evaluate implications for interest accrual and appropriate regulatory reporting, such as whether a loan should be reported as a troubled debt restructuring (TDR).[28] Although not discussed in the examples below, examiners consider the adequacy of a lender's supporting documentation, internal analysis, and business decision to enter into a loan workout arrangement. The examples also do not address the effect of the loan workout arrangement on the allowance and subsequent reporting requirements.

Examiners should use caution when applying these examples to ''real-life'' situations, consider all facts and circumstances of the loan being evaluated, and exercise judgment before reaching conclusions related to loan classifications, accrual treatment, and TDR reporting.[29]

The TDR determination requires consideration of all of the facts and circumstances surrounding the modification. No single factor, by itself, is determinative of whether a modification is a TDR. To make this determination, the lender assesses whether (a) the borrower is *experiencing financial difficulties* and (b) the lender has granted a *concession.* For purposes of these examples, if the borrower was not *experiencing financial difficulties,* the example does not assess whether a *concession* was granted. However, in distressed situations, lenders may make *concessions* because borrowers are *experiencing financial difficulties.* Accordingly, lenders and examiners should exercise judgment in evaluating whether a restructuring is a TDR. In addition, some examples refer to disclosures of TDRs, which pertain only to the reporting in Schedules RC–C or RC–N of the Call Report or Schedule A, Section 2 of NCUA Form 5300 and not the applicable measurement in determining an appropriate allowance pursuant to the accounting standards.

A. Income Producing Property—Office Building

Base Case: A lender originated a $15 million loan for the purchase of an office building with monthly payments based on an amortization of 20 years and a balloon payment of $13.6 million at the end of year five. At origination, the loan had a 75 percent loan-to-value (LTV) based on an appraisal reflecting a $20 million market value on an ''as stabilized'' basis, a debt service coverage (DSC) ratio of 1.30x, and a market interest rate. The lender expected to renew the loan when the balloon payment became due at the end of year five. Due to technological advancements and a workplace culture change since the inception of the loan, many businesses switched to hybrid work-from-home arrangements to reduce longer-term costs and improve employee retention. As a result, the property's cash flow declined as the borrower has had to grant rental concessions to either retain its existing tenants or attract new tenants, since the demand for office space has decreased.

Scenario 1: At maturity, the lender renewed the $13.6 million loan for one year at a market interest rate that provides for the incremental risk and payments based on amortizing the principal over the remaining 15 years. The borrower had not been delinquent on prior payments and has sufficient cash flow to service the loan at the market interest rate terms with a DSC ratio of 1.12x, based on updated financial information.

A review of the leases reflects that most tenants are stable occupants, with long-term leases and sufficient cash flow to pay their

[28] The agencies view that the accrual treatments in these examples as falling within the range of acceptable practices under regulatory reporting instructions.

[29] In addition, estimates of the fair value of collateral require the use of assumptions requiring judgment and should be consistent with measurement of fair value in ASC Topic 820, *Fair Value Measurement;* see Appendix 2.

rent. The major tenants have not adopted hybrid work-from-home arrangements for their employees given the nature of the businesses. A recent appraisal reported an ''as stabilized'' market value of $13.3 million for the property for an LTV of 102 percent. This reflects current market conditions and the resulting decline in cash flow.

Classification: The lender internally graded the loan pass and is monitoring the credit. The examiner agreed, because the borrower has the ability to continue making loan payments based on reasonable terms, despite a decline in cash flow and in the market value of the collateral.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The borrower has demonstrated the ability to make the regularly scheduled payments and, even with the decline in the borrower's creditworthiness, cash flow appears sufficient to make these payments, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender determined that the renewed loan should not be reported as a TDR. While the borrower is experiencing some financial deterioration, the borrower has sufficient cash flow to service the debt and has no record of payment default; therefore, the borrower is not *experiencing financial difficulties.* The examiner concurred with the lender's TDR treatment.

Scenario 2: At maturity, the lender renewed the $13.6 million loan at a market interest rate that provides for the incremental risk and payments based on amortizing the principal over the remaining 15 years. The borrower had not been delinquent on prior payments. Current projections indicate the DSC ratio will not drop below 1.12x based on leases in place and letters of intent for vacant space. However, some leases are coming up for renewal, and additional rental concessions may be necessary to either retain those existing tenants or attract new tenants. The lender estimates the property's current ''as stabilized'' market value is $14.5 million, which results in a 94 percent LTV, but a current valuation has not been ordered. In addition, the lender has not asked the borrower or guarantors to provide current financial statements to assess their ability to support any cash flow shortfall.

Classification: The lender internally graded the loan pass and is monitoring the credit. The examiner disagreed with the internal grade and listed the credit as special mention. While the borrower has the ability to continue to make payments based on leases currently in place and letters of intent for vacant space, there has been a declining trend in the property's revenue stream, and there is most likely a reduced collateral margin. In addition, there is potential for further deterioration in the cash flow as more leases will expire in the upcoming months, while absorption for office space in this market has slowed. Lastly, the examiner noted that the lender failed to request current financial information and to obtain an updated collateral valuation,[30] representing administrative weaknesses.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The borrower has demonstrated the ability to make regularly scheduled payments and, even with the decline in the borrower's creditworthiness, cash flow is sufficient at this time to make payments, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender determined that the renewed loan should not be reported as a TDR. While the borrower is experiencing some financial deterioration, the borrower is not *experiencing financial difficulties* as the borrower has sufficient cash flow to service the debt, and there is no history of default. The examiner concurred with the lender's TDR treatment.

Scenario 3: At maturity, the lender restructured the $13.6 million loan on a 12-month interest-only basis at a below market interest rate. The borrower has been sporadically delinquent on prior principal and interest payments. The borrower projects a DSC ratio of 1.10x based on the restructured interest-only terms. A review of the rent roll, which was available to the lender at the time of the restructuring, reflects the majority of tenants have short-term leases, with three leases expected to expire within the next three months. According to the lender, leasing has not improved since the restructuring as market conditions remain soft. Further, the borrower does not have an update as to whether the three expiring leases will renew at maturity; two of the tenants have moved to hybrid work-from-home arrangements. A recent appraisal provided a $14.5 million ''as stabilized'' market value for the property, resulting in a 94 percent LTV.

Classification: The lender internally graded the loan pass and is monitoring the credit. The examiner disagreed with the internal grade and classified the loan substandard due to the borrower's limited ability to service a below market interest rate loan on an interest-only basis, sporadic delinquencies, and an increase in the LTV based on an updated appraisal. In addition, there is lease rollover risk because three of the leases are expiring soon, which could further limit cash flow.

Nonaccrual Treatment: The lender maintained the loan on accrual status due to the positive cash flow and collateral margin. The examiner did not concur with this treatment as the loan was not restructured with reasonable repayment terms, and the borrower has not demonstrated the ability to amortize the loan and has limited capacity to service a below market interest rate on an interest-only basis. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because the borrower is *experiencing financial difficulties* (the project's ongoing ability to generate sufficient cash flow to service the debt is questionable as lease income is declining, loan payments have been sporadic, leases are expiring with uncertainty as to renewal or replacement, and collateral values have declined) and the lender granted a *concession* by reducing the interest rate to a below market level and deferring principal payments. The examiner concurred with the lender's TDR treatment.

B. Income Producing Property—Retail Properties

Base Case: A lender originated a 36-month, $10 million loan for the construction of a shopping mall. The construction period was 24 months with a 12-month lease-up period to allow the borrower time to achieve stabilized occupancy before obtaining permanent financing. The loan had an interest reserve to cover interest payments over the three-year term. At the end of the third year, there is $10 million outstanding on the loan, as the shopping mall has been built and the interest reserve, which has been covering interest payments, has been fully drawn.

At the time of origination, the appraisal reported an ''as stabilized'' market value of $13.5 million for the property. In addition, the borrower had a take-out commitment that would provide permanent financing at maturity. A condition of the take-out lender was that the shopping mall had to achieve a 75 percent occupancy level.

Due to weak economic conditions and a shift in consumer behavior to a greater reliance on e-commerce, the property only reached a 55 percent occupancy level at the end of the 12-month lease up period. As a result, the original takeout commitment became void. In addition, there has been a considerable tightening of credit for these types of loans, and the borrower has been unable to obtain permanent financing elsewhere since the loan matured. To date, the few interested lenders are demanding significant equity contributions and much higher pricing.

Scenario 1: The lender renewed the loan for an additional 12 months to provide the borrower time for higher lease-up and to obtain permanent financing. The extension was made at a market interest rate that provides for the incremental risk and is on an interest-only basis. While the property's historical cash flow was insufficient at a 0.92x debt service ratio, recent improvements in the occupancy level now provide adequate coverage based on the interest-only payments. Recent events include the signing of several new leases with additional leases under negotiation; however, takeout financing continues to be tight in the market.

In addition, current financial statements reflect that the builder, who personally guarantees the debt, has cash on deposit at the lender plus other unencumbered liquid assets. These assets provide sufficient cash flow to service the borrower's global debt service requirements on a principal and interest basis, if necessary, for the next 12 months. The guarantor covered the initial cash flow shortfalls from the project and provided a good faith principal curtailment of $200,000 at renewal, reducing the loan

[30] In relation to comments on valuations within these examples, refer to the appraisal regulations of the applicable Federal financial institution supervisory agency to determine whether there is a regulatory requirement for either an evaluation or appraisal. See footnote 18.

balance to $9.8 million. A recent appraisal on the shopping mall reports an ''as is'' market value of $10 million and an ''as stabilized'' market value of $11 million, resulting in LTVs of 98 percent and 89 percent, respectively.

Classification: The lender internally graded the loan as a pass and is monitoring the credit. The examiner disagreed with the lender's internal loan grade and listed it as special mention. While the project continues to lease up, cash flows cover only the interest payments. The guarantor has the ability, and has demonstrated the willingness, to cover cash flow shortfalls; however, there remains considerable uncertainty surrounding the takeout financing for this type of loan.

Nonaccrual Treatment: The lender maintained the loan on accrual status as the guarantor has sufficient funds to cover the borrower's global debt service requirements over the one-year period of the renewed loan. Full repayment of principal and interest is reasonably assured from the project's and guarantor's cash resources, despite a decline in the collateral margin. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender concluded that while the borrower has been affected by declining economic conditions and a shift to e-commerce, the deterioration has not led to financial difficulties. The borrower was not *experiencing financial difficulties* because the borrower and guarantor have the ability to service the renewed loan, which was underwritten at a market interest rate, plus the borrower's other obligations on a timely basis. In addition, the lender expects to collect the full amount of principal and interest from the borrower's or guarantor's cash sources (*i.e.,* not from interest reserves). Therefore, the lender is not treating the loan renewal as a TDR. The examiner concurred with the lender's rationale that the loan renewal is not a TDR.

Scenario 2: The lender restructured the loan on an interest-only basis at a below market interest rate for one year to provide additional time to increase the occupancy level and, thereby, enable the borrower to arrange permanent financing. The level of lease-up remains relatively unchanged at 55 percent, and the shopping mall projects a DSC ratio of 1.02x based on the preferential loan terms. At the time of the restructuring, the lender used outdated financial information, which resulted in a positive cash flow projection. However, other file documentation available at the time of the restructuring reflected that the borrower anticipates the shopping mall's revenue stream will further decline due to rent concessions, the loss of a tenant, and limited prospects for finding new tenants.

Current financial statements indicate the builder, who personally guarantees the debt, cannot cover any cash flow shortfall. The builder is highly leveraged, has limited cash or unencumbered liquid assets, and has other projects with delinquent payments. A recent appraisal on the shopping mall reports an ''as is'' market value of $9 million, which results in an LTV ratio of 111 percent.

Classification: The lender internally classified the loan as substandard. The examiner disagreed with the internal grade and classified the amount not protected by the collateral value, $1 million, as loss and required the lender to charge-off this amount. The examiner did not factor costs to sell into the loss classification analysis, as the current source of repayment is not reliant on the sale of the collateral. The examiner classified the remaining loan balance, based on the property's ''as is'' market value of $9 million, as substandard given the borrower's uncertain repayment capacity and weak financial support.

Nonaccrual Treatment: The lender determined the loan did not warrant being placed in nonaccrual status. The examiner did not concur with this treatment because the partial charge-off is indicative that full collection of principal is not anticipated, and the lender has continued exposure to additional loss due to the project's insufficient cash flow and reduced collateral margin and the guarantor's inability to provide further support. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because (a) the borrower is *experiencing financial difficulties* as evidenced by the high leverage, delinquent payments on other projects, and inability to meet the proposed exit strategy because of the inability to lease the property in a reasonable timeframe; and (b) the lender granted a *concession* as evidenced by the reduction in the interest rate to a below market interest rate. The examiner concurred with the lender's TDR treatment.

Scenario 3: The loan has become delinquent. Recent financial statements indicate the borrower and the guarantor have minimal other resources available to support this loan. The lender chose not to restructure the $10 million loan into a new single amortizing note of $10 million at a market interest rate because the project's projected cash flow would only provide a 0.88x DSC ratio as the borrower has been unable to lease space. A recent appraisal on the shopping mall reported an ''as is'' market value of $7 million, which results in an LTV of 143 percent.

At the original loan's maturity, the lender restructured the $10 million debt into two notes. The lender placed the first note of $7 million (*i.e.,* the Note A) on monthly payments that amortize the debt over 20 years at a market interest rate that provides for the incremental risk. The project's DSC ratio equals 1.20x for the $7 million loan based on the shopping mall's projected net operating income. The lender then charged-off the $3 million note due to the project's lack of repayment capacity and to provide reasonable collateral protection for the remaining on-book loan of $7 million. The lender also reversed accrued but unpaid interest. The lender placed the second note (*i.e.,* the Note B) consisting of the charged-off principal balance of $3 million into a 2 percent interest-only loan that resets in five years into an amortizing payment. Since the restructuring, the borrower has made payments on both loans for more than six consecutive months and an updated financial analysis shows continued ability to repay under the new terms.

Classification: The lender internally graded the on-book loan of $7 million as a pass loan due to the borrower's demonstrated ability to perform under the modified terms. The examiner agreed with the lender's grade as the lender restructured the original obligation into Notes A and B, the lender charged off Note B, and the borrower has demonstrated the ability to repay Note A. Using this multiple note structure with charge-off of the Note B enables the lender to recognize interest income and limit the amount reported as a TDR in future periods.

Nonaccrual Treatment: The lender placed the on-book loan (Note A) of $7 million loan in nonaccrual status at the time of the restructure. The lender later restored the $7 million to accrual status as the borrower has the ability to repay the loan, has a record of performing at the revised terms for more than six months, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment. Interest payments received on the off-book loan have been recorded as recoveries because full recovery of principal and interest on this loan (Note B) was not reasonably assured.

TDR Treatment: The lender considered both Note A and Note B as TDRs because the borrower is *experiencing financial difficulties* and the lender granted a *concession.* The lender reported the restructured on-book loan (Note A) of $7 million as a TDR, while the second loan (Note B) was charged off. The financial difficulties are evidenced by the borrower's high leverage, delinquent payments on other projects, inability to lease the property in a reasonable timeframe, and the unlikely collectability of the charged-off loan (Note B). The concessions on Note A include extending the on-book loan beyond expected timeframes.

The lender plans to stop disclosing the on-book loan as a TDR after the regulatory reporting defined time period expires because the loan was restructured with a market interest rate and is in compliance with its modified terms.[31] The examiner agreed with the lender's TDR treatment.

Scenario 4: Current financial statements indicate the borrower and the guarantor have minimal other resources available to support this loan. The lender restructured the $10 million loan into a new single note of $10 million at a market interest rate that provides for the incremental risk and is on an amortizing basis. The project's projected cash flow reflects a 0.88x DSC ratio as the borrower has been unable to lease space. A recent appraisal on the shopping mall reports an ''as is'' market value of $9 million, which results in an LTV of 111 percent. Based on the property's current market value of $9 million, the lender charged-off $1 million immediately after the renewal.

Classification: The lender internally graded the remaining $9 million on-book portion of the loan as a pass loan because the lender's analysis of the project's cash flow indicated

[31] Refer to the guidance on ''Troubled debt restructurings'' in the FFIEC Call Report and NCUA 5300 Call Report instructions.

a 1.05x DSC ratio when just considering the on-book balance. The examiner disagreed with the internal grade and classified the $9 million on-book balance as substandard due to the borrower's marginal financial condition, lack of guarantor support, and uncertainty over the source of repayment. The DSC ratio remains at 0.88x due to the single note restructure, and other resources are scant.

Nonaccrual Treatment: The lender maintained the remaining $9 million on-book portion of the loan on accrual, as the borrower has the ability to repay the principal and interest on this balance. The examiner did not concur with this treatment. Because the lender restructured the debt into a single note and had charged-off a portion of the restructured loan, the repayment of the principal and interest contractually due on the entire debt is not reasonably assured given the DSC ratio of 0.88x and nominal other resources. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

The loan can be returned to accrual status [32] if the lender can document that subsequent improvement in the borrower's financial condition has enabled the loan to be brought fully current with respect to principal and interest and the lender expects the contractual balance of the loan (including the partial charge-off) will be fully collected. In addition, interest income may be recognized on a cash basis for the partially charged-off portion of the loan when the remaining recorded balance is considered fully collectible. However, the partial charge-off cannot be reversed.

TDR Treatment: The lender reported the restructured loan as a TDR according to the requirements of its regulatory reports because (a) the borrower is *experiencing financial difficulties* as evidenced by the high leverage, delinquent payments on other projects, and inability to meet the original exit strategy because the borrower was unable to lease the property in a reasonable timeframe; and (b) the lender granted a *concession* as evidenced by deferring payment beyond the repayment ability of the borrower. The charge-off indicates that the lender does not expect full repayment of principal and interest, yet the borrower remains obligated for the full amount of the debt and payments, which is at a level that is not consistent with the borrower's repayment capacity. Because the borrower is not expected to be able to comply with the loan's restructured terms, the lender would likely continue to disclose the loan as a TDR. The examiner concurs with reporting the renewed loan as a TDR.

C. Income Producing Property—Hotel

Base Case: A lender originated a $7.9 million loan to provide permanent financing for the acquisition of a stabilized 3-star hotel property. The borrower is a limited liability company with underlying ownership by two families who guarantee the loan. The loan term is five years, with payments based on a 25-year amortization and with a market interest rate. The LTV was 79 percent based on the hotel's appraised value of $10 million.

At the end of the five-year term, the borrower's annualized DSC ratio was 0.95x. Due to competition from a well-known 4-star hotel that recently opened within one mile of the property, occupancy rates have declined. The borrower progressively reduced room rates to maintain occupancy rates, but continued to lose daily bookings. Both occupancy and Revenue per Available Room (RevPAR) [33] declined significantly over the past year. The borrower then began working on an initiative to make improvements to the property (*i.e.,* automated key cards, carpeting, bedding, and lobby renovations) to increase competitiveness, and a marketing campaign is planned to announce the improvements and new price structure.

The borrower had paid principal and interest as agreed throughout the first five years, and the principal balance had reduced to $7 million at the end of the five-year term.

Scenario 1: At maturity, the lender renewed the loan for 12 months on an interest-only basis at a market interest rate that provides for the incremental risk. The extension was granted to enable the borrower to complete the planned renovations, launch the marketing campaign, and achieve the borrower's updated projections for sufficient cash flow to service the debt once the improvements are completed. (If the initiative is successful, the loan officer expects the loan to either be renewed on an amortizing basis or refinanced through another lending entity.) The borrower has a verified, pledged reserve account to cover the improvement expenses. Additionally, the guarantors' updated financial statements indicate that they have sufficient unencumbered liquid assets. Further, the guarantors expressed the willingness to cover any estimated cash flow shortfall through maturity. Based on this information, the lender's analysis indicates that, after deductions for personal obligations and realistic living expenses and verification that there are no contingent liabilities, the guarantors should be able to make interest payments. To date, interest payments have been timely. The lender estimates the property's current ''as stabilized'' market value at $9 million, which results in a 78 percent LTV.

Classification: The lender internally graded the loan as a pass and is monitoring the credit. The examiner agreed with the lender's internal loan grade. The examiner concluded that the borrower and guarantors have sufficient resources to support the interest payments; additionally, the borrower's reserve account is sufficient to complete the renovations as planned.

Nonaccrual Treatment: The lender maintained the loan on accrual status as full repayment of principal and interest is reasonably assured from the hotel's and guarantors cash flows, despite a decline in the borrower's cash flow due to competition. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender concluded that while the borrower has been affected by competition, the level of deterioration does not warrant TDR treatment. The borrower was not *experiencing financial difficulties* because the combined cash flow generated by the borrower and the liquidity provided by the guarantors should be sufficient to service the debt. Further, there was no history of default by the borrower or guarantors. The examiner concurred with the lender that the loan renewal is not a TDR.

Scenario 2: At maturity of the original loan, the lender restructured the loan on an interest-only basis at a below market interest rate for 12 months to provide the borrower time to complete its renovation and marketing efforts and increase occupancy levels. At the end of the 12-month period, the hotel's renovation and marketing efforts were completed but unsuccessful. The hotel continued to experience a decline in occupancy levels, resulting in a DSC ratio of 0.60x. The borrower does not have capacity to offer additional incentives to lure customers from the competition. RevPAR has also declined. Current financial information indicates the borrower has limited ability to continue to make interest payments, and updated projections indicate that the borrower will be below break-even performance for the next 12 months. The borrower has been sporadically delinquent on prior interest payments. The guarantors are unable to support the loan as they have unencumbered limited liquid assets and are highly leveraged. The lender is in the process of renewing the loan again.

The most recent hotel appraisal, dated as of the time of the first restructuring, reports an ''as stabilized'' appraised value of $7.2 million ($6.7 million for the real estate and $500,000 for the tangible personal property of furniture, fixtures, and equipment), resulting in an LTV of 97 percent. The appraisal does not account for the diminished occupancy, and its assumptions significantly differ from current projections. A new valuation is needed to ascertain the current value of the property.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the borrower's diminished ongoing ability to make payments, guarantors' limited ability to support the loan, and the reduced collateral position. The lender is obtaining a new valuation and will adjust the internal classification, if necessary, based on the updated value.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower demonstrated an ability to make interest payments. The examiner did not concur with this treatment as the loan was not restructured on reasonable repayment terms, the borrower has insufficient cash resources to service the below market interest rate on an interest-only basis, and the collateral margin has narrowed and may be narrowed further with a new valuation, which collectively indicate that full repayment of principal and interest is in doubt. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

[32] Refer to the guidance on ''nonaccrual status'' in the FFIEC Call Report and NCUA 5300 Call Report instructions.

[33] Total guest room revenue divided by room count and number of days in the period.

TDR Treatment: The lender reported the restructured loan as a TDR because the borrower is *experiencing financial difficulties:* the hotel's ability to generate sufficient cash flows to service the debt is questionable as the occupancy levels and resultant net operating income (NOI) continue to decline, the borrower has been delinquent, and collateral value has declined. The lender made a *concession* by extending the loan on an interest-only basis at a below market interest rate. The examiner concurred with the lender's TDR treatment.

Scenario 3: At maturity of the original loan, the lender restructured the debt for one year on an interest-only basis at a below market interest rate to give the borrower additional time to complete renovations and increase marketing efforts. While the combined borrower/guarantors' liquidity indicated they could cover any cash flow shortfall until maturity of the restructured note, the borrower only had 50 percent of the funds to complete its renovations in reserve. Subsequently, the borrower attracted a sponsor to obtain the remaining funds necessary to complete the renovation plan and marketing campaign.

Eight months later, the hotel experienced an increase in its occupancy and achieved a DSC ratio of 1.20x on an amortizing basis. Updated projections indicated the borrower would be at or above the 1.20x DSC ratio for the next 12 months, based on market terms and rate. The borrower and the lender then agreed to restructure the loan again with monthly payments that amortize the debt over 20 years, consistent with the current market terms and rates. Since the date of the second restructuring, the borrower has made all principal and interest payments as agreed for six consecutive months.

Classification: The lender internally classified the most recent restructured loan substandard. The examiner agreed with the lender's initial substandard grade at the time of the subject restructuring, but now considers the loan as a pass as the borrower was no longer having financial difficulty and has demonstrated the ability to make payments according to the modified principal and interest terms for more than six consecutive months.

Nonaccrual Treatment: The original restructured loan was placed in nonaccrual status. The lender initially maintained the most recent restructured loan in nonaccrual status as well, but returned it to an accruing status after the borrower made six consecutive monthly principal and interest payments. The lender expects full repayment of principal and interest. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender reported the first restructuring as a TDR. With the first restructuring, the lender determined that the borrower was *experiencing financial difficulties* as indicated by depleted cash resources and deteriorating financial condition. The lender granted a *concession* on the first restructuring by providing a below market interest rate. At the time of the second restructuring, the borrower's financial condition had improved, and the borrower was no longer experiencing financial difficulty; the lender did not grant a *concession* on the second restructuring as the renewal was granted at a market interest rate and amortizing terms, thus the latest restructuring is no longer classified as a TDR. The examiner concurred with the lender.

Scenario 4: The lender extended the original amortizing loan for 12 months at a market interest rate. The borrower is now experiencing a six-month delay in completing the renovations due to a conflict with the contractor hired to complete the renovation work, and the current DSC ratio is 0.85x. A current valuation has not been ordered. The lender estimates the property's current ''as stabilized'' market value is $7.8 million, which results in an estimated 90 percent LTV. The lender did receive updated projections, but the borrower is now unlikely to achieve break-even cash flow within the 12-month extension timeframe due to the renovation delays. At the time of the extension, the borrower and guarantors had sufficient liquidity to cover the debt service during the twelve-month period. The guarantors also demonstrated a willingness to support the loan by making payments when necessary, and the loan has not gone delinquent. With the guarantors' support, there is sufficient liquidity to make payments to maturity, though such resources are declining rapidly.

Classification: The lender internally graded the loan as pass and is monitoring the credit. The examiner disagreed with the lender's grading and listed the loan as special mention. While the borrower and guarantor can cover the debt service shortfall in the near-term, the duration of their support may not extend long enough to replace lost cash flow from operations due to delays in the renovation work. The primary source of repayment does not fully cover the loan as evidenced by a DSC ratio of 0.85x. It appears that competition from the new hotel will continue to adversely affect the borrower's cash flow until the renovations are complete, and if cash flow deteriorates further, the borrower and guarantors may be required to use more liquidity to support loan payments and ongoing business operations. The examiner also recommended the lender obtain a new valuation.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The borrower and legally obligated guarantors have demonstrated the ability and willingness to make the regularly scheduled payments and, even with the decline in the borrower's creditworthiness, global cash resources appear sufficient to make these payments, and the ultimate full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

TDR Treatment: While the borrower is experiencing some financial deterioration, the borrower is not *experiencing financial difficulties* as the borrower and guarantors have sufficient cash resources to service the debt. The lender expects full collection of principal and interest from the borrower's operating income and global cash resources. The examiner concurred with the lender's rationale that the loan is not a TDR.

D. Acquisition, Development and Construction—Residential

Base Case: The lender originated a $4.8 million acquisition and development (A&D) loan and a $2.4 million construction revolving line of credit (revolver) for the development and construction of a 48-lot single-family project. The maturity for both loans is three years, and both are priced at a market interest rate; both loans also have an interest reserve. The LTV on the A&D loan is 75 percent based on an ''as complete'' value of $6.4 million. Up to 12 units at a time will be funded under the construction revolver at the lesser of 80 percent LTV or 100 percent of costs. The builder is allowed two speculative (''spec'') units (including one model). The remaining units must be pre-sold with an acceptable deposit and a pre-qualified mortgage. As units are settled, the construction revolver will be repaid at 100 percent (or par); the A&D loan will be repaid at 120 percent, or $120,000 ($4.8 million/48 units × 120 percent). The average sales price is projected to be $500,000, and total construction cost to build each unit is estimated to be $200,000. Assuming total cost is lower than value, the average release price will be $320,000 ($120,000 A&D release price plus $200,000 construction costs).

Estimated time for development is 12 months; the appraiser estimated absorption of two lots per month for total sell-out to occur within three years (thus, the loan would be repaid upon settlement of the 40th unit, or the 32nd month of the loan term). The borrower is required to curtail the A&D loan by six lots, or $720,000, at the 24th month, and another six lots, or $720,000, by the 30th month.

Scenario 1: Due to issues with the permitting and approval process by the county, the borrower's development was delayed by 18 months. Further delays occurred because the borrower was unable to pave the necessary roadways due to excessive snow and freezing temperatures. The lender waived both $720,000 curtailment requirements due to the delays. Demand for the housing remains unchanged.

At maturity, the lender renewed the $4.8 million outstanding A&D loan balance and the $2.4 million construction revolver for 24 months at a market interest rate that provides for the incremental risk. The interest reserve for the A&D loan has been depleted as the lender had continued to advance funds to pay the interest charges despite the delays in development. Since depletion of the interest reserve, the borrower has made the last several payments out-of-pocket.

Development is now complete, and construction has commenced on eight units (two ''spec'' units and six pre-sold units). Combined borrower and guarantor liquidity show they can cover any debt service shortfall until the units begin to settle and the project is cash flowing. The lender estimates that the property's current ''as complete'' value is $6 million, resulting in an 80 percent LTV. The curtailment schedule was re-set to eight lots, or $960,000, by month 12, and another eight lots, or $960,000, by month 18. A new appraisal has not been ordered; however, the lender noted in the file that, if the borrower does not meet

the absorption projections of six lots/quarter within six months of booking the renewed loan, the lender will obtain a new appraisal.

Classification: The lender internally graded the restructured loans as pass and is monitoring the credits. The examiner agreed, as the borrower and guarantor can continue making payments on reasonable terms and the project is moving forward supported by housing demand and is consistent with the builder's development plans. However, the examiner noted weaknesses in the lender's loan administrative practices as the financial institution did not (1) suspend the interest reserve during the development delay and (2) obtain an updated collateral valuation.

Nonaccrual Treatment: The lender maintained the loans on accrual status. The project is moving forward, the borrower has demonstrated the ability to make the regularly scheduled payments after depletion of the interest reserve, global cash resources from the borrower and guarantor appears sufficient to make these payments, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The borrower is not *experiencing financial difficulties* as the borrower and guarantor have sufficient means to service the debt, and there is no history of default. With the continued supportive housing market conditions, the lender expects full collection of principal and interest from sales of the lots. The examiner concurred with the lender's rationale that the renewal is not a TDR.

Scenario 2: Due to weather and contractor issues, development was not completed until month 24, a year behind the original schedule. The borrower began pre-marketing, but sales have been slow due to deteriorating market conditions in the region. The borrower has achieved only eight pre-sales during the past six months. The borrower recently commenced construction on the pre-sold units.

At maturity, the lender renewed the $4.8 million A&D loan balance and $2.4 million construction revolver on a 12-month interest-only basis at a market interest rate, with another 12-month option predicated upon $1 million in curtailments having occurred during the first renewal term (the lender had waived the initial term curtailment requirements). The lender also renewed the construction revolver for a one-year term and reduced the number of ''spec'' units to just one, which also will serve as the model. A recent appraisal estimates that absorption has dropped to four lots per quarter for the first two years and assigns an ''as complete'' value of $5.3 million, for an LTV of 91 percent. The interest reserve is depleted, and the borrower has been paying interest out-of-pocket for the past few months. Updated borrower and guarantor financial statements indicate the continued ability to cover interest-only payments for the next 12 to 18 months.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the deterioration and uncertainty surrounding the market (as evidenced by slower than anticipated sales on the project), the lack of principal reduction, and the reduced collateral margin.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the development is complete, the borrower has pre-sales and construction has commenced, and the borrower and guarantor have sufficient means to make interest payments at a market interest rate until the earlier of maturity or the project begins to cash flow. The examiner concurred with the lender's accrual treatment.

TDR Treatment: While the borrower is experiencing some financial deterioration, the borrower is not *experiencing financial difficulties* as the borrower and guarantor have sufficient means to service the debt. The lender expects full collection of principal and interest from the sale of the units. The examiner concurred with the lender's rationale that the renewal is not a TDR.

Scenario 3: Lot development was completed on schedule, and the borrower quickly sold and settled the first 10 units. At maturity, the lender renewed the $3.6 million A&D loan balance ($4.8 million reduced by the sale and settlement of the 10 units ($120,000 release price × 10) to arrive at $3.6 million) and $2.4 million construction revolver on a 12-month interest-only basis at a below market interest rate.

The borrower then sold an additional 10 units to an investor; the loan officer (new to the financial institution) mistakenly marked these units as pre-sold and allowed construction to commence on all 10 units. Market conditions then deteriorated quickly, and the investor defaulted under the terms of the bulk contract. The units were completed, but the builder has been unable to re-sell any of the units, recently dropping the sales price by 10 percent and engaging a new marketing firm, which is working with several potential buyers.

A recent appraisal estimates that absorption has dropped to three lots per quarter and assigns an ''as complete'' value of $2.3 million for the remaining 28 lots, resulting in an LTV of 156 percent. A bulk appraisal of the 10 units assigns an ''as-is'' value of the units of $4.0 million ($400,000/unit). The loans are cross-defaulted and cross-collateralized; the LTV on a combined basis is 95 percent ($6 million outstanding debt (A&D plus revolver) divided by $6.3 million in combined collateral value). Updated borrower and guarantor financial statements indicate a continued ability to cover interest-only payments for the next 12 months at the reduced rate; however, this may be limited in the future given other troubled projects in the borrower's portfolio that have been affected by market conditions.

The lender modified the release price for each unit to net proceeds; any additional proceeds as units are sold will go towards repayment of the A&D loan. Assuming the units sell at a 10 percent reduction, the lender calculates the average sales price would be $450,000. The financial institution's prior release price was $320,000 ($120,000 for the A&D loan and $200,000 for the construction revolver). As such (by requiring net proceeds), the financial institution will be receiving an additional $130,000 per lot, or $1.3 million for the completed units, to repay the A&D loan ($450,000 average sales price less $320,000 bank's release price equals $130,000). Assuming the borrower will have to pay $30,000 in related sales/settlement costs leaves approximately $100,000 remaining per unit to apply towards the A&D loan, or $1 million total for the remaining 10 units ($100,000 times 10).

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the borrower and guarantor's diminished ability to make interest payments (even at the reduced rate), the stalled status of the project, and the reduced collateral protection.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower had previously demonstrated an ability to make interest payments. The examiner disagreed as the loan was not restructured on reasonable repayment terms. While the borrower and guarantor may be able to service the debt at a below market interest rate in the near term using other unencumbered liquid assets, other projects in their portfolio are also affected by poor market conditions and may require significant liquidity contributions, which could affect their ability to support the loan. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because the borrower is *experiencing financial difficulties* as evidenced by the borrower's inability to re-sell the units, their diminished ability to make interest payments (even at a reduced rate), and other troubled projects in the borrower's portfolio. The lender granted a *concession* with the interest-only terms at a below market interest rate. The examiner concurred with the lender's TDR treatment.

E. Construction Loan—Single Family Residence

Base Case: The lender originated a $1.2 million construction loan on a single-family ''spec'' residence with a 15-month maturity to allow for completion and sale of the property. The loan required monthly interest-only payments at a market interest rate and was based on an ''as completed'' LTV of 70 percent at origination. During the original loan construction phase, the borrower was able to make all interest payments from personal funds. At maturity, the home had been completed, but not sold, and the borrower was unable to find another lender willing to finance this property under similar terms.

Scenario 1: At maturity, the lender restructured the loan for one year on an interest-only basis at a below market interest rate to give the borrower more time to sell the ''spec'' home. Current financial information indicates the borrower has limited ability to continue to make interest-only payments from personal funds. If the residence does not sell by the revised maturity date, the borrower plans to rent the home. In this event, the lender will consider modifying the debt into an amortizing loan with a 20-year maturity, which would be consistent with

this type of income-producing investment property. Any shortfall between the net rental income and loan payments would be paid by the borrower. Due to declining home values, the LTV at the renewal date was 90 percent.

Classification: The lender internally classified the loan substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the borrower's diminished ongoing ability to make payments and the reduced collateral position.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower demonstrated an ability to make interest payments during the construction phase. The examiner did not concur with this treatment because the loan was not restructured on reasonable repayment terms. The borrower had limited capacity to continue to service the debt, even on an interest-only basis at a below market interest rate, and the deteriorating collateral margin indicated that full repayment of principal and interest was not reasonably assured. The examiner instructed the lender to place the loan in nonaccrual status.

TDR Treatment: The lender reported the restructured loan as a TDR. The borrower was *experiencing financial difficulties* as indicated by depleted cash reserves, inability to refinance this debt from other sources with similar terms, and the inability to repay the loan at maturity in a manner consistent with the original exit strategy. A *concession* was provided by renewing the loan with a deferral of principal payments, at a below market interest rate (compared to the rate charged on an investment property) for an additional year when the loan was no longer in the construction phase. The examiner concurred with the lender's TDR treatment.

Scenario 2: At maturity of the original loan, the lender restructured the debt for one year on an interest-only basis at a below market interest rate to give the borrower more time to sell the ''spec'' home. Eight months later, the borrower rented the property. At that time, the borrower and the lender agreed to restructure the loan again with monthly payments that amortize the debt over 20 years at a market interest rate for a residential investment property. Since the date of the second restructuring, the borrower had made all payments for over six consecutive months.

Classification: The lender internally classified the restructured loan substandard. The examiner agreed with the lender's initial substandard grade at the time of the restructuring, but now considered the loan as a pass due to the borrower's demonstrated ability to make payments according to the reasonably modified terms for more than six consecutive months.

Nonaccrual Treatment: The lender initially placed the restructured loan in nonaccrual status but returned it to accrual after the borrower made six consecutive monthly payments. The lender expects full repayment of principal and interest from the rental income. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender reported the first restructuring as a TDR. At the time of the first restructure, the lender determined that the borrower was *experiencing financial difficulties* as indicated by depleted cash resources and a weak financial condition. The lender granted a *concession* on the first restructuring as evidenced by the below market rate.

At the second restructuring, the lender determined that the borrower was not *experiencing financial difficulties* due to the borrower's improved financial condition. Further, the lender did not grant a *concession* on the second restructuring as that loan is at market interest rate and terms. Therefore, the lender determined that the second restructuring is no longer a TDR. The examiner concurred with the lender.

Scenario 3: The lender restructured the loan for one year on an interest-only basis at a below market interest rate to give the borrower more time to sell the ''spec'' home. The restructured loan has become more than 90 days past due, and the borrower has not been able to rent the property. Based on current financial information, the borrower does not have the capacity to service the debt. The lender considers repayment to be contingent upon the sale of the property. Current market data reflects few sales, and similar new homes in this property's neighborhood are selling within a range of $750,000 to $900,000 with selling costs equaling 10 percent, resulting in anticipated net sales proceeds between $675,000 and $810,000.

Classification: The lender graded $390,000 loss ($1.2 million loan balance less the maximum estimated net sales proceeds of $810,000), $135,000 doubtful based on the range in the anticipated net sales proceeds, and the remaining balance of $675,000 substandard. The examiner agreed, as this classification treatment results in the recognition of the credit risk in the collateral-dependent loan based on the property's value less costs to sell. The examiner instructed management to obtain information on the current valuation on the property.

Nonaccrual Treatment: The lender placed the loan in nonaccrual status when it became 60 days past due (reversing all accrued but unpaid interest) because the lender determined that full repayment of principal and interest was not reasonably assured. The examiner concurred with the lender's nonaccrual treatment.

TDR Treatment: The lender reported the loan as a TDR until foreclosure of the property and its transfer to other real estate owned. The lender determined that the borrower was continuing to *experience financial difficulties* as indicated by depleted cash reserves, inability to refinance this debt from other sources with similar terms, and the inability to repay the loan at maturity in a manner consistent with the original exit strategy. In addition, the lender granted a *concession* by reducing the interest rate to a below market level. The examiner concurred with the lender's TDR treatment.

Scenario 4: The lender committed an additional $48,000 for an interest reserve and extended the $1.2 million loan for 12 months at a below market interest rate with monthly interest-only payments. At the time of the examination, $18,000 of the interest reserve had been added to the loan balance. Current financial information obtained during the examination reflects the borrower has no other repayment sources and has not been able to sell or rent the property. An updated appraisal supports an ''as is'' value of $952,950. Selling costs are estimated at 15 percent, resulting in anticipated net sales proceeds of $810,000.

Classification: The lender internally graded the loan as pass and is monitoring the credit. The examiner disagreed with the internal grade. The examiner concluded that the loan was not restructured on reasonable repayment terms because the borrower has limited capacity to service the debt, and the reduced collateral margin indicated that full repayment of principal and interest was not assured. After discussing regulatory reporting requirements with the examiner, the lender reversed the $18,000 interest capitalized out of the loan balance and interest income. Further, the examiner classified $390,000 loss based on the adjusted $1.2 million loan balance less estimated net sales proceeds of $810,000, which was classified substandard. This classification treatment recognizes the credit risk in the collateral-dependent loan based on the property's market value less costs to sell. The examiner also provided supervisory feedback to management for the inappropriate use of interest reserves and lack of current financial information in making that decision. The remaining interest reserve of $30,000 is not subject to adverse classification because the loan should be placed in nonaccrual status.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The examiner did not concur with this treatment. The loan was not restructured on reasonable repayment terms, the borrower has limited capacity to service a below market interest rate on an interest-only basis, and the reduced collateral margin indicates that full repayment of principal and interest is not assured. The lender's decision to provide a $48,000 interest reserve was not supported, given the borrower's inability to repay it. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual, and reversed the capitalized interest to be consistent with regulatory reporting instructions. The lender also agreed to not recognize any further interest income from the interest reserve.

TDR Treatment: The lender reported the restructured loan as a TDR. The borrower is *experiencing financial difficulties* as indicated by depleted cash reserves, inability to refinance this debt from other sources with similar terms, and the inability to repay the loan at maturity in a manner consistent with the original exit strategy. A *concession* was provided by renewing the loan with a deferral of principal payments, at a below market interest rate (compared to other investment properties) for an additional year when the loan was no longer in the construction phase. The examiner concurred with the lender's TDR treatment.

F. Construction Loan—Land Acquisition, Condominium Construction and Conversion

Base Case: The lender originally extended a $50 million loan for the purchase of vacant

land and the construction of a luxury condominium project. The loan was interest-only and included an interest reserve to cover the monthly payments until construction was complete. The developer bought the land and began construction after obtaining purchase commitments for ⅓ of the 120 planned units, or 40 units. Many of these pending sales were speculative with buyers committing to buy multiple units with minimal down payments. The demand for luxury condominiums in general has declined since the borrower launched the project, and sales have slowed significantly over the past year. The lack of demand is attributed to a slowdown in the economy. As a result, most of the speculative buyers failed to perform on their purchase contracts and only a limited number of the other planned units have been pre-sold.

The developer experienced cost overruns on the project and subsequently determined it was in the best interest to halt construction with the property 80 percent completed. The outstanding loan balance is $44 million with funds used to pay construction costs, including cost overruns and interest. The borrower estimates an additional $10 million is needed to complete construction. Current financial information reflects that the developer does not have sufficient cash flow to pay interest (the interest reserve has been depleted); and, while the developer does have equity in other assets, there is doubt about the borrower's ability to complete the project.

Scenario 1: The borrower agrees to grant the lender a second lien on an apartment project in its portfolio, which provides $5 million in additional collateral support. In return, the lender advanced the borrower $10 million to finish construction. The condominium project was completed shortly thereafter. The lender also agreed to extend the $54 million loan ($44 million outstanding balance plus $10 million in new money) for 12 months at a market interest rate that provides for the incremental risk, to give the borrower additional time to market the property. The borrower agreed to pay interest whenever a unit was sold, with any outstanding balance due at maturity.

The lender obtained a recent appraisal on the condominium building that reported a prospective ''as complete'' market value of $65 million, reflecting a 24-month sell-out period and projected selling costs of 15 percent of the sales price. Comparing the $54 million loan amount against the $65 million ''as complete'' market value plus the $5 million pledged in additional collateral (totaling $70 million) results in an LTV of 77 percent. The lender used the prospective ''as complete'' market value in its analysis and decision to fund the completion and sale of the units and to maximize its recovery on the loan.

Classification: The lender internally classified the $54 million loan as substandard due to the units not selling as planned and the project's limited ability to service the debt despite the 1.3x gross collateral margin. The examiner agreed with the lender's internal grade.

Nonaccrual Treatment: The lender maintained the loan on accrual status due to the protection afforded by the collateral margin. The examiner did not concur with this treatment due to the uncertainty about the borrower's ability to sell the units and service the debt, raising doubts as to the full repayment of principal and interest. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because the borrower is *experiencing financial difficulties,* as demonstrated by the insufficient cash flow to service the debt, concerns about the project's viability, and, given current market conditions and project status, the unlikely possibility of refinance. In addition, the lender provided a *concession* by advancing additional funds to finish construction, deferring interest payments until a unit was sold, and deferring principal pay downs on any unsold units until the maturity date when any remaining accrued interest plus principal are due. The examiner concurred with the lender's TDR treatment.

Scenario 2: A recent appraisal of the property reflects that the highest and best use would be conversion to an apartment building. The appraisal reports a prospective ''as complete'' market value of $60 million upon conversion to an apartment building and a $67 million prospective ''as stabilized'' market value upon the property reaching stabilized occupancy. The borrower agrees to grant the lender a second lien on an apartment building in its portfolio, which provides $5 million in additional collateral support.

In return, the lender advanced the borrower $10 million, which is needed to finish construction and convert the project to an apartment complex. The lender also agreed to extend the $54 million loan for 12 months at a market interest rate that provides for the incremental risk, to give the borrower time to lease the apartments. Interest payments are deferred. The $60 million ''as complete'' market value plus the $5 million in other collateral results in an LTV of 83 percent. The prospective ''as complete'' market value is primarily relied on as the loan is funding the conversion of the condominium to apartment building.

Classification: The lender internally classified the $54 million loan as substandard due to the units not selling as planned and the project's limited ability to service the debt. The collateral coverage provides adequate support to the loan with a 1.2x gross collateral margin. The examiner agreed with the lender's internal grade.

Nonaccrual Treatment: The lender determined the loan should be placed in nonaccrual status due to an oversupply of units in the project's submarket, and the borrower's untested ability to lease the units and service the debt, raising concerns as to the full repayment of principal and interest. The examiner concurred with the lender's nonaccrual treatment.

TDR Treatment: The lender reported the restructured loan as a TDR as the borrower is *experiencing financial difficulties,* as demonstrated by the insufficient cash flow to service the debt, concerns about the project's viability, and, given current market conditions and project status, the unlikely possibility for the borrower to refinance at this time. In addition, the lender provided a *concession* by advancing additional funds to finish construction and deferring interest payments until the maturity date without a defined exit strategy. The examiner concurred with the lender's TDR treatment.

G. Commercial Operating Line of Credit in Connection With Owner Occupied Real Estate

Base Case: Two years ago, the lender originated a CRE loan at a market interest rate to a borrower whose business occupies the property. The loan was based on a 20-year amortization period with a balloon payment due in three years. The LTV equaled 70 percent at origination. A year ago, the lender financed a $5 million operating line of credit for seasonal business operations at market terms. The operating line of credit had a one-year maturity with monthly interest payments and was secured with a blanket lien on all business assets. Borrowings under the operating line of credit are based on accounts receivable that are reported monthly in borrowing base reports, with a 75 percent advance rate against eligible accounts receivable that are aged less than 90 days old. Collections of accounts receivable are used to pay down the operating line of credit. At maturity of the operating line of credit, the borrower's accounts receivable aging report reflected a growing trend of delinquency, causing the borrower temporary cash flow difficulties. The borrower has recently initiated more aggressive collection efforts.

Scenario 1: The lender renewed the $5 million operating line of credit for another year, requiring monthly interest payments at a market interest rate, and principal to be paid down by accounts receivable collections. The borrower's liquidity position has tightened but remains satisfactory, cash flow available to service all debt is 1.20x, and both loans have been paid according to the contractual terms. The primary repayment source for the operating line of credit is conversion of accounts receivable to cash. Although payments have slowed for some customers, most customers are paying within 90 days of invoice. The primary repayment source for the real estate loan is from business operations, which remain satisfactory, and an updated appraisal is not considered necessary.

Classification: The lender internally graded both loans as pass and is monitoring the credits. The examiner agreed with the lender's analysis and the internal grades. The lender is monitoring the trend in the accounts receivable aging report and the borrower's ongoing collection efforts.

Nonaccrual Treatment: The lender determined that both the real estate loan and the renewed operating line of credit may remain on accrual status as the borrower has demonstrated an ongoing ability to perform, has the financial capacity to pay a market interest rate, and full repayment of principal and interest is reasonably assured. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender concluded that while the borrower has been affected by

declining economic conditions, the renewal of the operating line of credit did not result in a TDR because the borrower is not *experiencing financial difficulties* and has the ability to repay both loans (which represent most of its outstanding obligations) at a market interest rate. The lender expects full collection of principal and interest from the collection of accounts receivable and the borrower's operating income. The examiner concurred with the lender's rationale that the loan renewal is not a TDR.

Scenario 2: The lender restructured the operating line of credit by reducing the line amount to $4 million, at a below market interest rate. This action is expected to alleviate the borrower's cash flow problem. The borrower is still considered to be a viable business even though its financial performance has continued to deteriorate, with sales and profitability declining. The trend in accounts receivable delinquencies is worsening, resulting in reduced liquidity for the borrower. Cash flow problems have resulted in sporadic over advances on the $4 million operating line of credit, where the loan balance exceeds eligible collateral in the borrowing base. The borrower's net operating income has declined but reflects the capacity to generate a 1.08x DSC ratio for both loans, based on the reduced rate of interest for the operating line of credit. The terms on the real estate loan remained unchanged. The lender estimated the LTV on the real estate loan to be 90 percent. The operating line of credit currently has sufficient eligible collateral to cover the outstanding line balance, but customer delinquencies have been increasing.

Classification: The lender internally classified both loans substandard due to deterioration in the borrower's business operations and insufficient cash flow to repay the debt at market terms. The examiner agreed with the lender's analysis and the internal grades. The lender will monitor the trend in the business operations, accounts receivable, profitability, and cash flow. The lender may need to order a new appraisal if the DSC ratio continues to fall and the overall collateral margin further declines.

Nonaccrual Treatment: The lender reported both the restructured operating line of credit and the real estate loan on a nonaccrual basis. The operating line of credit was not renewed on market interest rate repayment terms, the borrower has an increasingly limited capacity to service the below market interest rate debt, and there is insufficient support to demonstrate an ability to meet the new payment requirements. The borrower's ability to continue to perform on the operating line of credit and real estate loan is not assured due to deteriorating business performance caused by lower sales and profitability and higher customer delinquencies. In addition, the collateral margin indicates that full repayment of all of the borrower's indebtedness is questionable, particularly if the borrower fails to continue being a going concern. The examiner concurred with the lender's nonaccrual treatment.

TDR Treatment: The lender reported the restructured operating line of credit as a TDR because the borrower is *experiencing financial difficulties* (as evidenced by the borrower's sporadic over advances, an increasing trend in accounts receivable delinquencies, and uncertain ability to repay the loans) and the lender *granted a concession* on the line of credit through a below market interest rate. The lender concluded that the real estate loan should not be reported as TDR since that loan is performing and had not been restructured. The examiner concurred with the lender's TDR treatments.

H. Land Loan

Base Case: Three years ago, the lender originated a $3.25 million loan to a borrower for the purchase of raw land that the borrower was seeking to have zoned for residential use. The loan terms were three years interest-only at a market interest rate; the borrower had sufficient funds to pay interest from cash flow. The appraisal at origination assigned an ''as is'' market value of $5 million, which resulted in a 65 percent LTV. The zoning process took longer than anticipated, and the borrower did not obtain full approvals until close to the maturity date. Now that the borrower successfully obtained the residential zoning, the borrower has been seeking construction financing to repay the land loan. At maturity, the borrower requested a 12-month extension to provide additional time to secure construction financing which would include repayment of the subject loan.

Scenario 1: The borrower provided the lender with current financial information, demonstrating the continued ability to make monthly interest payments and principal curtailments of $150,000 per quarter. Further, the borrower made a principal payment of $250,000 in exchange for a 12-month extension of the loan. The borrower also owned an office building with an ''as stabilized'' market value of $1 million and pledged the property as additional unencumbered collateral, granting the lender a first lien. The borrower's personal financial information also demonstrates that cash flow from personal assets and the rental income generated by the newly pledged office building are sufficient to fully amortize the land loan over a reasonable period. A decline in market value since origination was due to a change in density; the project was originally intended as 60 lots but was subsequently zoned as 25 single-family lots because of a change in the county's approval process. A recent appraisal of the raw land reflects an ''as is'' market value of $3 million, which results in a 75 percent LTV when combined with the additional collateral and after the principal reduction. The lender restructured the loan into a $3 million loan with quarterly curtailments for another year at a market interest rate that provides for the incremental risk.

Classification: The lender internally graded the loan as pass due to adequate cash flow from the borrower's personal assets and rental income generated by the office building to make principal and interest payments. Also, the borrower provided a principal curtailment and additional collateral to maintain a reasonable LTV. The examiner agreed with the lender's internal grade.

Nonaccrual Treatment: The lender maintained the loan on accrual status, as the borrower has sufficient funds to cover the debt service requirements for the next year. Full repayment of principal and interest is reasonably assured from the collateral and the borrower's financial resources. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender concluded that the borrower was not *experiencing financial difficulties* because the borrower has the ability to service the renewed loan, which was prudently underwritten and has a market interest rate. The examiner concurred with the lender's rationale that the renewed loan is not a TDR.

Scenario 2: The borrower provided the lender with current financial information that indicated the borrower is unable to continue to make interest-only payments. The borrower has been sporadically delinquent up to 60 days on payments. The borrower is still seeking a loan to finance construction of the project, and has not been able to obtain a takeout commitment; it is unlikely the borrower will be able to obtain financing, since the borrower does not have the equity contribution most lenders require as a condition of closing a construction loan. A decline in value since origination was due to a change in local zoning density; the project was originally intended as 60 lots but was subsequently zoned as 25 single-family lots. A recent appraisal of the property reflects an ''as is'' market value of $3 million, which results in a 108 percent LTV. The lender extended the $3.25 million loan at a market interest rate for one year with principal and interest due at maturity.

Classification: The lender internally graded the loan as pass because the loan is currently not past due and is at a market interest rate. Also, the borrower is trying to obtain takeout construction financing. The examiner disagreed with the internal grade and adversely classified the loan, as discussed below. The examiner concluded that the loan was not restructured on reasonable repayment terms because the borrower does not have the capacity to service the debt and full repayment of principal and interest is not assured. The examiner classified $550,000 loss ($3.25 million loan balance less $2.7 million, based on the current appraisal of $3 million less estimated cost to sell of 10 percent or $300,000). The examiner classified the remaining $2.7 million balance substandard. This classification treatment recognizes the credit risk in this collateral dependent loan based on the property's market value less costs to sell.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The examiner did not concur with this treatment and instructed the lender to place the loan in nonaccrual status because the borrower does not have the capacity to service the debt, value of the collateral is permanently impaired, and full repayment of principal and interest is not assured.

TDR Treatment: The lender reported the restructured loan as a TDR. The borrower is *experiencing financial difficulties* as indicated by the inability to refinance this debt, the inability to repay the loan at

maturity in a manner consistent with the original exit strategy, and the inability to make interest-only payments going forward. *A concession was provided* by renewing the loan with a deferral of principal and interest payments for an additional year when the borrower was unable to obtain takeout financing. The examiner concurred with the lender's TDR designation.

I. Multi-Family Property

Base Case: The lender originated a $6.4 million loan for the purchase of a 25-unit apartment building. The loan maturity is five years, and principal and interest payments are based on a 30-year amortization at a market interest rate. The LTV was 75 percent (based on an $8.5 million value), and the DSC ratio was 1.50x at origination (based on a 30-year principal and interest amortization).

Leases are typically 12-month terms with an additional 12-month renewal option. The property is 88 percent leased (22 of 25 units rented). Due to poor economic conditions, delinquencies have risen from two units to eight units, as tenants have struggled to make ends meet. Six of the eight units are 90 days past due, and these tenants are facing eviction.

Scenario 1: At maturity, the lender renewed the $5.9 million loan balance on principal and interest payments for 12 months at a market interest rate that provides for the incremental risk. The borrower had not been delinquent on prior payments. Current financial information indicates that the DSC ratio dropped to 0.80x because of the rent payment delinquencies. Combining borrower and guarantor liquidity shows they can cover cash flow shortfall until maturity (including reasonable capital expenditures since the building was recently renovated). Borrower projections show a return to break-even within six months since the borrower plans to decrease rents to be more competitive and attract new tenants. The lender estimates that the property's current ''as stabilized'' market value is $7 million, resulting in an 84 percent LTV. A new appraisal has not been ordered; however, the lender noted in the file that, if the borrower does not meet current projections within six months of booking the renewed loan, the lender will obtain a new appraisal.

Classification: The lender internally graded the renewed loan as pass and is monitoring the credit. The examiner disagreed with the lender's analysis and classified the loan as substandard. While the borrower and guarantor can cover the debt service shortfall in the near-term using additional guarantor liquidity, the duration of the support may be less than the lender anticipates if the leasing fails to materialize as projected. Economic conditions are poor, and the rent reduction may not be enough to improve the property's performance. Lastly, the lender failed to obtain an updated collateral valuation, which represents an administrative weakness.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The borrower has demonstrated the ability to make the regularly scheduled payments and, even with the decline in the borrower's creditworthiness, the borrower and guarantor appear to have sufficient cash resources to make these payments if projections are met, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

TDR Treatment: While the borrower is experiencing some financial deterioration, the borrower is not *experiencing financial difficulties* as the borrower and guarantor have sufficient means to service the debt, and there was no history of default. The lender expects full collection of principal and interest from the borrower's operating income if they meet projections. The examiner concurred with the lender's rationale and TDR treatment.

Scenario 2: At maturity, the lender renewed the $5.9 million loan balance on a 12-month interest-only basis at a below market interest rate. In response to an event that caused severe economic conditions, the federal and state governments enacted moratoriums on all rent payments. The borrower has been paying as agreed; however, cash flow has been severely impacted by the rent moratoriums. While the moratoriums do not forgive the rent (or unpaid fees), they do prevent evictions for unpaid rent and have been in effect for the past six months. As a result, the borrower's cash flow is severely stressed, and the borrower has asked for temporary relief of the interest payments. In addition, a review of the current rent roll indicates that five of the 25 units are now vacant. A recent appraisal values the property at $6 million (98 percent LTV). Updated borrower and guarantor financial statements indicate the continued ability to cover interest-only payments for the next 12 to 18 months at the reduced rate of interest. Updated projections that indicate below break-even performance over the next 12 months remain uncertain given that the end of the moratorium (previously extended) is a ''soft'' date and that tenant behaviors may not follow historical norms.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the borrower's diminished ability to make interest payments (even at the reduced rate) and lack of principal reduction, the uncertainty surrounding the rent moratoriums, and the reduced and tight collateral position.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower demonstrated an ability to make principal and interest payments and has some capacity to make payments on the interest-only terms at a below market interest rate. The examiner did not concur with this treatment as the loan was not restructured on reasonable repayment terms, the borrower has insufficient cash flow to amortize the debt, and the slim collateral margin indicates that full repayment of principal and interest may be in doubt. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because the borrower is *experiencing financial difficulties* as evidenced by the reported reduced, stressed cash flow that prompted the borrower's request for payment relief in the restructure. The lender granted a *concession* (interest-only at a below market interest rate) in response. The examiner concurred with the lender's TDR treatment.

Scenario 3: At maturity, the lender renewed the $5.9 million loan balance on a 12-month interest-only basis at a below market interest rate. The borrower has been sporadically delinquent on prior principal and interest payments. A review of the current rent roll indicates that 10 of the 25 units are vacant after tenant evictions. The vacated units were previously in an advanced state of disrepair, and the borrower and guarantors have exhausted their liquidity after repairing the units. The repaired units are expected to be rented at a lower rental rate. A post-renovation appraisal values the property at $5.5 million (107 percent LTV). Updated projections indicate the borrower will be below break-even performance for the next 12 months.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's concerns due to the borrower's diminished ability to make principal or interest payments, the guarantor's limited ability to support the loan, and insufficient collateral protection. However, the examiner classified $900,000 loss ($5.9 million loan balance less $5 million (based on the current appraisal of $5.5 million less estimated cost to sell of 10 percent, or $500,000)). The examiner classified the remaining $5 million balance substandard. This classification treatment recognizes the collateral dependency.

Nonaccrual Treatment: The lender maintained the loan on accrual basis because the borrower demonstrated a previous ability to make principal and interest payments. The examiner did not concur with the lender's treatment as the loan was not restructured on reasonable repayment terms, the borrower has insufficient cash flow to service the debt at a below market interest rate on an interest-only basis, and the impairment of value indicates that full repayment of principal and interest is in doubt. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because the borrower is *experiencing financial difficulties* as evidenced by sporadic delinquencies, fully dissipated liquidity, and reduced collateral protection. The lender granted a *concession* with the interest-only terms at a below market interest rate. The examiner concurred with the lender's TDR treatment.

Appendix 2

Selected Rules, Supervisory Guidance, and Authoritative Accounting Guidance

Rules

- Federal regulations on real estate lending standards and the *Interagency Guidelines for Real Estate Lending Policies:* OCC: 12 CFR part 34, subpart D, and appendix A to subpart D; and FDIC: 12 CFR part 365 and appendix A. For NCUA, refer to 12 CFR part

723 for member business loan and commercial loan regulation which addresses commercial real estate lending and 12 CFR part 741, Appendix B, which addresses loan workouts, nonaccrual policy, and regulatory reporting of troubled debt restructurings.

• Federal regulations on the *Interagency Guidelines Establishing Standards for Safety and Soundness:* 12 CFR part 30, appendix A (OCC); 12 CFR part 364 appendix A (FDIC). For NCUA safety and soundness regulations and guidance, see 12 CFR 741.3(b)(2), 12 CFR part 741, appendix B, 12 CFR part 723, and NCUA letters to credit unions 10–CU–02 ''Current Risks in Business Lending and Sound Risk Management Practices'' issued January 2010 (NCUA). Credit unions should also refer to the Commercial and Member Business Loans section of the NCUA Examiner's Guide.

• Federal appraisal regulations: OCC: 12 CFR part 34, subpart C; FDIC: 12 CFR part 323; and NCUA: 12 CFR part 722.

Supervisory Guidance

• *FFIEC Instructions for Preparation of Consolidated Reports of Condition and Income* (FFIEC 031, FFIEC 041, and FFIEC 051 Instructions) and *NCUA 5300 Call Report Instructions.*

• *Interagency Policy Statement on Allowances for Credit Losses,* issued May 2020, as applicable.

• *Interagency Guidance on Credit Risk Review Systems,* issued May 2020.

• *Interagency Supervisory Examiner Guidance for Institutions Affected by a Major Disaster,* issued December 2017.

• Board, FDIC, and OCC joint guidance entitled *Statement on Prudent Risk Management for Commercial Real Estate Lending,* issued December 2015.

• *Interagency Supervisory Guidance Addressing Certain Issues Related to Troubled Debt Restructurings,* issued October 2013.

• *Interagency Appraisal and Evaluation Guidelines,* issued October 2010.

• Board, FDIC, and OCC joint guidance on *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices,* issued December 2006.

• *Interagency Policy Statement on the Allowance for Loan and Lease Losses,* issued December 2006, as applicable.

• *Interagency FAQs on Residential Tract Development Lending,* issued September 2005.

• *Interagency Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions,* issued July 2001, as applicable.[34]

Authoritative Accounting Standards [35]

• *ASC Topic 310, Receivables*

• *ASC Subtopic 310–40, Receivables—Troubled Debt Restructurings by Creditors*

• *ASC Topic 326, Financial Instruments—Credit losses*

• *ASC Subtopic 450–20, Contingencies—Loss Contingencies*

• *ASC Topic 820, Fair Value Measurement*

• *ASC Subtopic 825–10, Financial Instruments—Overall*

Appendix 3

Valuation Concepts for Income Producing Real Estate

Several conceptual issues arise during the process of reviewing a real estate loan and in using the net present value approach of collateral valuation. The following discussion sets forth the meaning and use of those key concepts.

The Discount Rate and the Net Present Value Approach: The discount rate used in the net present value approach to convert future net cash flows of income-producing real estate into present market value terms is the rate of return that market participants require for the specific type of real estate investment. The discount rate will vary over time with changes in overall interest rates and in the risk associated with the physical and financial characteristics of the property. The riskiness of the property depends both on the type of real estate in question and on local market conditions.

The Direct Capitalization (''Cap'' Rate) Technique: Many market participants and analysts use the ''cap'' rate technique to relate the value of a property to the net operating income it generates. In many applications, a ''cap'' rate is used as a short cut for computing the discounted value of a property's income streams.

The direct income capitalization method calculates the value of a property by dividing an estimate of its ''stabilized'' annual income by a factor called a ''cap'' rate. Stabilized annual income generally is defined as the yearly net operating income produced by the property at normal occupancy and rental rates; it may be adjusted upward or downward from today's actual market conditions. The ''cap'' rate, usually defined for each property type in a market area, is viewed by some analysts as the required rate of return stated in terms of current income. The ''cap'' rate can be considered a direct observation of the required earnings-to-price ratio in current income terms. The ''cap'' rate also can be viewed as the number of cents per dollar of today's purchase price investors would require annually over the life of the property to achieve their required rate of return.

The ''cap'' rate method is an appropriate valuation technique if the net operating income to which it is applied is representative of all future income streams or if net operating income and the property's selling price are expected to increase at a fixed rate. The use of this technique assumes that either the stabilized annual income or the ''cap'' rate used accurately captures all relevant characteristics of the property relating to its risk and income potential. If the same risk factors, required rate of return, financing arrangements, and income projections are used, the net present value approach and the direct capitalization technique will yield the same results.

The direct capitalization technique is not an appropriate valuation technique for troubled real estate since income generated by the property is not at normal or stabilized levels. In evaluating troubled real estate, ordinary discounting typically is used for the period before the project reaches its full income potential. A ''terminal cap rate'' is then utilized to estimate the value of the property (its reversion or sales price) at the end of that period.

Differences Between Discount and Cap Rates: When used for estimating real estate market values, discount and ''cap'' rates should reflect the current market requirements for rates of return on properties of a given type. The discount rate is the required rate of return including the expected increases in future prices and is applied to income streams reflecting inflation. In contrast, the ''cap'' rate is used in conjunction with a stabilized net operating income figure. The fact that discount rates for real estate are typically higher than ''cap'' rates reflects the principal difference in the treatment of expected increases in net operating income and/or property values.

Other factors affecting the ''cap'' rate (but not the discount rate) include the useful life of the property and financing arrangements. The useful life of the property being evaluated affects the magnitude of the ''cap'' rate because the income generated by a property, in addition to providing the required return on investment, has to be sufficient to compensate the investor for the depreciation of the property over its useful life. The longer the useful life, the smaller is the depreciation in any one year, hence, the smaller is the annual income required by the investor, and the lower is the ''cap'' rate. Differences in terms and the extent of debt financing and the related costs are also taken into account.

Selecting Discount and Cap Rates: The choice of the appropriate values for discount and ''cap'' rates is a key aspect of income analysis. In markets marked by both a lack of transactions and highly speculative or unusually pessimistic attitudes, analysts consider historical required returns on the type of property in question. Where market information is available to determine current required yields, analysts carefully analyze sales prices for differences in financing, special rental arrangements, tenant improvements, property location, and building characteristics. In most local markets, the estimates of discount and ''cap'' rates used in an income analysis generally should fall within a fairly narrow range for comparable properties.

Holding Period Versus Marketing Period: When the net present value approach is applied to troubled properties, the chosen time frame should reflect the period over

[34] The guidance in the July 2001 Policy Statement was substantially adopted by the NCUA through its Interpretative Ruling and Policy Statement 02–3, *Allowance for Loan and Lease Losses Methodologies and Documentation for Federally Insured Credit Unions,* in May 2002.

[35] ASC Topic 326, *Financial Instruments—Credit Losses,* when adopted by a financial institution, replaces the incurred loss methodology included in ASC Subtopic 310–10, *Receivables—Overall* and ASC Subtopic 450–20, *Contingencies—Loss Contingencies,* for financial assets measured at amortized cost, net investments in leases, and certain off balance-sheet credit exposures.'' ASC Topic 326 also, when adopted by a financial institution, supersedes ASC Subtopic 310–40 *Troubled Debt Restructurings by Creditors.*

which a property is expected to achieve stabilized occupancy and rental rates (stabilized income). That time period is sometimes referred to as the ''holding period.'' The longer the period is before stabilization, the smaller the reversion value will be within the total value estimate. The marketing period is the length of time that may be required to sell the property in an open market.

Appendix 4

Special Mention and Adverse Classification Definitions [36]

The FDIC and OCC use the following definitions for assets adversely classified for supervisory purposes as well as those assets listed as special mention:

Special Mention

A Special Mention asset has potential weaknesses that deserve management's close attention. If left uncorrected, these potential weaknesses may result in deterioration of the repayment prospects for the asset or in the institution's credit position at some future date. Special Mention assets are not adversely classified and do not expose an institution to sufficient risk to warrant adverse classification.

Adverse Classifications

Substandard Assets: A substandard asset is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the institution will sustain some loss if the deficiencies are not corrected.

Doubtful Assets: An asset classified doubtful has all the weaknesses inherent in one classified substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable.

Loss Assets: Assets classified loss are considered uncollectible and of such little value that their continuance as bankable assets is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value, but rather it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may be effected in the future.

Appendix 5

Accounting—Current Expected Credit Losses Methodology (CECL)

This appendix addresses the relevant accounting and regulatory guidance for financial institutions that have adopted Accounting Standards Update (ASU) 2016–13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* and its subsequent amendments (collectively, ASC Topic 326) in determining the allowance for credit losses (ACL). Additional guidance for the financial institution's estimate of the ACL and for examiners' responsibilities to evaluate these estimates is presented in the *Interagency Policy Statement on Allowances for Credit Losses (June 2020).* Additional information related to identifying and disclosing modifications for regulatory reporting under ASC Topic 326 is located in the FFIEC Call Report and NCUA 5300 Call Report instructions.

Expected credit losses on loans under ASC Topic 326 are estimated under the same CECL methodology as all other loans in the portfolio. Loans, including loans modified in a restructuring, should be evaluated on a collective basis unless they do not share similar risk characteristics with other loans. Changes in credit risk, borrower circumstances, recognition of charge-offs, or cash collections that have been fully applied to principal, often require reevaluation to determine if the modified loan should be included in a different pool of assets with similar risks for measuring expected credit losses.

Although ASC Topic 326 allows a financial institution to use any appropriate loss estimation method to estimate the ACL, there are some circumstances when specific measurement methods are required. If a financial asset is collateral dependent,[37] the ACL is estimated using the fair value of the collateral. For a collateral-dependent loan, regulatory reporting requires that if the amortized cost of the loan exceeds the fair value [38] of the collateral (less costs to sell if the costs are expected to reduce the cash flows available to repay or otherwise satisfy the loan, as applicable), this excess is included in the amount of expected credit losses when estimating the ACL. However, some or all of this difference may represent a Loss for classification purposes that should be charged off against the ACL in a timely manner.

Financial institutions also should consider the need to recognize an allowance for expected credit losses on off-balance sheet credit exposures, such as loan commitments, in other liabilities consistent with ASC Topic 326.

Appendix 6

Accounting—Incurred Loss Methodology

This Appendix addresses the relevant accounting and regulatory guidance for financial institutions using the incurred loss methodology to estimate the allowance for loan and lease losses under ASC Subtopics 310–10, *Receivables—Overall* and 450–20, *Contingencies—Loss Contingencies* and have not adopted Accounting Standards Update (ASU) 2016–13, *Financial Instruments—Credit Losses (Topic 326).*

Restructured Loans

The restructuring of a loan or other debt instrument should be undertaken in ways that improve the likelihood that the maximum credit repayment will be achieved under the modified terms in accordance with a reasonable repayment schedule. A financial institution should evaluate each restructured loan to determine whether the loan should be reported as a TDR. For reporting purposes, a restructured loan is considered a TDR when the financial institution, for economic or legal reasons related to a borrower's financial difficulties, grants a concession to the borrower in modifying or renewing a loan that the financial institution would not otherwise consider. To make this determination, the financial institution assesses whether (a) the borrower is *experiencing financial difficulties* and (b) the financial institution has granted a *concession.*[39]

The determination of whether a restructured loan is a TDR requires consideration of all relevant facts and circumstances surrounding the modification. No single factor, by itself, is determinative of whether a restructuring is a TDR. An overall general decline in the economy or some deterioration in a borrower's financial condition does not automatically mean that the borrower is *experiencing financial difficulties.* Accordingly, financial institutions and examiners should use judgment in evaluating whether a modification is a TDR.

Allowance for Loan and Lease Losses (ALLL)

Guidance for the financial institution's estimate of loan losses and examiners' responsibilities to evaluate these estimates is presented in *Interagency Policy Statement on the Allowance for Loan and Lease Losses (December 2006)* and *Interagency Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions (July 2001).*[40]

[36] Federal banking agencies loan classification definitions of Substandard, Doubtful, and Loss may be found in the Uniform Agreement on the Classification and Appraisal of Securities Held by Depository Institutions Attachment 1—Classification Definitions (OCC: OCC Bulletin 2013–28; and FDIC: FIL–51–2013). The Federal banking agencies definition of Special Mention may be found in the Interagency Statement on the Supervisory Definition of Special Mention Assets (June 10, 1993). The NCUA does not require credit unions to adopt the definition of special mention or a uniform regulatory classification schematic of loss, doubtful, substandard. A credit union must apply a relative credit risk score (*i.e.,* credit risk rating) to each commercial loan as required by 12 CFR part 723 Member Business Loans; Commercial Lending (see Section 723.4(g)(3)) or the equivalent state regulation as applicable. Adversely classified refers to loans more severely graded under the credit union's credit risk rating system. Adversely classified loans generally require enhanced monitoring and present a higher risk of loss.

[37] The repayment of a collateral-dependent loan is expected to be provided substantially through the operation or sale of the collateral when the borrower is experiencing financial difficulty based on the entity's assessment as of the reporting date. Refer to the glossary entry in the Call Report instructions for ''Allowance for Credit Losses—Collateral-Dependent Financial Assets.''

[38] The fair value of collateral should be measured in accordance with FASB ASC Topic 820, *Fair Value Measurement.* For impairment analysis purposes, the fair value of collateral should reflect the current condition of the property, not the potential value of the collateral at some future date.

[39] Refer to ASC Subtopic 310–40, *Receivables—Troubled Debt Restructurings by Creditors.* Refer also to the FFIEC Call Report and NCUA 5300 Call Report instructions.

[40] Credit unions should follow interagency supervisory guidance relative to the ALLL in the financial and regulatory reporting of loans.

Financial institutions are required to estimate credit losses based on a loan-by-loan assessment for certain loans and on a group basis for the remaining loans in the held-for-investment loan portfolio. All loans that are reported as TDRs are considered impaired and are typically evaluated on an individual loan basis in accordance with ASC Subtopics 310–40, and 310–10. Generally, if an individually assessed loan [41] is impaired, but is not collateral dependent, management allocates in the ALLL for the amount of the recorded investment in the loan that exceeds the present value of expected future cash flows, discounted at the original loan's effective interest rate.

For an individually evaluated impaired collateral dependent loan,[42] regulatory reporting requires the amount of the recorded investment in the loan that exceeds the fair value of the collateral [43] (less costs to sell) [44] if the costs are expected to reduce the cash flows available to repay or otherwise satisfy the loan, as applicable), to be charged off to the ALLL in a timely manner.

Financial institutions also should consider the need to recognize an allowance for estimated credit losses on off-balance sheet credit exposures, such as loan commitments in other liabilities consistent with ASC Subtopic 825–10, *Financial Instruments—Overall.* For additional information, refer to the FFIEC Call Report and NCUA 5300 Call Report instructions pertaining to regulatory reporting.

For performing CRE loans, supervisory policies do not require automatic increases in the ALLL solely because the value of the collateral has declined to an amount that is less than the recorded investment in the loan. However, declines in collateral values should be considered when applying qualitative factors to calculate loss rates for affected groups of loans when estimating loan losses under ASC Subtopic 450–20.

Michael J. Hsu,

Acting Comptroller of the Currency.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on July 19, 2022.

Debra A. Decker,

Executive Secretary.

By order of the Board of the National Credit Union Administration.

Dated at Alexandria, VA, on July 19, 2022.

Melane Conyers-Ausbrooks,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 2022–16471 Filed 8–1–22; 8:45 am]

BILLING CODE 4810–33–P; 6714–01–P; 7535–01–P

[41] The recorded investment in the loan for accounting purposes may differ from the loan balance as described elsewhere in this statement. The recorded investment in the loan for accounting purposes is the loan balance adjusted for any unamortized premium or discount and unamortized loan fees or costs, less any amount previously charged off, plus recorded accrued interest.

[42] Under ASC Subtopic 310–10, a loan is collateral dependent when the loan for which repayment is expected to be provided solely by the underlying collateral. Refer to the glossary entry in the Call Report instructions for ''Allowance for Credit Losses—Collateral-Dependent Financial Assets.''

[43] The fair value of collateral should be measured in accordance with FASB ASC Topic 820, *Fair Value Measurement.* For impairment analysis purposes, the fair value of collateral should reflect the current condition of the property, not the potential value of the collateral at some future date.

[44] *See* footnote 24.

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Part II

Department of the Interior

National Park Service
36 CFR Part 2
Office of the Secretary of the Interior
43 CFR Part 49
Bureau of Land Management
43 CFR Part 8360
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Paleontological Resources Preservation; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 2

Office of the Secretary of the Interior

43 CFR Part 49

Bureau of Land Management

43 CFR Part 8360

Fish and Wildlife Service

50 CFR Part 27

[Docket NPS–2016–0003; FWS–93261, FXRS12630900000, FF09R81000, 167; BOR–RR83530000, 190R5065C6, RX.59389832.1009676; BLM–19X.LLW0240000.L10500000.PC0000.LXSIPALE0000; NPS–GPO Deposit Account 4311H2]

RIN 1093–AA25

Paleontological Resources Preservation

AGENCY: Bureau of Land Management, Bureau of Reclamation, National Park Service, U.S. Fish and Wildlife Service; Interior.

ACTION: Final rule.

SUMMARY: The U.S. Department of the Interior (DOI or Department) is promulgating this regulation under the Paleontological Resources Preservation Act. This regulation provides for the management, preservation, and protection of paleontological resources on lands administered by the Bureau of Land Management, the Bureau of Reclamation, the National Park Service, and the U.S. Fish and Wildlife Service, and ensures that these federally owned resources are available for present and future generations to enjoy as part of America's national heritage. The regulation addresses the management, collection, and curation of paleontological resources from Federal lands using scientific principles and expertise, including collection in accordance with permits; curation in an approved repository; and maintenance of confidentiality of specific locality data. The regulation details the processes related to the civil and criminal penalties for illegal collecting, damaging, otherwise altering or defacing, or selling paleontological resources.

DATES: This regulation is effective September 1, 2022. Submit comments on the information collection requirements of this final regulation on or before September 1, 2022.

ADDRESSES: The comments received on the proposed rule are available on *http://www.regulations.gov* in Docket ID: NPS–2016–0003. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this rule 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. Please provide a copy of your comments to the Departmental Information Collection Clearance Officer, Office of the Secretary/Office of the Chief Information Officer, 1849 C Street NW, Washington, DC 20240. Please reference OMB Control Number 1093–0008 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Julia F. Brunner, Geologic Resources Division, National Park Service, by telephone: (303) 969–2012 or email: *Julia_F_Brunner@nps.gov.* Persons who use a telecommunications device for deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS) have long managed, protected, and preserved fossils under various legal authorities as a nonrenewable resource with scientific and educational value. For example, all four bureaus have required a permit for fossil collection (the exception is BLM, which has allowed collection of common plant and invertebrate fossils in certain areas without a permit); required fossils collected under permit to be curated in accordance with DOI museum management standards; protected fossils from theft and vandalism; and closed areas to fossil collection as appropriate for protection or other management reasons.

However, the laws and regulations under which the bureaus have managed, protected, and curated fossils have not always been clearly understood or uniformly implemented (see, *e.g.,* Congressional Research Service Report for Congress, *Fossils on Federal Lands: Current Federal Laws and Regulations* (1998)). To address this concern, the Senate Interior Appropriations Subcommittee in 1999 requested that DOI, the U.S. Department of Agriculture (USDA) Forest Service (FS), and the Smithsonian Institution prepare a report on fossil resource management on Federal lands (see Sen. Rep. 105–227, at 60 (1998)). The request directed these entities to analyze (1) the need for a unified Federal policy for the collection, storage, and preservation of fossils; (2) the need for standards that would maximize the availability of fossils for scientific study; and (3) the effectiveness of current methods for storing and preserving fossils collected from Federal lands. During the course of preparing the report, the agencies held a public meeting to gather public input. The DOI published its report to Congress, ''Assessment of Fossil Management of Federal and Indian Lands,'' in May 2000.

After the report was released, a bill reflecting what is now the Paleontological Resources Preservation Act (PRPA) was introduced in the 107th Congress. PRPA was modeled after the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa–470mm), and emphasized the recommendations and guiding principles in the May 2000 report. Lawmakers reintroduced the bill in subsequent Congresses through the 111th Congress when it was included as a subtitle in the Omnibus Public Land Management Act, which became law on March 30, 2009. Legislative history demonstrates that PRPA (16 U.S.C. 470aaa–470aaa–11) was enacted to preserve paleontological resources for current and future generations because these resources are non-renewable and are an irreplaceable part of America's heritage. PRPA requires that implementation be coordinated between the Secretaries of the Interior and Agriculture (16 U.S.C. 470aaa–1).

Previous Federal Actions

The USDA and the DOI formed an interagency coordination team (ICT) in April 2009 to draft proposed regulations. Members of the ICT included paleontologists, program leads, and regulatory specialists from the USDA's Forest Service and the affected DOI bureaus: the BLM, Reclamation, NPS, and FWS. The Forest Service published a proposed regulation on May 23, 2013 (78 FR 30810) for a 60-day comment period and then published a final regulation on April 17, 2015 (80 FR 21588). DOI published a proposed regulation (RIN 1093–AA16) on December 7, 2016 (81 FR 88173), also for a 60-day comment period. The public comment period ended on

February 6, 2017. The Department of the Interior withdrew the rulemaking action from the Spring 2017 Unified Agenda of Regulatory and Deregulatory Actions to allow the Department to assess the action further. DOI determined rulemaking was appropriate and included the rulemaking on the Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions, under the current RIN.

Final Rule

This rule establishes unified DOI regulations for the management of paleontological resources on Federal lands under the jurisdiction of the Secretary of the Interior, and administered by BLM, Reclamation, NPS, and FWS. The rule amends title 43 of the Code of Federal Regulations (CFR) by adding a new part 49 entitled ''Paleontological Resources Preservation.'' In accordance with 16 U.S.C. 470aaa–1, the rule outlines how the four bureaus manage, protect, and preserve paleontological resources on Federal land using scientific principles and expertise. This rule makes conforming amendments to 36 CFR part 2, 43 CFR part 8360, and 50 CFR part 27 to update the authority citation and reference the newly established part 49 of title 43.

The following presents a summary of subparts A through I of the final regulation, followed by responses to public comments received. For a more detailed discussion and a section-by-section analysis of subparts A through I, refer to the proposed rule (81 FR 88173, December 7, 2016).

Subpart A—Preserving, Managing, and Protecting Paleontological Resources

Subpart A of the final regulation (43 CFR 49.1 through 49.40) implements several provisions of the Act, including 16 U.S.C. 470aaa, 470aaa–1, 470aaa–2, 470aaa–8, 470aaa–9, and 470aaa–10. This subpart explains the scope of the rule (§ 49.1); contains definitions of key terms used in the regulation (§ 49.5); clarifies that this rule does not supplant other laws and regulations that authorize the bureaus to preserve, manage, and protect paleontological resources on and from Federal lands (§ 49.10); explains the locations and situations in which this rule does not apply (§ 49.15); explains that the regulation does not create new rights or entitlements (§ 49.20); explains when confidentiality of information about specific localities of paleontological resources is required (§ 49.25); describes how the bureaus will conduct inventory, monitoring, and preservation activities (§ 49.30); describes how the bureaus will foster public education and awareness (§ 49.35); and explains the circumstances in which the bureaus may restrict access or collection (§ 49.40).

Subpart B—Paleontological Resources Permitting; Requirements, Modifications, and Appeals

Subpart B of the final regulation (43 CFR 49.100 through 49.145) implements the permitting provisions at 16 U.S.C. 6304 of the Act. This subpart specifies when a permit is required to collect paleontological resources from Federal land (§ 49.100); describes who may receive a permit (§ 49.105); describes permit applicant qualification requirements (§ 49.110); explains where to file permit applications and the required content (§ 49.115); sets out how bureaus make decisions about permit applications (§ 49.120); describes the terms and conditions required for permits (§ 49.125); explains when and how a permit may be modified, suspended, revoked or cancelled (§ 49.130); states that permit-related decisions are appealable (§ 49.135); sets forth the permit appeal process (§ 49.140); and states that OMB has approved the information collection provisions in this regulation (§ 49.145).

Subpart C—Management of Paleontological Resource Collections

Subpart C of the final regulation (43 CFR 49.200 through 49.215) implements section 6305 of the Act (16 U.S.C. 470aaa–4). This subpart requires paleontological resources collected under the final regulation to be deposited into an approved repository (§ 49.200); lists the criteria for approval of a repository (§ 49.205); lists the requirements for agreements between bureaus and approved repositories (§ 49.210); and describes the standards for management of collections made under the final regulations (§ 49.215).

Subpart D—Prohibited Acts

Subpart D of the final regulation contains one section (43 CFR 49.300). For public notice and clarity, this subpart restates section 6306 of the Act (16 U.S.C. 470aaa–5).

Subpart E—Criminal Penalties

Subpart E of the final regulation implements section 6306 of the Act (16 U.S.C. 470aaa–5). Subpart E contains one section, 43 CFR 49.400, which describes the criminal penalties applicable to persons who knowingly commit or counsel, solicit, or employ another person to commit any of the prohibited acts described in subpart D. Bureaus may also utilize other authorities to issue citations for criminal violations involving paleontological resources.

Subpart F—Civil Penalties

Subpart F of the final regulation (43 CFR 49.500 through 49.575) implements section 6307 of the Act (16 U.S.C. 470aaa–6), and sets forth the process and requirements for the assessment of a civil penalty upon a person who commits one of the actions prohibited by subpart D. This subpart describes when a civil penalty may be assessed (§ 49.500); explains that the first step of the process is issuance of a notice of violation (§ 49.505); describes the contents of the notice of violation, including a proposed assessment of civil penalty (§ 49.510); explains how a person may object to the notice of violation (§ 49.515); explains the timing of a final assessment of civil penalty (§ 49.520); describes how the proposed and final assessments of civil penalty are calculated (§ 49.525); describes the service and contents of a final assessment of civil penalty (§ 49.530); sets forth the person's options for responding to the final assessment of civil penalty (§ 49.535); describes the procedures for a hearing, if requested, at the Departmental Cases Hearings Division (§ 49.540); describes the contents of the administrative law judge's decision, if there is one (§ 49.545); describes how that decision may be appealed (§ 49.550); explains the procedures governing such an appeal (§ 49.555); sets forth the deadlines for payment of the civil penalty (§ 49.560); explains when a person assessed a civil penalty may seek judicial review (§ 49.565); explains the consequences of failing to pay the civil penalty (§ 49.570); and describes the uses for collected civil penalties (§ 49.575).

Subpart G—Determining Scientific Value, Commercial Value, and the Cost of Response, Restoration, and Repair

The purpose of subpart G (43 CFR 49.600 through 49.610) of the final regulation is to establish the factors used to determine the level of criminal penalties that will be imposed under subpart E and the amount of civil penalties that will be imposed under subpart F of the final regulations. Subpart G, which implements sections 6306(c) and 6307(a)(2) of the Act (16 U.S.C. 470aaa–5(c) and 470aaa–6(a)(2)), does not apply to other management aspects of paleontological resources under the final regulation and the Act. This subpart describes how scientific value is determined for criminal and civil penalties (§ 49.600); describes how commercial value is determined for

criminal and civil penalties (§ 49.605); and describes how the cost of response, restoration, and repair is determined for criminal and civil penalties (§ 49.610).

Subpart H—Forfeiture and Rewards

The purpose of subpart H (43 CFR 49.700 and 49.705) is to implement section 6308 of the Act (16 U.S.C. 470aaa–7). This subpart explains how forfeiture of paleontological resources that are related to a violation of the Act and the final regulation may take place (§ 49.700); and explains how rewards for information leading to a finding of civil violation or criminal conviction are to be determined and distributed (§ 49.705).

Subpart I—Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands

The purpose of subpart I (43 CFR 49.800 through 49.810) is to implement casual collection as authorized by sections 6301(1) and 6304(a)(2) of the Act (16 U.S.C. 470aaa(1) and 470aaa–3(a)(2)). This subpart clarifies that casual collecting is not allowed on lands administered by NPS or FWS (§ 49.800); describes where casual collecting is allowed on lands administered by BLM and Reclamation (§ 49.805); and defines the parameters of casual collecting (§ 49.810).

Summary of Public Comments

During the public comment period, DOI received 466 comment submissions containing 1,611 separate comments. DOI received comments from amateur collectors, professional academic paleontologists, repository managers, paleontology consultants, and students. Sixty percent (60%) of the comments received by DOI addressed subpart I (casual collection). Twelve percent (12%) of the comments addressed subpart B (permitting). Eight percent (8%) addressed subpart A (management). Five percent (5%) of the comments addressed subpart C (curation). DOI received fewer comments on the remaining subparts. Most comments were helpful and constructive. DOI was not able to address those comments that criticized regulatory provisions required by the Act. However, each comment received consideration in the development of the final rule.

The following discussion addresses substantive information provided during the comment period, by topic, and includes a table that lists substantive changes that the bureaus made in the final rule based on comment analysis and other considerations.

General Comments

This section summarizes DOI's response to public comments that did not relate to a particular section of the proposed DOI regulations.

1. Comment: Many commenters stated that Congress should appropriate enough funds for the bureaus to hire more paleontologists to implement the regulations and the Act.

Bureau response: The bureaus will work with Congress as appropriate to identify and allocate the resources needed to carry out the provisions of the Act and the final regulations. The bureaus will also continue to foster partnerships with amateur paleontologists, local communities, and scientists in order to enhance the bureaus' capacity to preserve, manage, and protect these nonrenewable resources.

2. Comment: Any plans, procedures, policies, and agreements developed by each bureau following promulgation of the regulations should be coordinated and standardized among the bureaus. Bureau national offices, rather than individual field offices, should establish any agreements with repositories.

Bureau response: The bureaus agree with the comment and intend to standardize their processes to the maximum extent practicable. The bureaus do not believe it is necessary for the regulation to require national rather than field offices to establish agreements with repositories.

3. Comment: The discretion reflected in the regulations may lead to inconsistent actions across DOI lands, introducing confusion for permittees and repositories.

Bureau response: The discretion reflected in the regulation is reasonable and affords the bureaus the flexibility needed to accommodate differing resources, issues, and areas. The bureaus will be as transparent as possible in the implementation of the regulations in order to reduce potential confusion on the part of the public.

Comments Related to Specific Sections of the Rule

Subpart A—Preserving, Managing, and Protecting Paleontological Resources

4. Comment: Several commenters stated that the term ''preservation'' necessitates collection of fossils from the ground. One commenter stated that fossils must be collected in order to be preserved, *i.e.,* saved from erosion and weathering, and asked the bureaus to either delete all references in the regulations to ''preservation'' or to amend the regulations to say that fossils must be collected if they are to be preserved from the destructive forces of nature.

Bureau response: Although numerous commenters share this perspective, other people and cultures who use, enjoy, and value federally administered lands do not agree. During the rulemaking process, the bureaus learned that some Native American Tribes value all fossils (vertebrate, invertebrate, and plant) *in situ* and believe that they should be left undisturbed in their resting place. These Tribes asserted that many federally administered lands are ancestral Tribal lands, many of which include important archaeological resources that might be damaged by fossil collection. In addition, these Tribes expressed concern that collection might interfere with natural processes and noted that negative consequences may, and often do, result from such interference.

Additionally, fossils contain the maximum potential to be scientifically informative prior to their excavation. It is in that state that researchers can observe and document their geological context. Therefore, it is often desirable for land managers to preserve known fossil resources in the ground, awaiting specific research needs or new technologies before removing them.

The Act, and therefore the final DOI regulations, strike a middle ground between these perspectives. First, the Act does not state or imply that the term ''preservation'' means that all fossils must be collected. The Act authorizes, but does not require, collection of paleontological resources. Second, the Act does not predicate collection on threats of weathering; instead it specifies that paleontological resources may be collected only by qualified persons, for the purpose of furthering paleontological knowledge or for public education and in accordance with bureau terms and conditions. The final regulations reflect this Congressional intent, and therefore retain the words ''preserve'' (see, *e.g.,* § 49.1) and ''preservation.''

5. Comment: The definition of ''associated records'' should not include scientific records.

Bureau response: The definition in § 49.5 of the regulations is consistent with existing bureau guidance, including the Department Manual (DM) at Part 411 DM, Identifying and Managing Museum Property.

6. Comment: Several commenters expressed confusion regarding the proposed rule's definition of ''collection.''

Bureau response: The bureaus appreciate the comments and simplified this definition in § 49.5 of the final regulations to be consistent with Part 411 DM, Identifying and Managing Museum Property. Part 411 of the DM sets forth the authorized approach to documenting and issuing instructions, policies, and procedures that have general and continuing applicability to Departmental activities, or that are important to the management of the Department.

7. Comment: One commenter asked whether ''consumptive use'' includes sampling such as invasive sampling.

Bureau response: The commenter is correct; invasive sampling is the same as consumptive use. The bureaus modified the term in § 49.5 of the final regulations from ''consumptive use'' to ''consumptive analysis.''

8. Comment: A few commenters expressed confusion about the proposed rule's use of the terms ''curation'' and ''curatorial services.'' Other commenters asked about the difference between ''curation'' and ''deposit.''

Bureau response: To address the comments, the final regulations use the term ''curation'' only (see § 49.5). To clarify the difference between curation and deposit, the final rule defines the term ''deposit.''

9. Comment: The definition of ''Federal land'' is unclear and too broad; it could potentially include lands administered by the Department of Defense.

Bureau response: The proposed regulations defined ''Federal land'' as applying only to the lands that are administered by BLM, Reclamation, FWS, or NPS.

10. Comment: Many commenters, particularly scientists and repository managers, stated that ''Federal land managers'' (referred to as ''authorized officers'' in the proposed regulations) lack expertise and education sufficient to adequately manage paleontological resources, and therefore the scientists or repository managers should make these decisions on the bureaus' behalf.

Bureau response: It is the responsibility of Federal land managers to manage all resources, impacts, and uses of the lands within the bureaus' jurisdiction, consistent with Federal laws, regulations, court decisions, policies, available resources, and stakeholder input. Federal land managers may not delegate this responsibility absent specific statutory authorization. Therefore, when managing paleontological resources Federal land managers rely on informed input from many sources, including, but not limited to, paleontologists, geologists, biologists, museum curators, law enforcement rangers, historians, other agencies and institutions, and the public. The definition of ''Federal land manager'' at § 49.5 in the final regulations is worded to include this collaboration.

11. Comment: The proposed rule's definition of ''fossilized'' was unclear.

Bureau response: The definition provided in § 49.5 reflects the common understanding of what is fossilized. The bureaus modified the definition to clarify that the preserved content contains evidence or remains of once-living organisms. The term ''paleontological resource,'' provided by the Act, is a subset of what is fossilized. Thus, for the purposes of the Act and this regulation, all paleontological resources are fossilized, but not all fossils are paleontological resources.

12. Comment: Commenters asked whether the terms ''fossil'' and ''paleontological resource'' are synonymous.

Bureau response: Fossils are presumed to be paleontological resources, subject to the Act and these regulations, except when they are an archaeological resource (subject to 16 U.S.C. 470bb(1)) or are a cultural item (subject to 25 U.S.C. 3001), or when the Federal land manager determines that the fossils do not have paleontological interest under the Act and these regulations. However, even when fossils are not a paleontological resource under the Act and these regulations, they are still regulated and managed under the bureaus' other legal and regulatory authorities, or under State or Tribal law.

13. Comment: Several commenters expressed the view that the bureaus should define the concept of ''paleontological interest,'' narrowly if possible.

Bureau response: Under the Act and these regulations, the concept of paleontological interest is relevant only to the determination of whether or not a fossil is a paleontological resource. If a fossil is determined to lack paleontological interest, it is not considered a ''paleontological resource'' and is not subject to the Act and these regulations. However, due to the savings provision of the Act and these regulations, even if a fossil is determined not to be a paleontological resource, it is still subject to other laws and regulations. The concept of paleontological interest is not relevant for any other purposes under the Act and these regulations. Therefore, defining paleontological interest did not appear to be necessary or advisable, particularly since any definition may become outdated—for instance, as scientific knowledge develops or management practice changes.

14. Comment: A commenter asked the bureaus to define ''plant'' and ''invertebrate'' paleontological resources with more specificity.

Bureau response: The bureaus do not believe that more details in the definition of paleontological resources are necessary for the implementation of the regulations, beyond stating in § 49.810(a)(1) that the term ''common non-vertebrate'' means ''common invertebrate or plant.''

15. Comment: One Tribe requested that the bureaus modify the definition of a ''paleontological resource'' to state that all paleontological resources are cultural resources.

Bureau response: The Act provides the definition for ''paleontological resource.'' When a fossil fits the definition of an archaeological resource (provided by 16 U.S.C. 470bb(1)) or the definition of a cultural item (provided by 25 U.S.C. 3001), it will be managed as that resource.

16. Comment: One commenter stated that paleontological resources, by definition, are of paleontological interest because they have value to scientists.

Bureau response: Under the regulations, a fossil is presumed to have paleontological interest and therefore be subject to the regulations unless and until the Federal land manager determines that the fossil does not have paleontological interest, is an archaeological resource as provided by 16 U.S.C. 470bb(1), or is a cultural item according to 25 U.S.C. 3001 and therefore it is not a ''paleontological resource.'' In such cases, the fossil would not be subject to the Act and these regulations. A fossil might be determined not to have paleontological interest for reasons that might include, but are not limited to, redundancy or loss of context. For example, a Federal land manager may determine that a particular exposure of abundantly represented and extensively researched shark teeth is so highly redundant that it does not contribute new information and, therefore, lacks paleontological interest. A fossil that is determined not to have paleontological interest is not a paleontological resource under the Act or these regulations and therefore is not regulated under the Act or these regulations, but is managed under other laws and regulations.

17. Comment: One commenter expressed confusion about whether fossils that have been determined not to be paleontological resources are subject to the casual collecting part of the regulations.

Bureau response: If a fossil is determined by a Federal land manager not to be a paleontological resource, then that fossil is not subject to the Act or these regulations. Collection and use of these non-paleontological resources are governed by other laws and regulations. For example, visitors may collect petrified wood on BLM-administered lands under the free use exemption provided at 43 CFR part 3620. By contrast, visitors may not engage in casual collecting of any fossils, including petrified wood or paleontological resources, in areas administered by NPS or FWS.

18. Comment: Some commenters expressed confusion about when the bureaus would manage a fossil as a mineral material and when they would manage it as a paleontological resource.

Bureau response: The savings provisions of the Act (16 U.S.C. 470aaa–10) state that laws providing for mineral materials disposal are not modified by the Act. Accordingly, § 49.15(d)(1) of these regulations excludes certain fossilized minerals and geological units on lands administered by BLM and Reclamation from management under this rule. This is consistent with language provided in the USDA Forest Service rule at 36 CFR 291.9(d), as well as with longstanding BLM policy and practice. In response to the comments, § 49.15 of the final regulations clarifies that, on lands administered by BLM and Reclamation, petrified wood is excluded from this regulation because petrified wood on BLM- and Reclamation-administered land is a mineral material according to the Petrified Wood Act of 1962 (Pub. L. 87–713, 30 U.S.C. 611) and is governed by the mineral material disposal laws (30 U.S.C. 601–604). Scientifically important occurrences of petrified wood on lands managed by BLM and Reclamation may be preserved under other applicable authorities. On lands administered by BLM or Reclamation, regulations at 43 CFR part 3620 authorize free use collection of petrified wood.

19. Comment: One commenter asked for the definition of paleontological resources to exempt fossil pollen because permits have not been required historically for its collection.

Bureau response: The Act and these regulations require permits for the collection of all paleontological resources, with the exception of paleontological resource collection that meets the definition of and parameters for casual collecting on certain lands administered by BLM and Reclamation in subpart I of these regulations. Collection of fossil pollen on lands administered by BLM and Reclamation, when conducted consistent with the definitions of and parameters of casual collecting in subpart I, does not require a permit.

20. Comment: Commenters noted that the bureaus should not consider conodonts and non-vertebrate microfossils paleontological resources.

Bureau response: The Act and these regulations require permits for the collection of all paleontological resources, with the exception of paleontological resource collection that meets the definition of and parameters for casual collecting on certain lands administered by BLM and Reclamation in subpart I of these regulations. The proposed rule noted the issues surrounding conodonts, which often lack paleontological interest and therefore, under the Act's definition, should not be considered paleontological resources. In response to the public comments on the proposed rule, conodonts on and from lands administered by BLM and Reclamation are not subject to the final regulation (§ 49.15(d)(3)).

21. Comment: Commenters expressed confusion about the impact of the regulations on other laws that apply to paleontological resources or fossils.

Bureau response: Section 49.10 clarifies that these regulations do not supplant other laws and regulations that authorize the bureaus to preserve, manage, and protect paleontological resources on and from Federal lands. In other words, those other laws and regulations continue to apply to paleontological resources in addition to these regulations.

22. Comment: Commenters expressed concern about the impact of mining, grazing, recreational, and other uses of Federal lands on paleontological resources.

Bureau response: Section 49.15 of these regulations explains that these regulations may not be used as the basis for additional requirements for mineral, reclamation, or related multiple-use activities that are authorized or permitted under the general mining, mineral leasing, geothermal leasing, or mineral materials disposal laws. Those types of permits, such as mining plans of operation, may contain stipulations designed to protect paleontological resources, but the basis for such stipulations would be laws and regulations other than these regulations. Conversely, this regulation may be used as the basis for paleontological resource-protective requirements in non-mineral-related permits. Section 49.15 also clarifies that these regulations apply only to paleontological resources on and from Federal lands as defined in these regulations. Fossils that are not paleontological resources, or that are located in or are from areas that are not Federal lands as defined in these regulations, are protected under other laws and regulations.

23. Comment: The regulations should require paleontological surveys on Federal lands before the bureaus allow activities that would damage paleontological resources, including mining, off-road vehicle use, other recreational access, and mineral collection.

Bureau response: Paleontological surveys may be required in order to satisfy other statutes, including the National Environmental Policy Act (NEPA) and others, and bureaus already conduct, and will continue to conduct these surveys under their existing programs.

24. Comment: Many commenters, especially field and museum professionals, asked for clarification on how they will be able to identify a paleontological site or location to the public in reports, scientific literature, websites, or by other public dissemination.

Bureau response: In the final rule, the bureaus have streamlined and simplified the process for determining when researchers may disclose specific locality information. Section 49.25 of the regulations implements the Act's requirement to maintain confidentiality of specific locality information unless and until the bureau finds that releasing the specific location information would not create a risk of harm to or theft or destruction of the resource or site containing the resource, and would also be consistent with the Act and other laws that apply to the resource.

Researchers can provide generalized locality information in their papers as well as including a statement directing readers to appropriate contacts for more specific information if needed. Researchers can also work with the bureaus to determine which specific locality information can be disclosed without creating a risk of harm to or theft or destruction of the resource or site containing the resource. Permittees may work with the Federal land manager to develop permit-specific allowances for the release of specific locality data collected under that permit. In addition, the bureaus may develop agreements with repositories regarding the sharing of specific location information for the purposes of scientific research or museum management.

The bureaus may develop guidance regarding the publication of paleontological site or location data that

recognizes a profession-wide approach or series of best practices that are also in accordance with the Act. Under the standard process, applicants submit a proposed research purpose and design, the bureaus evaluate the application, including the professional qualifications and expertise of the applicant and the benefits and impacts of the project, and then the bureaus develop the terms and conditions in the permit and the repository agreement that will, among other things, address confidentiality and disclosure of specific location information throughout the life of the permit and the agreement, supporting the goals of the permittee, the bureau, and the repository. This process is used by the U.S. Forest Service and was explained in response to similar comments received by the U.S. Forest Service when it promulgated its regulations in 2015. See 80 FR 21588, 21606 (April 17, 2015). Future guidance issued by the DOI bureaus may clarify or adjust this standard process in coordination with permittees and repositories to support the conservation, understanding, management, and publication of new knowledge about paleontological resources. The BLM intends to issue guidance after the effective date of this rule that would allow for the release of locality data at certain thresholds that would not require case-by-case evaluations of the potential for harm to resources or sites containing resources. All of the bureaus are open to considering flexibilities within the standard process that would allow for the release of specific locality data in a manner that is less burdensome for the bureaus, the permittees, and the repositories, provided that any such actions are consistent with these regulations and the protections in the Act.

25. Comment: Many commenters expressed the opinion that the confidentiality requirement is a prohibition, is censorship, and is antithetical to science. Some suggested that the bureaus should evaluate the risks of disclosure based on various organizations' guidelines for information dissemination. Some stated that knowledge and disclosure of specific locality data is necessary for many types of paleontological research and for publishing scientific papers. Commenters also asserted that confidentiality requirements are inconsistent with some museums' collections management policies. Another commenter stated that the process for deliberating and releasing specific location data might take too long. Other commenters expressed confusion about whether the confidentiality provisions in the proposed regulations apply to paleontological resources that were collected before the effective date of the Act and regulations and/or from non-Federal or split estate lands (lands with Federal mineral interests underlying non-federal surface interests).

Bureau response: The confidentiality provisions in the final regulations at § 49.25 and § 49.215 reflect the language of the Act in order to be implemented as appropriate to address the issues presented by the commenters.

The Act and the regulations do not impose a blanket prohibition on the release of information about the nature and specific location of paleontological resources, rather they condition the disclosure of this information on the bureaus' analysis of three criteria. Specifically, § 49.25 states that nature and specific location information is exempt from disclosure unless the Federal land manager makes a three-part finding that disclosure would (1) further the purposes of the Act; (2) not create risk of harm to or theft or destruction of the resource or site containing the resource; and (3) be in accordance with other applicable laws. This is the mandate set forth by Congress in the Act, and the bureaus are not at liberty to ignore Congressional direction. Confidentiality and judicious disclosure of confidential information reduce resource theft and vandalism, support law enforcement ranger safety, and preserve sites and resources, benefitting cultural values (such as areas sacred to some Native Americans), scientific study, and public education.

In response to the concern that the confidentiality provisions would impact scientists' ability to conduct paleontological research, the bureaus note that these provisions are nearly identical to the confidentiality provisions in the Archaeological Resources Protection Act of 1979, the Federal Cave Resources Protection Act of 1988, the Endangered Species Act of 1973, the National Parks Omnibus Management Act of 1998, and other Federal laws.

In response to the assertions that scientific journal editors require paleontologists to disclose specific locality information in their papers, the bureaus reviewed publication guidelines and found, to the contrary, that journals recognize the need for and wisdom of judicious confidentiality.

In response to the comment that confidentiality is contrary to some organizations' and museums' management policies, the bureaus note that the Act requires the repositories that hold collections made under the Act to maintain the confidentiality of specific location information unless they obtain written permission from the Federal land manager.

26. Comment: Many commenters expressed support and suggestions regarding bureau efforts to inventory and monitor paleontological resources on Federal lands, particularly in coordination with avocational paleontologists, scientists, the public, other agencies, and other partners. One commenter suggested that bureaus should supply burro pack trains to support proactive collection of all significant vertebrate fossils. Other commenters asked whether bureau funding is sufficient to carry out the provisions of the regulation regarding inventory, monitoring, and public education and awareness.

Bureau response: The final regulation reflects the bureaus' commitment to inventory, monitoring, and public education and awareness, but also notes that such activities will take place as appropriate and practicable (see § 49.30 and § 49.35). Such practicability is related to bureau capacity (such as resources and funding), and other constraining factors. Partnerships with avocational paleontologists, scientists, other agencies, and the general public that are consistent with the Act are an important component of bureau management.

27. Comment: Several commenters were concerned about how the bureaus would close areas to the collection of paleontological resources.

Bureau response: The Federal land manager will close or restrict the collection of paleontological resources in order to protect resources or provide for public safety. These closures would be area-specific, might be temporary or permanent, and would be tailored to the resource or public safety needs. The area closure provision at § 49.40 is consistent with existing area closure authorities that the bureaus currently exercise, including 43 CFR subpart 8364 (BLM); 43 CFR 423 (Reclamation); 36 CFR 1.5 (NPS); and 50 CFR 25.21 (FWS). The bureaus may institute a temporary closure to address an immediate need, but permanent closures or restrictions would be put in place through the bureau planning processes, which would include opportunity for public comment.

Subpart B—Paleontological Resources Permitting; Requirements, Modifications, and Appeals

28. Comment: Several commenters stated that any permitting requirement

is a cumbersome, new, and awkward restriction for scientists.

Bureau response: The requirement to obtain a permit prior to collecting fossils from DOI-managed land is not new. Permits have been and continue to be required for all fossil collection on NPS, FWS, and Reclamation land, and vertebrate fossil collection on BLM land. In the Act, Congress reaffirmed the permitting requirement. The regulation's permitting provisions are streamlined, transparent, and as consistent as possible with existing practice.

29. Comment: Several commenters stated that the proposed rule was unclear with respect to the applicability of the permitting requirement.

Bureau response: In response to the comments, the final regulations at 43 CFR 49.100 (proposed § 49.50) has been retitled to clarify that it applies to permits for paleontological resource activities, not to activities related to other resources or uses of Federal land.

30. Comment: One commenter asked the bureaus to form a working group to develop research permits.

Bureau response: The regulations address permitting in accordance with the Act. DOI bureaus worked collaboratively and developed a standardized application for paleontological resources use permits. In compliance with the Paperwork Reduction Act, those forms were reviewed and approved by the Office of Management and Budget (OMB). A central goal of OMB review is to help agencies strike a balance between collecting information necessary to fulfill our statutory missions and guarding against unnecessary or duplicative information that imposes unjustified costs on the American public. At any point, members of the public may submit comments to the sponsoring Federal agencies and OMB about any currently approved information collections. Such comments may involve, for example, the need for the information and the reporting burdens involved.

31. Comment: One commenter stated that permits, reporting, repositories, and enforcement are expensive and provide little-to-no benefit.

Bureau response: Permitting, reporting, deposition into repositories, and enforcement are required by the Act. The regulations implement these requirements.

32. Comment: Many commenters stated that a permit should not be required for the collecting of common invertebrate and plant fossils. They also stated that depositing all of the collected common invertebrate and plant fossils into approved repositories would burden those repositories.

Bureau response: The bureaus (and Congress) agree with these comments. The Act provides for casual collecting of common invertebrate and plant fossils on certain BLM and Reclamation lands without a permit. Subpart I of this rule implements this provision. Neither the Act nor these regulations require that casual collectors of paleontological resources place these items in an approved repository. However, the Act and the regulations do require deposit of paleontological resources collected under a permit into an approved repository. Because the bureaus share the commenters' concern about burdening repositories, the final regulations require permit applicants to include in their permit applications the name, location, and contact information of a proposed repository that is willing and able to accept the collection that would be made under the permit, if the permit were approved. Absent this information, the permit application is incomplete and will not be approved.

33. Comment: Commenters stated that a permit should not be required to collect vertebrate fossils that are more numerous, such as shark teeth, or to collect fossils for educational purposes.

Bureau response: The bureaus recognize that some vertebrate fossils are common, but the Act does not provide for the casual collection of common vertebrate fossils. Since the casual collection provision of the Act is for common invertebrate and plant paleontological resources only, the collecting of all other paleontological resources must be conducted under a permit (see § 49.100).

34. Comment: Several commenters requested clarification on when bureaus would require a permit for paleontology-related activities other than collection of paleontological resources, including whether Federal Government personnel would be required to obtain a permit before collecting paleontological resources.

Bureau response: In response to the comments, the bureaus clarified the language in the final regulations at 43 CFR 49.100(b) to state that permits issued under the authority of the Act and the regulation may be required for paleontological research or consulting activities that do not involve collection. Bureau policy and guidance will define this process as warranted. The final regulations retain the requirement for Federal Government personnel, as well as agents and contractors, to obtain a permit or other type of bureau authorization prior to collecting paleontological resources because the Act does not exempt such personnel from the permit requirement of the Act. Permits, whether issued to agency staff, professional or amateur scientists, or project consultants, serve the important functions of tracking paleontological resources (in both the field and in collections) in order to further paleontological knowledge and public education.

35. Comment: Commenters stated that repeatedly applying for a permit for the same project would be burdensome and suggested that the regulations should provide for annual permit renewal.

Bureau response: The bureaus agree. Permit applicants are required to provide dates of the proposed work in their permit applications so that Federal land managers may issue a permit with the appropriate duration. The final regulations at § 49.130(a) also provide for permit modification, which would include permit renewals when an approved project takes longer than originally anticipated.

36. Comment: Many commenters expressed frustration that the permitting requirements and process in the proposed regulations were too restrictive, cumbersome, potentially slow, and exclusionary.

Bureau response: The permit requirements in these regulations closely track the conditions provided in the Act. These requirements ensure that collection, research, and consulting activities are conducted in a manner consistent with the purposes of the Act as well as other laws and directives that apply to Federal lands and resources.

37. Comment: Many commenters suggested less stringent applicant qualification requirements. They stated that persons without advanced degrees or formal paleontological education, such as amateur and avocational paleontologists and graduate students, should be able to receive permits. Other commenters stated that applicant qualifications under the DOI regulations should be consistent with application qualifications under the Forest Service regulations.

Bureau response: In response to the comments, the bureaus phrased the final regulations at 43 CFR 49.110 to enable permit applicants to demonstrate education, training, and experience appropriate to the proposed project rather than requiring a graduate degree. The bureaus recognize that many amateur and avocational paleontologists possess a profound knowledge of these resources. In addition, graduate students and other types of scientists such as biologists and geologists may be sufficiently knowledgeable to collect paleontological resources under certain

circumstances. Broadening the range of qualifications for applicants will enhance partnerships with the bureaus and offer greater opportunities for scientific knowledge and public enjoyment. The qualification requirements are very similar to those in the Forest Service regulations. Under both sets of regulations, the bureaus will evaluate a person's qualifications in relation to the complexity and context of the proposed project.

Additionally, a provision in the final regulation (§ 49.105(b)) allows individuals who do not meet the qualification requirements described in § 49.110 to perform work under an issued permit when appropriately supervised by a permittee.

38. Comment: Several commenters stated that the proposed regulations required unrealistically specific permit applications, and that permittees do not always know what they will find before they find it.

Bureau response: The regulations provide that bureaus can modify permits in response to changed circumstances, including unanticipated discoveries.

39. Comment: One commenter stated that the requirement for a permit applicant to demonstrate experience in ''planning'' was too vague.

Bureau response: The bureaus agree and removed that requirement from the list of permit application requirements.

40. Comment: One commenter asked how the bureaus would consider an applicant's ''past performance'' in a permit application.

Bureau response: In response to the comment, the bureaus added language to § 49.110(b) to explain that ''past performance'' includes compliance with previous permits, relevant civil or criminal violations, or relevant current indictments or charges.

41. Comment: One commenter asked whether the bureaus would charge fees for permits.

Bureau response: The Act does not provide authorization for the bureaus to charge fees (or cost recovery) for permits, but individual bureaus may charge fees under separate authorities. Because the bureaus view permittees as partners who provide scientific information and inventory of paleontological resources to the bureaus in furtherance of the Act, it is reasonable not to charge fees for permits.

42. Comment: Several commenters asked for more standardization of the permit applications and form instructions among the bureaus, and expressed concern about the use of the NPS's Research Permit and Reporting System (RPRS) for collection and disturbance on NPS-administered lands. Other commenters recommended deleting or easing some of the permit application requirements.

Bureau response: In response to the comments, the final regulations contain simplified and reduced permit application requirements. The four DOI bureaus have standardized the process as much as possible. Applicants can now submit very similar or identical information to each bureau. Applicants use a standardized paleontology permit application to apply for a permit to collect resources on lands administered by BLM, Reclamation, or FWS. When proposing to conduct these activities on lands administered by NPS, permit applicants use RPRS, currently accessible at *https://irma.nps.gov/rprs/.* Even though the bureaus have different permitting systems, the information required of permit applicants is consistent. It is the permit applicant's responsibility to determine which bureau has jurisdiction, use that bureau's permit application form, and respond to that bureau's requests for information in a timely manner.

43. Comment: One commenter asked whether a bureau has the discretion to ask permit applicants for more information than that listed in the regulations. Another commenter noted that detailed information in the application, even if not used to issue the permit initially, might be helpful at a later point.

Bureau response: The bureaus agree that detailed information is helpful. Per § 49.115, as a follow-up to the application initially submitted, applicants may be asked for clarification when necessary for Federal land managers to determine that the applicant is qualified to conduct the proposed work, that the application is complete, and that the proposed activity meets the requirements of the Act and the final regulations.

44. Comment: Several commenters suggested that permit applicants should be able to include in their permit applications a request for permission to disclose specific locality information. Another commenter asked for clarification of the term ''specific locality.''

Bureau response: Subpart A of the final regulation defines the term ''specific locality.'' Applicants may request permission to disclose specific locality information in their permit application, as part of their project description.

45. Comment: Several commenters asked about the compliance requirements for permits and suggested that paleontological collection permits should be subject to the same terms and conditions as permits for other Federal land uses.

Bureau response: The regulations at 43 CFR 49.120 explain how the bureaus will make a decision about permit applications. A decision about a permit application is a Federal agency decision and as such is subject to compliance requirements in accordance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, Executive Order 13175, and other authorities. Like any use of Federal lands, the bureaus would impose compliance requirements, including, but not limited to, any provisions for reducing environmental impacts associated with a paleontological permit application and proposed project, based on the scope of the proposed activities and the reasonably foreseeable impacts of those activities. The final regulation includes terms and conditions for approved paleontological permits that are applicable to those resources and that implement the Act.

46. Comment: Commenters proposed ''same-day'' permits for surface collection of common fossils and 30-day permits for projects involving excavation, and an estimated timetable for processing permit applications.

Bureau response: The permitting provisions in the regulation are consistent with the purposes of the Act and do not impose new requirements that would cause permitting to take more time than current permitting requirements. Adding deadlines to these provisions may hinder the bureaus' ability to comply with applicable laws, regulations, executive orders, and other requirements, and therefore are not included in the regulation.

47. Comment: Several commenters asked for more detail in the permit approval process, specifically for adding in multiple permit levels, categories of site protection, fossils available for collection, curation requirements, publication requirements, and other management issues.

Bureau response: Permits are situation-specific. The bureaus, therefore, have streamlined the regulatory framework appropriate to management of this resource across a variety of possible circumstances. Adding additional categories to the final regulations would add complexity and delays to the permit application, evaluation, and decision-making process. Permit applicants are encouraged to submit as much information as possible to help the Federal land manager understand the

proposed project, evaluate potential impacts, and make a decision about the application.

48. Comment: Commenters asked the bureaus to consider other existing or recent paleontological permits, as well as other competing uses of Federal land, when evaluating a new application to avoid conflicts among permittees.

Bureau response: Federal land managers consider all of the uses of the land, including competing uses and resource management concerns, when evaluating proposed use of Federal lands. However, the Act does not provide exclusivity or allow ''claims'' for paleontological resource use collection.

49. Comment: The bureaus received many comments about the role of repositories in the permit application and approval process. Several commenters urged consultation and an agreement between the permittee and repository prior to permit approval. Another commenter urged the bureaus to have a list of pre-approved repositories from which the applicant can pick, and to handle the repository approval process prior to and separately from the permit approval process. Other commenters suggested that repositories should be able to agree ''in principle'' to accept the collection, and then be able to accept only part of a collection and refuse the remaining part, or even refuse the entire collection.

Bureau response: In response to the comments, the bureaus worded the final regulation as concisely as possible in order to avoid imposing a one-size-fits-all approach, and instead to maximize flexibility for repositories, permittees, and the bureaus. The final regulations do not include repository approval in the permitting decision process, but instead simply require, as a condition for permit approval, that an approved repository will accept the collection in accordance with the terms and conditions included in the permit. This flexibility will allow bureau staff, repositories, and permittees to develop project-specific and collection-specific approaches while still adhering to the Act's instruction to deposit the paleontological resources collected under a permit into an approved repository.

50. Comment: Several commenters noted that the proposed collection needs to be acceptable to repositories. Commenters stated that it is the permittees' responsibility to collect only those fossils that he/she is sure will be accepted by a repository, and that the written verification from the proposed repository should include the right to accept or refuse all or portions of the collection based on compliance with the repository's mission, policy, and scientific and collections standards. At the same time, another commenter stated that written verification is not necessary for employees of that repository.

Bureau response: Deciding which paleontological resources to select for long-term preservation in the approved repository must be the result of collaboration between the permittee, the repository official, and the Federal land manager. This is why the agreement between the applicant and the repository official must make clear what the repository will, and will not, accept. The Federal land manager will then limit the permit authorization to what the permittee and repository official have agreed to collect and subsequently accept at the repository.

However, the bureaus recognize that collecting activities often result in collections or portions of collections that do not warrant long-term preservation and that such preservation would impose unnecessary burdens on both the repository and the bureau. This is why provisions at § 49.200(c) allow the Federal land manager, with input from the permittee and repository official, to determine that some collections, or portions of collections, do not meet the Act's requirement of furthering paleontological knowledge, public education, or the management of paleontological resources, and therefore may be assigned to working collections.

51. Comment: Permit applicants should not be involved in the approval of a repository.

Bureau response: Section 49.205 clarifies that it is the role of the bureaus to review and approve repositories. The bureaus recognize that a permittee should not act as the repository official on the same permit and have clarified this in the final regulation at § 49.125(a)(10).

52. Comment: Permittees should be required to furnish copies of their publications to the bureaus that permitted the project.

Bureau response: The bureaus have always required submission of copies of publications and reports that are generated on the basis of permitted activity. The final regulations include clarifying language to ensure that this practice continues.

53. Comment: Commenters asked about the expiration date and filing deadlines for annual reports.

Bureau response: The final regulation states that reports must be filed in accordance with the dates and formats specified in the permit.

54. Comment: One commenter stated that the regulations should limit bureaus' discretion.

Bureau response: The final regulations provide an appropriate balance of enumerated criteria and discretion. Federal land managers are responsible for addressing a wide range of resources, uses, and stakeholders, in addition to paleontological resources and paleontologists.

55. Comment: Many commenters expressed concern about the requirement to obtain written permission from the Federal land manager before releasing, disclosing, or sharing information about the specific location of paleontological resources.

Bureau response: Section 6304(c)(3) of the Act expressly instructs that permittees and repositories may not release specific locality data without written permission from the Secretary. The Act tasks the Secretary (acting through the bureaus) with implementing a balance between disclosure in order to enhance scientific access and confidentiality in order to protect resources from theft and vandalism. The bureaus recognize the importance of sharing data in order to enhance scientific discourse and continue to allow appropriate sharing of this data. However, the regulations do not elaborate beyond the Act's stated provisions so that each bureau may develop its own guidance on the confidentiality of paleontological locality and location data according to its unique mission and authorities. When appropriate, the permit will define the terms of release, disclosure, or sharing of specific location information. The Federal land manager may revise the permission when warranted, either through a permit modification or in specific instructions, for example in comments to draft reports that disclose location information.

56. Comment: One commenter asked whether the bond that may be required under 43 CFR 49.125(c) may include reimbursement of bureau costs. Another commenter asked for more specificity about the bonding requirement.

Bureau response: The purpose of a bond is to cover bureau costs in the event of permittee non-performance. A bond may be required depending on the scale of a permitted activity. Individual bureau guidance will provide clarification regarding bonding.

57. Comment: Several commenters stated that paleontological resources collected under a permit should become the property of the repository that houses the collection.

Bureau response: The Act expressly states that paleontological resources collected under a permit remain the property of the United States. The final regulation therefore retains this same statement.

58. Comment: Several commenters addressed the costs of fieldwork, preparation, and curation. Some argued that permittees should not be responsible for all of the costs associated with the collections that they make. Others stated that the bureaus, the repositories, and or project proponents should assume these costs. Commenters suggested that a budget for costs assumed by permittee, repository(ies), a project proponent, or bureaus should be resolved prior to permit approval.

Bureau response: In response to these comments, the final regulations require permit applicants to develop cost projections for the proposed work and state that permittees are responsible for the costs of the project if approved, unless these costs are allocated differently in a separate written agreement (such as a contract between a paleontological consulting company and a project proponent). Also in response to the comments, the final regulations do not hold permittees responsible for long-term curation costs, again unless this is addressed in a separate written document. Thus, the final regulations allow for other parties to be responsible for long-term curation costs.

59. Comment: One commenter suggested that permittees should acknowledge the repository as well as the permitting bureau in any report, publication, or other media resulting from the work performed under the permit.

Bureau response: The bureaus agree with the comment; the final regulation incorporates this requirement into the terms and conditions for an approved permit.

60. Comment: Several commenters were concerned about the concept of ''working collections.'' These commenters asked about the legal implications under the Act and Federal property law, the use of working collections, and the implications for deaccessioning (removing Federal property from a museum).

Bureau response: The final regulation reaffirms that all paleontological resources collected from Federal land under a permit remain U.S. property and must be deposited into an approved repository. However, the bureaus recognize that not all collected fossils are worthy of long-term preservation. Provisions at § 49.200(c) allow the Federal land manager, with input from the repository official and permittee, to determine that a collection, or portion of a collection, does not further paleontological knowledge, public education, or management of paleontological resources and therefore may be assigned to a working collection. The definition of a working collection, provided at § 49.5, is consistent with guidance in the Departmental Manual in part 411 and all working collections should be managed in a manner consistent with departmental and, as appropriate, bureau policy.

61. Comment: A commenter asked for clarification that a permit's terms and conditions apply only to the project and activities authorized under that permit.

Bureau response: The bureaus made this clarification at § 49.125(b). Before the bureau approves a permit, permit applicants should review and agree to these terms and conditions.

62. Comment: Several commenters asked that permittees, not repositories, should be responsible for providing bureaus with DI Form 9007, ''Repository Receipt for Collections (Paleontology).''

Bureau response: The bureaus made this clarification at § 49.125(a)(10).

63. Comment: One commenter suggested that the bureaus should address a potential violation of a permit term or condition by modification of the permit, while they should address an actual violation of a permit term or condition by suspension of the permit.

Bureau response: The bureaus agree with the comment; the final regulation at § 49.130(a) clarifies that bureaus may modify permits if there is a potential or actual violation of a permit term or condition.

64. Comment: One commenter asked how permits can accommodate new field discoveries. Another commenter asked about the consequences of a permittee failing to meet a deadline in the permit, such as depositing a collection into an approved repository.

Bureau response: The bureaus may modify permits. For example, if a permittee makes a discovery or cannot meet a particular deadline, he or she may request a modification to the permit in order to accommodate that discovery or to change the deadline to a different date. Other consequences for the violation of permit terms and conditions are permit suspension, revocation, or the assessment of penalties.

65. Comment: Several commenters asked why the proposed regulations provided for verbal or written notification of permit modification, suspension, revocation, or cancellation, but then provided that the permit modification, suspension, revocation, or cancellation was effective only when the permittee receives the written notification.

Bureau response: The purpose of the verbal notification is to provide early notice to the permittee and prompt correction of the issues that led to the permit modification, suspension, revocation, or cancellation. However, the permit modification, suspension, revocation, or cancellation becomes effective upon the permittee's receipt of the written notification.

66. Comment: One commenter asked for more detailed methodology in § 40.130 to justify bureau decisions about permit modification, suspension, revocation, or cancellation and avoid challenges from aggrieved permittees.

Bureau response: This section explains the reasons for permit modification, suspension, revocation, or cancellation but also maintains flexibility to respond quickly to the conditions or events that necessitate the modification, suspension, revocation, or cancellation. These events may be emergencies, such as fires, landslides, health issues, or accidents, or non-emergencies, such as some permit violations, but in all cases bureau personnel need to be able to address the situation as needed and efficiently. Under § 49.140, permit-related decisions may be appealed.

67. Comment: One commenter noted that the proposed rule was inconsistent about the consequences for violation of a term or condition of a permit. While § 49.125(e) stated that violations of permit terms may subject the person to penalties, § 49.130(a)–(c) stated that violations of permit terms and conditions may result in permit modification, suspension, or revocation.

Bureau response: The bureaus agree and worded § 49.125(e) to clarify that a violation of permit terms and conditions may result in permit modification, suspension, revocation, and/or penalties. This language provides flexibility and avoids the possible pitfalls of a one-size-fits-all consequence.

Subpart C—Management of Paleontological Resource Collections

68. Comment: One commenter recommended that approved repositories should assign globally unique identifiers (GUIDs) to collected specimens according to data management best practices and submit the GUID assignment information to DOI. The repository-assigned GUIDs would be incorporated into the DOI museum collections data management systems, and repository-assigned GUIDs

would be required when conducting collection inventories and inquiries.

Bureau response: The bureaus appreciate the comment. However, the comment proposes a procedure that is not within the scope of the Act and these regulations but instead is within the scope of Departmental museum collections policy.

69. Comment: Comments asked about the rules applicable to working collections, specifically ownership, disposition, and standards.

Bureau response: In response to these comments, the bureaus clarified the definition of working collections at § 49.5.

70. Comment: Several commenters expressed confusion about the January 6, 2017, date and recommended changing the text to read, ''The curation of paleontological resources collected from Federal land before the implementation of the final rules is governed by the terms and conditions of the original collection permit or agreement.''

Bureau response: The bureaus agree with this comment and clarified the regulation at § 49.200(b) to incorporate the recommendation. In addition, § 49.200(a) clearly states that a collection made pursuant to a permit issued under the final regulations must be deposited in an approved repository. This section does not state that it applies to preexisting collections.

71. Comment: Commenters submitted a wide variety of comments regarding the process, timing, and criteria for selecting a repository for the paleontological resources that are collected under the Act and these regulations. One commenter questioned the need for approved repositories at all. Commenters expressed concern that the repository approval process would be burdensome. Another commenter suggested that permit approval should be separate from repository approval, and asked the bureaus to maintain a list of already-approved repositories and either allow the permit applicant to choose from that list, or inform the applicant that he/she will need to wait for the permit pending approval/denial of repository, which would be a wholly separate action. Other commenters were concerned that repositories may initially agree to accept a collection, but then change their minds based on space considerations, resources, or other factors. Commenters also stated that permit applicants and permittees do not control these types of decisions. These commenters suggested that repositories should be allowed to accept custody, decline custody, or provisionally accept custody of the collection before the collecting permit is issued.

Bureau response: The Act specifically requires the deposit of all paleontological resources collected under a permit in an approved repository, and so the final regulations contain this requirement. Each permit applicant identifies a repository that is willing to accept the proposed collection. During the review of the permit application, the Federal land manager determines whether the identified repository meets the standards set forth in § 49.205. The bureaus do not have a single list of pre-approved repositories to serve as a ''menu'' for permitting; rather the Federal land manager approves the deposit of the proposed collection under that permit into either the identified repository or another repository that meets those standards. The bureaus can approve repositories at any time.

72. Comment: Commenters noted that the process described in the proposed regulations for depositing paleontological resources would actually work against timely placement of the resources into the repository.

Bureau response: The bureaus agree and streamlined the language at § 49.210 to clarify that agreements between repositories and the bureaus can be reviewed, modified, or developed on a parallel track with the deposit, and not necessarily prior to the deposit.

73. Comment: Commenters alleged that the process in the proposed regulations for approving a repository afforded too much discretion to the Federal land managers.

Bureau response: In consideration of this comment, the bureaus revised the repository approval language at § 49.120 and § 49.205 to clarify that the Federal land manager will work with the permit applicant, the proposed repository, and if necessary other repositories to determine which repository to approve for the proposed collection.

74. Comment: Commenters stated that repositories for collected resources should be situated near the area from which the resources were extracted.

Bureau response: The bureaus agree that geographic proximity to the collecting site is an important consideration, as well as other factors such as repository capability and capacity. The Federal land manager would consider all of these factors when evaluating which repository should be approved to receive a collection.

75. Comment: Several commenters pointed out that there may be situations when, despite the best efforts of the permittee and the Federal land manager to ensure that all paleontological resources collected from federally administered lands meet the Act's criteria for collection (furtherance of paleontological knowledge, public education, or management of paleontological resources), there may be times when some of the collected resources do not meet these criteria.

Bureau response: The final regulations accommodate this situation at § 49.200 by allowing these paleontological resources to be placed in working collections, which are available for research, education, or consumption, but are not cataloged into a permanent collection.

76. Comment: Commenters stated that permittees, not repositories, should be responsible for filing DI Form 9007 (Repository Receipt for Collections (Paleontology)) with the Federal land manager, since only permittees can verify that all of the specimens under a permit were actually deposited. Another commenter suggested that the repositories should be required to maintain a copy of DI Form 9007 (Repository Receipt for Collections (Paleontology)) in its permanent files.

Bureau response: The bureaus concur with both comments. The permittee, not the repository, is responsible for submitting DI Form 9007 to the bureau. It is standard practice for repositories to maintain a copy of DI Form 9007 as part of receiving the collection.

77. Comment: Commenters noted that the repositories that house Federal paleontological collections bear a large financial burden for storage, curation, and reporting requirements that, under current regulations and practices, are not adequately covered by grants or permittees. They also asserted that the proposed regulations contained new management and reporting requirements that would increase this financial burden. For example, several commenters stated that the proposed regulations would require repositories to ''track'' every use or request for use of a specimen. Another commenter stated that the bureaus' requirements and oversight would be duplicative with museums' current management standards. They suggested several different options for reducing this burden such as eliminating some paperwork requirements, asking the Federal Government or the parties who initiate the collection to assume more of the cost, and having the authority to charge fees.

Bureau response: The regulations have been worded to ensure that paleontological resources are collected under permit only when that collection would meet the Act's criteria for permitted collection (furtherance of

paleontological knowledge, public education, or management of paleontological resources), and to ensure that the permit applicant understands at the outset that he or she will be responsible for the short-term costs of preparing the collection for curation. However, the regulations do not assign responsibility for long-term curation costs to the permittees. The bureaus also worded the regulation to clarify that the standards for curation of any paleontological resources collected under permit pursuant to these regulations are the same as the standards that already apply to existing collections, and therefore repositories should readily meet these standards without experiencing additional burdens. Finally, § 49.215 is worded to broaden and clarify repositories' ability to recover their costs by charging reasonable fees, consistent with applicable law, for the costs they incur when curating collections made under the Act.

78. Comment: One commenter asked who assumes responsibility for curation costs after the original permittee retires.

Bureau response: The language of the final regulations allows permittees, repositories, and bureaus to determine appropriate fee structures depending on the nature of the activity and the reason for its collection (see § 49.215).

79. Comment: One commenter asserted that repositories already meeting high standards of fossil curation should be exempt from bureau oversight. However, other commenters suggested the opposite, noting that Federal fossils housed in approved repositories are in effect long-term loans, and that the permittee and approved repository should be required to receive bureau approval for anything done to the fossils (*e.g.,* molding and casting, chemical analyses, consumptive sampling, CT and laser scanning) that was not authorized in the original permit. Another suggestion was that the bureaus should provide repositories with blanket approval for a set period, then decide whether to renew that approval based on performance and reports in order to help agencies keep repositories accountable while reducing paperwork. Other commenters stated that individualized agreements for each collection would be too burdensome for the repositories, and that repository agreements would be more effective and less burdensome if they covered multiple collections.

Bureau response: To address these comments, the regulation at § 49.210(a) states that an agreement between a bureau and repository can, and should, cover multiple Federal collections. The agreement may last for a few years and serve as ''blanket approval'' for various actions.

80. Comment: One commenter stated that repository agreements are between permittees and approved repositories.

Bureau response: Section 49.210 describes the content of agreements between the bureaus and the approved repositories. Permittees often have their own curation agreements with repositories in which the repository commits to accepting the collection, often in return for payment.

81. Comment: Several commenters recommended that DOI transfer all stewardship responsibilities, authority, and custody of collections to approved repositories, particularly since repositories expend funds on curation.

Bureau response: The Act specifically states that paleontological resources collected from Federal lands will remain the property of the United States. The bureaus develop agreements with repositories in order to meet shared goals.

82. Comment: One commenter recommended that DOI should adopt best practices for digitally managing and mobilizing collections records through the workflows and standards already in place in repositories' data management systems.

Bureau response: The bureaus agree. The Act requires collaborative efforts with non-Federal partners and the scientific community where possible. The Department is currently developing policy for digitally managing museum records. Much of this effort is already underway in collaboration with repository partners in order to develop shared best practices.

83. Comment: One commenter urged the bureaus to standardize frequency, methods, and reporting process for inventories.

Bureau response: Standardized inventory procedures are contained in departmental guidance at 411 DM, and bureaus follow it as feasible within available resources.

84. Comment: One comment stated that publications and reports are not the repository's responsibility.

Bureau response: The bureaus agree in part and disagree in part. Where researchers study a specimen at that repository, they, rather than the repository, are responsible for making their publications or reports available to the bureau (see § 49.210(b)(10)). Repositories, however, are responsible for submitting information concerning inventory to the bureaus (see § 49.215(a)(3)).

85. Comment: Several commenters suggested that the regulations should provide repository staff with upfront approval to conduct research-related activities including reproduction and consumptive analysis. Other commenters suggested that the regulations should direct the bureaus to transfer decision-making autonomy for these activities to repository staff in permits and/or bureau-repository agreements. Several commenters suggested that the regulations should contain detailed definitions of the term ''reproduction'' and ''consumptive use'' by adding explanations of traditional versus digital reproduction, as well as types of alterations such as glues, putties, molding, and casting. Another suggested that the regulations could provide upfront blanket approval for non-invasive, non-consumptive types of reproduction but require case-by-case approval for other types of research activities.

Bureau response: Neither the Act nor other statutes authorize the bureaus to delegate a broad one-size-fits-all grant of decision-making authority regarding the topics of reproduction and consumptive analysis to repository staff. The bureaus also do not agree that defining the scope of repository decision-making is an appropriate topic for collection permits, since a permit is a contract between the bureau and the permittee to which the repository is not a signatory. Instead, as authorized by Congress in section 6305 of the Act, repository decision-making and roles are more appropriately addressed in agreements between the repositories and bureaus.

If a repository agreement addresses the topic of reproduction or consumptive use, then case-by-case approval may not be necessary. Such agreements are a key component of responsible, transparent, and publicly accountable management. In response to comments, the bureaus added the term ''duties and responsibilities'' to § 49.210 to indicate that agreements may include, as requested by these commenters, upfront approval for various levels of reproduction and consumptive analysis.

86. Comment: Several commenters stated that, if collections are moved from one repository to another at bureau request, the burden of arranging and paying for the transfer should fall on the bureau, not on the repositories.

Bureau response: The bureaus believe that this topic should be addressed in bureau-repository agreements and that the regulatory provisions at § 49.210 are sufficiently flexible for such agreements to address these sorts of details.

87. Comment: One commenter suggested that the regulations should specifically state whether temporary loans of material from one institution to

another for research or exhibit purposes require approval from the Federal land manager. Another commenter suggested that loans should be addressed in a separate paragraph.

Bureau response: The bureaus concur with this point and added paragraph (b)(7) to the final regulations at § 49.210. This provision will motivate both parties to develop appropriate agreements early in the collection's history; such agreements are a key component of responsible, transparent, and publicly accountable management.

88. Comment: Section 49.215(a)(11) of the proposed regulations stated that agreements between the bureau and approved repository may include, as appropriate, a statement that ''employees of the repository will take no actions whereby any of the collection(s) shall or may be encumbered, seized, taken, sold, attached, lost, stolen, destroyed or damaged.'' Reviewers pointed out that collections can be destroyed or damaged by various curation actions such as preparation, molding and casting, photography, moving, and consumptive use. One reviewer suggested more positive wording.

Bureau response: The bureaus agree with all of these comments. Agreements between the bureau and approved repository may contain a statement that employees of the repository will work to preserve and protect specimens in their care using best professional practices. References to ''destroyed or damaged'' in the discretionary statement were removed.

89. Comment: Several commenters stated that the curatorial standards should not apply to teaching collections.

Bureau response: The final regulations include a definition of ''working collections'' in § 49.5 that includes fossils that are placed in a teaching collection or other public education facility. In addition, § 49.215 clarifies that the Department and bureau curation standards apply to the collections that are deposited and accessioned into approved repositories, but do not require the application of these standards to ''working collections.''

90. Comment: Several commenters requested clarification on some of the requirements for repositories, for example the scope of collections.

Bureau response: The bureaus reworded § 49.205(a)(2) to clarify that repositories have flexibility when demonstrating their ability to receive and store paleontological resources from Federal lands.

91. Comment: A few commenters asked whether permittees or repositories are responsible for submitting reports, and expressed concern about the lack of enforcement for this requirement.

Bureau response: Permittees are responsible for submitting reports to the bureaus describing the status of the fieldwork, collection, and research (see § 49.125). Repositories are responsible for reporting inventory results to the bureaus (see § 49.215). These reporting requirements are not new; permittees and repositories submit reports to bureaus already. The final regulations improve enforceability by listing reporting requirements as a condition of permit approval and as a topic in repository agreements. The purpose of these reports is to ensure that permittees, repositories, and the bureaus maintain accountability to the American public for the care and management of Federal paleontological resources. The final regulations simplify the reporting process for resources from lands administered by BLM, Reclamation, or FWS by incorporating the new DI Form 9006 (Paleontological Permit Report Cover Sheet). For activities conducted on lands administered by NPS, reports must be submitted under the existing NPS RPRS system.

92. Comment: A commenter alleged that submission of reports to the bureaus does not provide a value to science.

Bureau response: Reports provide information to the bureaus that is necessary in order to manage Federal paleontological resources using scientific principles and expertise and to maintain compliance with other Federal laws. Federal paleontological resource management is based on many considerations in addition to science. The bureaus believe that it is reasonable to require the persons and institutions who collect, study, and curate paleontological resources from federally administered lands to provide the bureaus and the American public with sufficient information to support and guide the bureaus' ongoing management, conservation, and public education regarding these resources.

93. Comment: Commenters stated that approved repository staff should be authorized to disclose specific location information based on current professional standards, best practices, and museum policy.

Bureau response: In the Act, Congress did not base disclosure on current professional practices, best practices, and museum policies; instead it based disclosure on a determination by the Federal land manager that disclosure would (1) further the purposes of the Act; (2) not create risk of harm to or theft or destruction of the resource or site containing the resource; and (3) be in accordance with other applicable laws. During the development of an agreement with a repository, the Federal land manager may include an authorization for the repository to disclose specific location information for a collection, if the Federal land manager has made the three-part finding for such disclosure (see § 49.210(b)(5), which states that repository agreements may address and guide the museums, researchers, and the bureaus in how confidentiality matters will be addressed). As professional paleontological organizations develop guidelines for establishing confidentiality in order to protect paleontological resources from theft or vandalism, bureaus may adopt some of these best practices as policy.

94. Comment: Several commenters asked about the ownership of collected specimens.

Bureau response: Collected specimens are Federal property. When the specimens are accessioned into museum collections, the ownership does not transfer to the repository; instead, the repository is holding the material in trust for the U.S. Government. When specimens are moved to working collections, they remain Federal property. Specimens collected under the casual collecting provisions of the Act and these regulations likewise remain Federal property but are largely not managed by the U.S. Government, except for the actions prohibited under the Act and subpart D of the regulations.

95. Comment: Many commenters were concerned that the authorized Federal official would not be qualified to determine which paleontological resources should be removed from a museum collection. One commenter proposed the following language, 'However, paleontological resources that have been accessioned into a long-term repository with permanent catalog numbers should not be removed without following that repository's deaccessioning policy, which will normally be to transfer the material to another permanent repository.'

Bureau response: The Federal land manager, not repositories, must make decisions about which fossils will be permanently preserved in museum collections. The Federal land manager will work in coordination with the repository official and other appropriate subject matter experts to remove resources from museum collections and place them into working collections when those resources are determined to be redundant, lack adequate associated

data, or otherwise do not further paleontological knowledge, public education, or management of paleontological resources.

96. Comment: How will collections be transferred from one repository to another?

Bureau response: In situations involving movement of the collection to another approved repository, the first repository would ship the collection to the second repository in accordance with the Federal land manager's instructions. The bureau would then modify the deposit agreement with the first repository and enter into a new agreement with the second repository.

Subpart D—Prohibited Acts

97. Comment: Several commenters asserted that the phrase ''should have known'' in § 49.300(a)(2) and (a)(3) is unclear and should be deleted or defined.

Bureau response: The ''should have known'' language cannot be deleted because the ''knew or should have known'' standard is contained in the PRPA. The bureaus believe that explaining the standard in this preamble with an example is more useful and appropriate than attempting to define the standard in the regulation.

Whether a person ''knew or should have known'' is an objective standard based on what a reasonable person would know or should know, in the exercise of due care and reasonable diligence and in consideration of the particular circumstances and context, about the facts that would make the person's acts prohibited under 43 CFR 49.300(a)(2) or (a)(3). For example, whether a person knew or should have known a paleontological resource to have been excavated or removed from Federal land under § 49.300(a)(2) or (a)(3) may depend on what the person would have known after conducting reasonably diligent inquiries and taking other reasonable measures to learn about the provenience of the resource before taking the actions described in paragraphs (a)(2) and (a)(3).

98. Comment: A commenter asked who determines whether a person ''knew or should have known'' that his or her actions are prohibited by subpart D.

Bureau response: To the extent, if any, that the commenter is suggesting that the person's knowledge of the law—the person's knowledge that his or her conduct violated the law—is the key consideration, this is not accurate. The key consideration under the ''knew or should have known'' standard, which is found in paragraphs (a)(2) and (a)(3) but not paragraphs (a)(1) and (a)(4), is knowledge of the facts that would make the person's acts prohibited.

Whether the person committed a prohibited action is determined through the process of bureau investigation and in some cases presentation to a court or the Office of Hearings and Appeals, Department of the Interior. The Federal land manager works with law enforcement personnel, resource specialists, and other subject matter experts in this process.

99. Comment: One commenter asked the bureaus to delete the language that prohibits the sale or purchase of fossils from Federal lands, because it restates the previous regulatory language.

Bureau response: Each of the paragraphs in § 49.300 describe different actions and are based directly on the Act and, therefore, need to remain in the final regulation.

100. Comment: One commenter asked about the consequences for a person who buys or receives a paleontological resource that, unbeknown to that person, is from Federal land.

Bureau response: Under the language of § 49.300(a)(2) and (a)(3), if the person should have known that the resource is from Federal land, or in other words a reasonable person would have known this fact after making a reasonable effort to learn the provenience (the *in situ* location) of the resource before buying or receiving it, then the person who bought or received the resource has committed a prohibited act and may be subject to civil and/or criminal penalties. If, on the other hand, the person makes a reasonable effort to learn more about the resource before buying or receiving it, but despite that effort does not know and has no reasonable basis to know that the resource is from Federal land, then that person has not committed a prohibited act and would not be subject to civil and/or criminal penalties.

101. Comment: A commenter asked how the bureaus would monitor for violations and enforce the Act.

Bureau response: The bureaus will manage for violations of the Act and regulations as any other resource investigation by professional law enforcement staff working closely with resource specialists and other agency personnel. Bureaus may issue citations to persons when law enforcement personnel have probable cause to believe that such persons committed a prohibited act. In some situations, the case may go before a magistrate.

102. Comment: A large number of commenters stated that the bureaus should support, not penalize, amateur collecting.

Bureau response: Congress and the bureaus agree. Language in the final regulation reinforces that the bureaus support amateur paleontology. These provisions address public education and outreach, collaboration with various communities, and casual collecting. As an example, NPS engages in a partnership with the Paleontological Society and Society for Vertebrate Paleontology to create a program for professional, student, and amateur paleontologists to assist with paleontology-related projects in parks. Amateur collecting can readily occur in accordance with the Act and the final regulations.

103. Comment: One commenter asked about the consequences for educators, including paleontologists, using fossils collected from public land as educational tools.

Bureau response: If the commenter is referring to fossils collected prior to enactment of the Act, then the laws and regulations applicable at that time will still apply to those fossils, rather than the Act and the final regulations. If the fossils were collected after enactment of the Act, there will be no adverse consequences if the educator collects the fossil in accordance with the Act and this regulation. If, on the other hand, the educator collected the fossils in violation of the Act and these regulations, then that educator may be subject to civil or criminal penalties.

104. Comment: A commenter suggested that the regulation should include a provision allowing persons who collected or obtained paleontological resources in violation of the Act and the regulations to return those resources to the Federal land manager without penalty.

Bureau response: In response to this comment, the final regulations allow persons who collected or obtained paleontological resources in violation of the Act and the regulation to return those resources to the Federal land manager without penalty, if deemed appropriate by the Federal land manager (see § 49.300(c)). The Federal land manager will determine the details of the return (*i.e.,* when, where, how, etc.).

Subpart E—Criminal Penalties

105. Comment: One commenter stated that the regulations would not prevent vandalism.

Bureau response: The bureaus agree that it is impossible to prevent all vandalism and theft of paleontological resources on Federal lands. Publication of the list of prohibited acts in subpart D (which include damage, altering, and defacing), the criminal penalties in subpart E, and the civil penalties in

subpart F is expected to improve the public's understanding of impermissible activities and, in turn, significantly reduce their occurrence. In addition, other provisions of the Act and the final regulations emphasize increased public education, coordination among the bureaus, and increased work with volunteers including amateur paleontologists to support inventory, monitoring, and educational outreach. These provisions are likely to reduce paleontological resource theft, vandalism, and other damages.

106. Comment: Although one commenter asserted that the regulations would require increased law enforcement presence, another commenter contended that the cost of implementing the regulation and Act, including law enforcement, would be too high.

Bureau response: In the short term, bureau staff will be implementing the Act and the final regulation. As the bureaus identify increasing need, they will seek to work with additional resources, personnel, volunteers, and partner organizations. For example, NPS works with the Paleontological Society and the Society of Vertebrate Paleontology to foster increased opportunities for volunteers and amateurs to assist the NPS with paleontological projects.

107. Comment: A commenter stated that theft and vandalism of fossils are a non-critical issue.

Bureau response: The Act explicitly prohibits, with criminal penalties, theft and vandalism of paleontological resources. 16 U.S.C. 470aaa–5. The Act requires the bureaus to issue regulations to carry out the provisions of the Act. 16 U.S.C. 470aaa–9. As a result, the bureaus are required by law to prohibit the theft and vandalism of paleontological resources. Notwithstanding this legal mandate, the bureaus believe that theft and vandalism are a real and present threat to the integrity of paleontological resources on Federal land. For example, the NPS has documented 861 incidents of paleontological resource crimes (theft and vandalism) within 24 NPS units between 2005 and 2014.

108. Comment: One commenter suggested that the bureaus should apply criminal penalties in the final regulations retroactively, but others recommended that criminal penalties under the Act should be effective only upon the promulgation of the final regulations.

Bureau response: Criminal penalties under the Act became effective on March 30, 2009, and are applicable prior to the effective date of the final regulation. The bureaus do not have the authority to apply the criminal penalties retroactively—*i.e.,* prior to the passage of the Act. The bureaus may prosecute paleontological resource theft and other crimes that took place prior to March 30, 2009, under other authorities that were in effect at that time and that continue to be in effect.

109. Comment: One commenter suggested that the bureaus should penalize persons who engage in scientific misconduct under existing Federal rules and policies rather than under the Act and the final regulations.

Bureau response: Congress, in the Act, did not mention or exempt scientific misconduct; therefore, the bureaus disagree with the commenter. In the Act, Congress listed prohibited actions and authorized penalties for persons who engage in those actions. For example, collection of vertebrate fossils without a permit on BLM land is a prohibited act. So is collection under a permit but not complying with the terms and conditions with that permit. If a collector or permittee engages in those actions, then he or she may be subject to penalties.

110. Comment: Several commenters contend that the regulations penalize children and other innocent or curious persons who simply pick up fossils, and asked about the effects of the regulations on the use of fossils as an effective motivational learning tool for science and public education.

Bureau response: Picking up paleontological resources is casual collecting, as defined and allowed under subpart I of the final regulations. Casual collecting on lands administered by BLM and Reclamation in compliance with subpart I is allowed. Casual collecting on lands administered by NPS and FWS is not allowed and may be subject to civil or criminal penalties. The Federal land manager and prosecutor have discretion whether to seek the imposition of penalties, and the final regulations now contain provisions that allow the return of paleontological resources collected or obtained in violation of the Act and the regulations without penalty, if deemed appropriate by the Federal land manager. These regulations will enhance the use of fossils as a learning tool for science and public education.

111. Comment: Several commenters asserted that it would be very easy for the bureaus to penalize adults who accidentally violate the regulation with fines and up to 5 years in prison.

Bureau response: A criminal violation must be committed ''knowingly,'' which means the act was done voluntarily or intentionally and not because of mistake or accident. Knowledge of the criminal statute governing the conduct is not required. However, both the Federal land manager and prosecutor have discretion whether to seek the imposition of penalties, and the final regulations now contain provisions that allow the return of fossils collected or obtained in violation of the Act and the regulations without penalty, if deemed appropriate by the Federal land manager.

Subpart F—Civil Penalties

112. Comment: One commenter alleged that this subpart addresses Notices of Violation as much as it addresses civil penalties, which is confusing.

Bureau response: The Notice of Violation (NOV) is the first step in the assessment of a civil penalty, and is part of ensuring due process for the person believed to have committed a violation. The NOV offers that person an opportunity to provide more information that the Federal land manager, law enforcement personnel, and potentially a court or the Office of Hearings and Appeals, Department of the Interior would use the NOV and any response to it, to determine whether a violation occurred and to assess an appropriate civil penalty.

113. Comment: A commenter supports criminal and civil penalties for violators of the final regulations, and asks if there is any private right of action as well.

Bureau response: The bureaus appreciate the supportive comment. Under the Act at section 6311(6) and the final regulations at § 49.20, third parties do not have the right to enforce the Act or the regulations.

114. Comment: One commenter expressed confusion about when the Federal land manager may issue an NOV.

Bureau response: In response to the comment, the bureaus worded § 49.505 to clarify when and how an NOV may be issued.

115. Comment: One commenter stated that there might be circumstances when the civil penalty proposed in the NOV pursuant to § 49.510 is actually, upon further consideration, too low and the bureau should adjust upward for the final assessment of civil penalty.

Bureau response: Section 49.525(e) authorizes the final assessment of civil penalty to be equal to, less than, or more than the proposed civil penalty. Likewise, under § 49.545(b)(2), the penalty assessed by an administrative law judge is not limited by the civil penalty that was assessed by the Federal land manager.

116. Comment: One commenter suggested adding the phrase ''of the paleontological resources and paleontological sites'' between the words ''repair'' and ''are'' in § 49.525(b) so that it would read: ''(b) Scientific and commercial values and the cost of response, restoration, and repair of the paleontological resources and paleontological sites are determined under subpart G of this part.'''

Bureau response: The bureaus agree and adopt the commenter's suggestion.

117. Comment: One commenter proposed alternative regulatory text regarding the procedures for determining scientific and commercial values provided under subpart G.

Bureau response: Subpart G provides criteria rather than procedures. However, to clarify the relationship of subparts F and G in response to the comment, the bureaus worded the final regulation at § 49.525(b) to state that civil penalties determined in accordance with subpart F are based in part on the values and costs derived in accordance with subpart G.

118. Comment: One commenter pointed out that the use of the word ''recovered'' in proposed § 49.525(d)(2) has been used in the past by unethical persons to mean ''covered back up.'' The commenter therefore suggested substituting the words ''salvaged'' or ''collected'' rather than ''recovered.''

Bureau response: The bureaus appreciate and agree with the proposed clarification, and substituted the word ''salvaged'' for the word ''recovered'' in the final regulation at § 49.525(d)(2).

119. Comment: One commenter noted that proposed § 49.525(e) directs the Federal land manager to determine ''scientific *or* commercial values, but should instead use the word ''*and.*''

Bureau response: The bureaus agreed but deleted this provision because it was redundant with § 49.525(b).

120. Comment: One commenter suggested adding the word ''and'' to the list at § 49.530.

Bureau response: The bureaus appreciate and adopt this clarifying edit.

121. Comment: A commenter asked for clarification of the acronym ''OHA.''

Bureau response: The final regulation defines and explains this acronym; ''OHA'' stands for the DOI Office of Hearings and Appeals.

122. Comment: One commenter asked for the phrase ''via certified mail, return receipt requested, or other verifiable delivery method'' to be added to § 49.535(c) and § 49.550(c).

Bureau response: The bureaus appreciate the clarifying edit and added the phrase ''via registered or certified mail, return receipt requested, or other delivery service method, delivery receipt requested.'' The bureaus have also added the option to file ''by electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the final assessment of civil penalty.'' This language is for consistency with OHA's development of an electronic filing system and associated updates to OHA regulations.

123. Comment: One commenter suggested that using the term ''Ad Hoc Board of Appeals'' in § 59.555(a) would eliminate the need to define ''Ad Hoc Board of Appeals'' in the definition section of the regulation.

Bureau response: Although the bureaus appreciate the comment and used the term ''Ad Hoc Board of Appeals'' in § 49.555(a) of the final regulations, the definitions section of the regulation retains the term for clarification.

124. Comment: One commenter suggested that the funds collected under subpart F (Civil Penalties) be available for preparation and curation of the paleontological resources that were the subject of the violation, in addition to the other purposes already listed in § 49.575.

Bureau response: The bureaus agree. The Act allows collected penalties to be used for various purposes, including ''to protect, restore, or repair the paleontological resources and sites which were the subject of the action, and to protect, monitor, and study the resources and sites.'' 16 U.S.C. 470aaa–6(d). Using the funds for preparation, stabilization, and curation falls within these purposes. These costs are also included in the calculation of scientific value under subpart G, which in turn is included in the calculation of civil penalties under subpart F and criminal penalties under subpart E. Therefore, once the penalties are collected, it is logical to apply them to defray those costs. The bureaus have worded the final regulation at § 49.575(a) to incorporate the suggestion.

Subpart G—Determining Scientific Value, Commercial Value, and the Cost of Response, Restoration, and Repair

125. Comment: Several comments indicated confusion about the purpose of determining scientific and commercial values, as well as the cost of response, restoration, and repair.

Bureau response: Determination of scientific and commercial values, as well as the costs of response, restoration and repair, in this regulation and under the Act are only relevant for the calculation of appropriate criminal and civil penalties under this regulation, and are not relevant for other management concerns. The final regulations now clarify this point via the addition of the phrase ''determined for criminal and civil penalties'' to the headings for §§ 49.600, 49.605, and 49.610 and the phrase ''[i]n determining a criminal or civil penalty'' to the text of those sections.

126. Comment: Two commenters requested the addition of ''preparation and stabilization'' costs to the list of costs associated with obtaining the scientific and educational information from the disturbed paleontological resource or site.

Bureau response: Preparation and stabilization are included in the costs of response and repair. However, the bureaus added the language as a clarification.

127. Comment: One commenter suggested distinguishing scientific value from paleontological value.

Bureau response: The final regulation only uses the term ''scientific value,'' not ''paleontological value.'' Thus, it is not necessary to discuss the latter term. Nonetheless, as stated in the preamble for the proposed rule, the bureaus view these terms as synonymous for purposes of the Act and the regulations.

128. Comment: One commenter suggested that the commercial value of a paleontological resource that is the subject of a prohibited act should not include preparation costs.

Bureau response: The final regulation at § 49.605 specifies that the commercial value of a resource is based on comparable sales, appraisal, market value, or like information. Thus, if the fossil that is the subject of a prohibited action has not been prepared, its commercial value will reflect the non-preparation. Conversely, if the fossil has been prepared, its commercial value will reflect that. If it is not possible to determine the commercial value, then the value will be based on § 49.600 (scientific value), which does include preparation costs, or the cost of response, restoration, and repair determined in accordance with § 49.610.

129. Comment: Commenters suggested clarifying revisions to § 49.610.

Bureau response: The bureaus agreed with these suggestions and incorporated the clarifications into the final regulation.

Subpart H—Forfeiture and Rewards

130. Comment: A commenter asked if a witness can earn a reward for reporting anything that looks like a violation of the regulations.

Bureau response: No, under subpart H, the bureaus may pay a reward to a

person who furnishes information that leads to an actual finding of a civil violation or to a criminal conviction.

Subpart I—Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands

Sixty percent of the comments received by the Department on the proposed rule addressed the provision of the Act that allows casual collection on lands administered by BLM and Reclamation. These comments overwhelmingly expressed a desire that these bureaus should allow the public to collect common non-vertebrate paleontological resources with the least amount of interference as possible. Both amateur and professional paleontologists shared this sentiment. The final rule accommodates many suggestions offered by the public.

131. Comment: Some commenters pointed out that the Act is clear about where casual collection is and is not allowed and that proposed § 49.800, stating that casual collection is not allowed on lands managed by the NPS or FWS, was superfluous, whereas other commenters did not recognize that casual collection is not allowed on those lands.

Bureau response: The bureaus have retained § 49.800 to affirm that casual collecting is not allowed on lands that are administered by the NPS or FWS.

132. Comment: Several commenters suggested that the NPS and FWS should ''formally relinquish'' authority over casual collecting because it is not allowed on NPS and FWS lands.

Bureau response: The NPS and FWS do not assert authority over casual collecting in areas administered by BLM or Reclamation, except in areas subject to an agreement between the bureaus, but all bureaus will continue to coordinate to ensure that casual collecting activities occur only in compliance with the Act and the final regulations.

133. Comment: Several commenters asked why BLM national monuments, national conservation areas, outstanding natural areas, or forest reserves would automatically be closed to casual collecting, when the Act does not provide that restriction.

Bureau response: The commenters are correct that the Act does not provide that restriction, and the bureaus have removed this provision. Under the Act, all BLM-administered lands are open to casual collection unless they are closed by statute or by area closures that are authorized by statute, such as those at 43 CFR subpart 8364, or by this regulation at § 49.40. These closures may apply to individual BLM national monuments, national conservation areas, outstanding natural areas, forest reserves, and other areas when provided for in the enabling legislation or presidential declaration for those areas, or when the BLM establishes an area as closed to casual collection through BLM's land use planning process set forth at 43 CFR part 1600.

134. Comment: Some commenters offered or suggested revisions to the definition of casual collection.

Bureau response: The definition of casual collection at § 49.810(a) is taken directly from section 6301 of the Act.

135. Comment: Several commenters suggested that the bureaus require prospective casual collectors to obtain a day license or simple permit, or to submit a post-collection report.

Bureau response: The Act specifically excludes casual collecting from the permit requirement, so the bureaus concluded that even a simple permit or license requirement for casual collecting would conflict with Congressional intent. While the bureaus recognize that these commenters are concerned about the impacts of casual collecting on scientifically important specimens, the regulations and existing statutes provide procedures for the bureaus to protect and preserve scientifically important paleontological resources, including non-vertebrate paleontological resources.

136. Comment: Many commenters refuted a statement in the proposed rule that explained that if a collector thought that a non-vertebrate fossil might be uncommon they must leave it in the field. Both amateur and professional paleontologists objected to this statement because the fossil might be lost and doing so would not be in keeping with the spirit of the Act. Additionally, many professional paleontologists who specialize in non-vertebrate fossils were adamant that amateur paleontologists are critical to the pursuit of paleontological science because they bring discoveries directly to them, rather than leaving fossils in the field.

Bureau response: The bureaus recognize that unless determined through a prior area closure or restriction, it is difficult to know whether a non-vertebrate paleontological resource is common, and so encourage collectors to share potentially important discoveries with knowledgeable non-vertebrate paleontologists to determine if the resource is not common, even when it means collecting the resource to accomplish this goal. The bureaus agree that amateur paleontologists are important to preserving paleontological resources, and therefore the bureaus recognize that these amateurs are partners in implementing the Act. In order to preserve important paleontological resources, the BLM and Reclamation will solicit input from both professional and amateur partners in order to determine whether the resource is common or not.

137. Comment: Some commenters expressed concern that under the Act casual collection on BLM-administered lands is more restrictive than prior to passage of the Act.

Bureau response: Prior to passage of the Act and enactment of these regulations, BLM allowed casual collecting as a matter of discretion on BLM-administered lands. Under the Act and § 49.805(a) of the regulation, casual collection of common non-vertebrate paleontological resources by the public is specifically authorized, so casual collection has expanded, not contracted. The Act provides for casual collection of reasonable amounts of common non-vertebrate paleontological resources on BLM-administered land for non-commercial use, except for areas closed by other statutes, executive orders, or in accordance with this regulation. Any closures or restrictions to casual collection must be in accordance with this regulation or other statutes.

138. Comment: A commenter wanted to know why rules for casual collection might be different on Bureau of Reclamation lands.

Bureau response: Prior to passage of the Act, Reclamation did not allow casual collection on lands that bureau administers. Section 49.805(b) allows the bureau to protect these lands for their intended use, water resource management. Therefore, casual collection is only allowed in designated areas following processes defined in Reclamation's public conduct rule at 43 CFR 423.

139. Comment: Some commenters asked for the option to sell collections made through casual use.

Bureau response: Both the Act and the final rule are clear that paleontological resources may only be collected for non-commercial purposes. A person may not sell a paleontological resource that they know or should know was collected on public lands.

140. Comment: Some commenters stated that the 25-pound reasonable amount limit should apply to the non-vertebrate fossils being collected, but not to the rock or matrix in which the fossils are embedded. Many also argued that to remove fossils from rock matrix in the field would require unreasonable

effort and would often damage the fossil that they were trying to collect. These respondents pointed out that the collection, while exceeding 25 pounds, would still only contain one or two non-vertebrate fossils. Applying the 25-pound limit to the entire rock would put many common non-vertebrate fossils out of reach of amateur collectors, or threaten the fossils because of the need for unnecessary field preparation.

Bureau response: Section 49.810(a)(2) of the final regulation states that a collector may remove up to 25 pounds of common non-vertebrate paleontological resources. This is the same amount included in the proposed rule. However, the bureaus have clarified that a collector may remove individual slabs or cobbles of rock that exceed 25 pounds in order to prevent the loss or breakage of otherwise good specimens. The collector may still create only negligible disturbance.

141. Comment: A large number of commenters were concerned about the proposed definition of negligible disturbance and pointed out that establishing areas of appropriate disturbance could not be one-size-fits-all and that using the regulations to establish predetermined areas would be arbitrary.

Bureau response: Section 49.810(a)(3) of the final rule states that negligible disturbance means little or no change to the surface of the land and minimal or no effect to natural and cultural resources. This definition is similar to the definition provided by the U.S. Forest Service in 36 CFR 291.5 under the same statute, and is consistent with the use of the term in other regulations for other BLM programs, including 43 CFR 2801.5, 2881.5, and 3819.5. The Federal land manager, using procedures at § 49.810(b), may establish specific limits to disturbance in specific areas.

142. Comment: Many commenters expressed concern about limitations to the types of hand tools that casual collectors may use, saying that such limits were too restrictive and exceeded the scope of the Act.

Bureau response: The definition provided at § 49.810(a)(5) removes the requirement that a hand tool must be small or limited to a hammer, trowel, or sieve. Regardless of the size of a hand tool, the person engaged in casual collection must not create anything greater than negligible disturbance as the final regulation defines this term.

143. Comment: Some respondents expressed dismay that even small power tools may not be used in support of casual collection because they are highly efficient and produce less disturbance than some hand tools.

Bureau response: The Act does not permit the use of power tools in support of casual collection. The definition provided at § 49.810(a)(5) retains the clarification that non-powered hand tool means without a motor, engine, or other power source.

144. Comment: Many commenters were concerned that casual collection could result in the overuse of an area or depletion of a paleontological resource.

Bureau response: Section 49.810(b) of the final rule states that the Federal land manager may establish additional limitations to casual collecting in order to preserve paleontological or other resources. Examples include reducing the maximum weight defined for reasonable amount, decreasing the threshold for negligible disturbance, limiting depth of allowable disturbance, limiting the use of specific tools, defining what is common in a specific area, establishing time or duration limits for collecting, establishing limits to avoid cumulative effects, and establishing parameters for safety. The bureaus may also establish limits to fossil collection through other area closure authorities, including § 47.40 of this regulation. The bureau will make public any information about limitations or restrictions to casual collection, identifying what the restrictions are and where they apply.

145. Comment: Some commenters expressed a desire to share their personal collections of non-vertebrate fossils with professional and educational groups, but fear having some or all of their collection confiscated by the bureaus because someone might determine that a fossil is not common.

Bureau response: The bureaus want to encourage collectors to share their collections, use them for educational purposes, and have them identified by qualified professionals. Therefore, the bureaus would determine that only non-vertebrate specimens found on public land that offer new information about the history of life on earth are not common. Avocational paleontologists are encouraged to build personal collections of common non-vertebrate paleontological resources collected in a manner consistent with this part.

146. Comment: Commenters wanted to know if academic institutions, such as geology departments, could build collections of casually collected non-vertebrate fossils.

Bureau response: Repositories, including geology departments and educational institutions, are encouraged to apply for a permit when they build collections of common non-vertebrate paleontological resources from lands administered by BLM or Reclamation. However, they may accept casually collected specimens in order to further public education. Repositories may accept these common non-vertebrate specimens for teaching collections or other educational uses without notifying the BLM or Reclamation, but should identify or acknowledge the appropriate bureau in subsequent presentations or displays. Specimens that are collected legally under this part, but are subsequently found to be uncommon, should be transferred to an approved repository and reported to the bureau that manages the land from which they were found.

147. Comment: Several commenters wanted to know who determines which fossils are not common. Many commenters were concerned that the Federal land manager might not be qualified to determine which fossils are not common. Some commenters stated that professional paleontologists, not the Federal land manager, should determine what is not common. Many asked for guidance in determining which fossils are and which fossils are not common.

Bureau response: The Act requires the bureaus to retain the responsibility to determine which non-vertebrate paleontological resources are not common. However, determining what is common or not common should always be done in consultation with a qualified paleontologist. What is not common should be determined by the scientific importance of the specimen and not simply on its rarity or condition of preservation. Thus, some fragments of otherwise rare specimens might be common. An exceptionally well preserved, unusual, and even ''rare'' specimen may be common according to this regulation if it does not offer important or new information about the history of life on Earth. Generally, uncommon fossils are those that are scientifically rare or unique. In cases where the qualified paleontologist and the collector do not agree on the importance of the specimen, or where multiple paleontologists disagree, the Federal land manager makes the final determination of what is not common.

Summary of Changes From the Proposed Rule

After taking the public comments into consideration and after additional review, the bureaus made the following substantive changes in the final rule. Additionally, the bureaus made small, non-substantive stylistic, formatting, and structural changes to better serve the reader. For a more detailed discussion of these changes, refer to the preceding section entitled ''Summary of

Public Comments'' and bureau responses, organized by subpart.

Title 43	Description of change
Subpart A	Changed heading from ''Managing, Protecting, and Preserving Paleontological Resources'' to ''Preserving, Managing, and Protecting Paleontological Resources.''
§ 49.1	Replaced ''fossils'' with ''paleontological resources'' here and throughout the final rule to clarify that the rule applies to paleontological resources, which are a subset of fossils.
§ 49.5	Replaced the term ''authorized officer'' with ''Federal land manager'' for clarification and consistency with other laws and regulations.
§ 49.5	Replaced the term ''curatorial services'' with ''curation.'' DOI reverted to the language used by USDA at 36 CFR 291.5 in order to remain consistent with the Forest Service, existing DOI policy at 411 DM, and with the Act. Previous versions, including the proposed rule, stated the same information, but DOI found that the USDA version of the definition provided the clearest definition of curation.
§ 49.5	Clarified definitions of ''collection,'' ''consumptive analysis,'' ''day,'' ''fossilized,'' and ''nature.''
§ 49.5	Added definitions of ''deposit,'' ''preparation,'' and ''working collection.''
§ 49.15	Added language to clarify that on lands administered by BLM or Reclamation, certain fossilized mineral materials, including petrified wood, and conodonts (microscopic remains of a Paleozoic-era eel-like animal) are not subject to these regulations.
§ 49.25	Streamlined and simplified the process of determining when specific locality information may be disclosed by eliminating the requirement for the Federal land manager to enter into written agreements with each party seeking disclosure; authorizing the Federal land manager to define bureau confidentiality requirements consistent with the regulation; and clarifying that the disclosure of information in furtherance of the Act does not constitute an official public disclosure under the Freedom of Information Act.
Subpart B	Corrected section-numbering sequence throughout this subpart. In the proposed rule, these sections were numbered §§ 49.50 through 49.95. In the final, they are numbered §§ 49.100 through 49.145. Subsequent citations in this table refer to the corrected numbers.
§ 49.100	Clarified that a permit may be required for paleontological research or consulting activities and eliminated the requirement for a permit for disturbance because the term ''disturbance'' was unclear in this context.
§ 49.105(b)	Clarified that a person not meeting the criteria to receive a permit can perform work under an issued permit when appropriately supervised by a permittee.
§ 49.110	Eliminated the requirement contained in the proposed regulation that would have required permit applicants to possess a graduate degree.
§ 49.115	Simplified permit application requirements by using concise language, and by not requiring that permit applicants include written verification of collection acceptance from a repository in their permit applications. The verification from the repository is a condition of permit approval, not the permit application.
§ 49.120	Removed the repository approval process from the permit approval process, in order to speed up and simplify the permit decision. Under the final regulation, repository approval may happen at any time.
§ 49.125(a)(1)	Clarified that both permittees and approved repositories named in the permit are subject to the Act and regulations' confidentiality requirements, and that they may disclose information if the Federal land manager determines that the disclosure is consistent with applicable bureau policy.
§ 49.125(a)(2)	Removed a permittee reporting requirement regarding persons conducting activities under a permit (proposed § 49.75(a)(2)), and replaced it with the requirement to maintain a safe and secure worksite.
§ 49.125(a)(8)	Added requirement for permittees to safeguard collections and related data until the collection is deposited in the approved repository named in the permit.
§ 49.125(a)(10)	Clarified that a permittee cannot also act as the repository official who signs the receipt for collections.
§ 49.125(a)(11)	Added requirement that copy of the permit and other associated records must accompany the collection during transport and be provided to the approved repository named in the permit.
§ 49.125(a)(13)	Clarified that permittees are responsible for the costs of the permitted activity, including initial curation costs. Proposed rule stated that permittees are responsible for all curation costs.
§ 49.125(e)	Added permit modification, suspension, and revocation to the possible consequences of permittee non-compliance with the terms of a permit.
§ 49.130	Added a provision that bureaus may modify permits when there is a *potential* violation of a term or condition.
§ 49.140	Clarified the permit-related decisions by NPS may be reconsidered, rather than appealed, to be consistent with other NPS permitting practices.
§ 49.200(a)	Clarified that, under this regulation, repositories are approved to receive a collection, not generally approved for everything.
§ 49.200(c)	Added authorization for Federal land managers to move paleontological resource collections that do not further paleontological knowledge, public education, or management of paleontological resources into working collections.
§ 49.205	Deleted the language requiring repository approval during the permit approval process, in order to provide more flexibility and speed up permit decisions. Also, simplified the requirements for approval of a proposed repository. Also, amended the process for Federal land managers to follow in the event of a repository's lack of compliance with the approval criteria.
§ 49.210	Eliminated entire section that was in the proposed rule regarding the process for depositing a collection at an approved repository because of public comment and because it was redundant with § 49.125(a)(10). This section now addresses the terms and conditions of agreements between the bureaus and repositories, which were formerly addressed by § 49.215.
§ 49.210(b)(5)	Now clarifies that determinations related to disclosure of specific locality information pursuant to § 49.25 are made by the Federal land manager.
§ 49.210(b)(7)	Now clarifies that agreements between bureaus and approved repositories must address loans to other entities.
§ 49.210(b)(10)	Now contains detail about the provision of publications or reports to the bureaus.
§ 49.210(b)(12)	Added affirmative requirement that repository employees must work to preserve and protect specimens in their care using best professional practices.
§ 49.215	With the elimination of one of the sections from the proposed rule (§ 49.210), the bureaus were able to move all subsequent sections up in this final rule. Thus, this section was, in the proposed rule, § 49.220.

Title 43	Description of change
§ 49.215(a)	Streamlined this language from the proposed rule to make it shorter, simpler, and less redundant with the definitions section.
§ 49.215(b)	Included language to clarify that the Federal land manager may remove specimens from museum collections and assign them to working collections. This will reduce burdens on repositories.
§ 49.215(c)	Added clarifying language regarding the fees that repositories may charge to recover their costs.
§ 49.300(b)	Added option for a person to return paleontological resources that were collected or obtained in violation of the Act without penalty to the Federal land manager if deemed appropriate by the Federal land manager.
§ 49.400	Streamlined the language regarding the effective date of this criminal penalties subpart and added minor clarifying edits to enhance wording consistency between this section and subpart G.
§ 49.500–49.535	Minor clarifying edits such as reorganization of a sentence, making headings lower-case, elimination of redundant clauses and sentences, and simplification of language.
§ 49.540	Added new paragraphs (c) and (d) for improved consistency between this subpart's hearing provisions and existing DOI regulations pertaining to hearings.
§ 49.575(a)	Added ''prepare'' and ''curate'' to the list of actions that can be funded by collected civil penalties. These are subsets of the terms ''protect,'' ''restore,'' and ''repair.'' These latter terms appeared in the proposed regulation and appear in the Act, but the final regulation includes ''prepare'' and ''curate'' as well, for the sake of clarity.
Subpart G	Throughout this subpart, added language to clarify that this subpart defines scientific value, commercial value, and the cost of response, restoration and repair only for determining civil and criminal penalties, not for any other purpose.
§ 49.600	Clarifies that scientific value is determined for the calculation of criminal and civil penalties, and clarifies the various components for determining this value.
§ 49.605	Clarifies that commercial value is determined for the calculation of criminal and civil penalties, and clarifies the various components for determining this value.
§ 49.610	Clarifies that cost of response, restoration, and repair is determined for the calculation of criminal and civil penalties, and clarifies the various components for determining this value. Adds preparation and stabilization to the calculation of this cost.
§ 49.700	Removes the reference to ''stolen Federal property'' because it is unnecessary for purposes of this section.
§ 49.805(a)	Removed list of specific types of BLM-administered lands, such as national monuments, national conservation areas, outstanding natural areas, or forest reserves that BLM had proposed for closure to casual collection by regulation. All BLM-managed public lands are open to casual collection unless specifically closed by statute or through the process at § 49.40 of these regulations.
§ 49.810(a)(1)	Added ''non-vertebrate paleontological resources'' as a shorthand for ''invertebrate or plant paleontological resources'' for simplicity and streamlining.
§ 49.810(a)(2)	Removed limitation that a person may collect only 100 pounds of common plant and invertebrate paleontological resources per year. Also allows collectors to remove a slab or cobble of rock that exceeds 25 pounds in order to preserve the integrity of an embedded specimen.
§ 49.810(a)(3)	Removed the language that was in the proposed rule regarding the size of and distance between disturbed areas as a component of the definition of negligible disturbance.
§ 49.810(a)(5)	Removed reference to the size of hand tools to be more consistent with the Act, which focused on the non-powered aspect of the hand tools rather than their size.
§ 49.810(c)	Established that Federal land managers will consult with knowledgeable paleontologists to determine which plant and invertebrate paleontological resources are not common.

Compliance With Other Laws, Executive Orders, and Departmental Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is significant.

Executive Order 13563 reaffirms the principles of Executive Order 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. Executive Order 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. DOIS has developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report titled ''Proposed Paleontological Resources Preservation Regulations, 43 CFR part 49: Economic Analysis in Support of Executive Order 12866 and Regulatory Flexibility Act Compliance,'' which can be viewed at *www.blm.gov/paleontology* by clicking on the link entitled ''Proposed Paleontological Resources Preservation Regulations, 43 CFR part 49: Economic Analysis in Support of Executive Order 12866 and Regulatory Flexibility Act Compliance.'' This report is also available via *http://www.regulations.gov* in Docket NPS–2016–0003.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or

Tribal governments or the private sector of more than $100 million per year. This rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. The rule addresses the management of paleontological resources on and from lands managed by BLM, Reclamation, FWS, and NPS, and imposes no requirements on other agencies or governments. A statement containing information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. This rule is not a government action capable of interfering with constitutionally protected property rights. It would implement the new statutory authority for managing, preserving, and protecting paleontological resources on Federal lands and is consistent with prior policies, procedures, and practices for the collection and curation of paleontological resources on Federal land. Private property is not affected. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule addresses the management of paleontological resources on and from lands managed by the BLM, Reclamation, FWS, and NPS, and imposes no requirements on other agencies or governments. It does not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175 and Departmental Policy)

DOI strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and Tribal sovereignty. In accordance with Executive Order 13175 and DOI's consultation policy, DOI readily acknowledges its responsibility to communicate meaningfully with federally recognized Indian Tribes on a government-to-government basis.

The PRPA and DOI regulations in this rule only apply to Federal land, which is defined in the PRPA and the regulations to expressly exclude Indian land. 16 U.S.C. 470aaa. Indian land is defined as ''land of federally recognized Indian Tribes or Indian individuals which is either held in trust by the United States or subject to a restriction against alienation imposed by the United States.'' 16 U.S.C. 470aaa. Notwithstanding this exclusion in the PRPA and regulations, DOI understands that many federally administered lands are ancestral Tribal lands that could be impacted by paleontological activities. For this reason, DOI prepared a Dear Tribal Leader Letter to formally notify Tribal leaders from each of the federally recognized Tribes that the proposed rule was forthcoming. DOI distributed the letter in November 2016, several weeks prior to the publication date of the proposed rule in December, to give Tribal leaders sufficient time to familiarize themselves with the Act and background material. The letter included weblinks to additional resources regarding the development of the proposed rule, identified subject matter experts, and invited Tribes to contact those experts directly. DOI also notified the National Association of Tribal Historic Preservation Officers of the forthcoming proposed rule. Two Tribes (the Shingle Springs Band of Miwok Indians and the San Carlos Apache) requested to be notified when the proposed rule published and were so notified. Two Tribes (Pueblo of San Felipe and Santa Clara Pueblo) submitted written comments on the proposed rule. In May 2017, DOI officials met with one Tribe (Pueblo of San Felipe) that requested consultation to discuss the Tribal implications of the proposed rule. Notes from this meeting were shared and verified for accuracy with the Tribe. Comments received from Tribes and DOI responses and actions taken as a result of those comments are provided below and in the comment summaries above.

Comments from two Tribes expressed concern about the potential adverse effects of collection and curation versus *in situ* preservation of paleontological resources. In response to these concerns, the final rule (1) conditions the Federal land manager's approval of proposed collection on whether the manner of collection would avoid or minimize adverse effects to significant natural or cultural resources; and (2) conditions the collection of paleontological resources on an explanation of how the proposed collection would further paleontological knowledge or public education, or management of paleontological resources, and on pre-agreement from a proposed repository to receive the collection.

Comments from Tribes also emphasized the importance of maintaining the confidentiality of specific location information. In response to these concerns, the final rule (1) clarifies that both permittees and approved repositories named in the permit are subject to confidentiality requirements; and (2) includes a requirement for permittees to safeguard collections and related data until the collection is deposited in the approved repository named in the permit.

There is also an opportunity for consultation on individual permit applications. The final rule requires that, when DOI receives an application for a permit, the Federal land manager evaluate the permit application and analyze impacts ''in accordance with applicable laws, regulations, and policies.'' *See* § 49.120. Therefore, the Federal Land Manager will evaluate whether the permit issuance would cause a significant impact to one or more Tribes and will consult with potentially affected Tribes prior to issuing the permit under Executive Order 13175.

Paperwork Reduction Act of 1995 (PRA)

This final rule contains a collection of information that DOI has submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). DOI 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. OMB has reviewed and approved the information collection requirements in this rule and assigned OMB Control Number 1093–0008.

OMB has reviewed and approved the information collection requirements associated with the NPS' application

and reports for paleontological permits (OMB Control Number 1024–0236).

This final rule authorizes DOI to collect the following information associated with paleontological permits for work on lands administered by the BLM, Reclamation, and FWS:

Paleontology Permit Application (§ 49.115). Permit applicants proposing to work in areas administered by BLM, Reclamation, or FWS must provide the information requested by DI Form 9002 (Paleontology Permit Application). Such information includes:

(1) Applicant's name, affiliation, and contact information.

(2) Description of the applicant's qualifications to include a current resume for the applicant and all other persons who will oversee fieldwork and other work, and information on the applicant's past performance on previous permits.

(3) Maps and other location information, and estimated start and end dates of proposed work.

(4) Description, purpose, and methodology of proposed work, including a detailed scope of work or research plan for the proposed activity, logistical information, methods that will be employed to explore for or remove the paleontological resources, proposed content and nature of any collection to be made under the permit.

(5) Information about the proposed repository.

(6) Description of anticipated costs, including bonding information.

Locality information (§ 49.125(a)(1) & (6)). Permittee will record locality information on DI Form 9004 (Paleontology Locality Record), or in another format approved by the bureau in the permit that captures the same information.

Resource damage or theft (§ 49.125(a)(7)). Permittee must report suspected or apparent resource damage or theft of paleontological or other resources to the Federal land manager as soon as possible, but not to exceed 48 hours, after learning of the suspected or apparent damage or theft.

Repository receipt (§ 49.125(a)(10) & (11)). Permittee must deposit the collection in the approved repository named in the permit by the date specified in the permit, and provide the bureau with DI Form 9007 (Repository Receipt of Collections (Paleontology)), which includes a certification by the permittee that the collection and other associated records were transferred to the repository and a certification by the approved repository's authorized official that the collection was received.

List and description of paleontological resources (§ 49.125(a)(12)). If the permittee has not transferred the collection to the approved repository named in the permit by the date specified in the permit, the permittee must provide the Federal land manager a complete list and description of all paleontological resources collected and the current location of the paleontological resources.

Reports (§ 49.125(a)(14)). Permittees conducting activities on lands administered by BLM, Reclamation, or FWS must submit reports to the bureaus using DI Form 9006 (Paleontology Permit Report) as a cover sheet for researchers' and consultants' permit reports.

Amendments to permits (§ 49.130(a)). Permittees may request a modification to a permit. Modification requests will include permittee name, permit number, and the reason(s) for the modification request.

Objecting to a Notice of Violation (§ 49.515(a) & (b)). When a person receives a notice of violation, the person has 30 days from the date the notice was received to object by submitting to the Federal land manager documentation to support the position that the person did not commit a violation or that the proposed penalty should be reduced or eliminated.

Responding to a civil penalty (§ 49.535(a) & (b)). A person may request a hearing on the Federal land manager's final assessment of a civil penalty by filing a request for hearing via registered or certified mail (return receipt requested or other delivery service method, delivery receipt requested) to the Departmental Cases Hearings Division, Office of Hearings and Appeals, Department of the Interior, at the address specified in the final assessment of civil penalty, or by electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the final assessment of civil penalty. The request for hearing must include the following information:

(1) The reasons for challenging the final assessment;

(2) The relief sought and the basis for the relief;

(3) A copy of the notice of civil violation and proposed civil penalty assessment;

(4) A copy of any objection and supporting documentation filed under § 49.515(a) & (b);

(5) A copy of the final assessment of civil penalty; and

(6) A certificate of service acknowledging service of the request for hearing with the accompanying documentation on the Office of the Solicitor.

Title: Application and Reports for Paleontological Permits, 43 CFR part 49.

OMB Control No.: 1093–0008.

Form Number(s): Forms DI–9002, DI–9003, DI–9004, DI–9005, DI–9006, and DI–9007.

Type of Review: New.

Description of Respondents: Individuals; organizations; businesses (museums and universities); State, Tribal, or local governments that collect paleontological resources or disturb paleontological sites on DOI lands.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Nonhour Cost Burden: None.

Requirement	Total annual responses	Completion time per response (hours)	Total annual burden hours
Permit Application—DI–9002–§ 49.115; DI–9003–§ 49.125(a); DI–9005–§ 49.125(d)	440	4	1,760
Locality Information—DI–9004–§ 49.125(a)(1)&(6)	300	1	300
Report Resource Damage or Theft—§ 49.125(a)(7)	50	1	50
Repository Receipt—DI–9007–§ 49.125(a)(10)&(11)	300	1	300
List and Description of Paleontological Resources—§ 49.125(a)(12)	100	1	100
Permit Report—DI–9006, § 49.125(a)(14)	440	5	2,200
Request Amendment to Permit—§ 49.130(a)	200	1	200
Objecting to a Notice of Violation—§ 49.515(a)&(b)	10	10	100
Responding to a Civil Penalty—§ 49.535(a)&(b)	5	10	50
Totals	1,845		5,060

A proposed rule, soliciting comments on this collection of information for 30 days, was published on December 7, 2016 (81 FR 88173). Of the 1,611 comments received on the proposed rulemaking, 4 comments were related to the information collection and associated forms. A summary of those comments and our responses are as follows:

Comment: Three commenters asked the bureaus to make permitting more consistent by adopting the same Paleontology Permit Application (Form DI–9002) across all bureaus, instead of having the NPS continue to use its existing permit request system.

Response: The NPS uses an online permit system (called the Research Permit and Reporting System) that requires the same information that is collected by Form DI–9002, so applicants for a paleontology permit should not see a difference in the time it takes to request a permit.

Comment: Three commenters expressed apprehension that the Federal land manager might require more information on the Form DI–9002 than is possible to provide, such as, (1) the exact location where collection will occur during a survey; or, (2) be required to provide a detailed list of fossil taxa that will be recovered.

Response: The information that an applicant provides on a permit application is necessary so that the Federal land manager can identify the extent and nature of work and its potential impacts. Permit applicants and the Federal land manager need to communicate with each other so that each may understand the specific needs of, or seek clarification from, the other.

Comment: One commenter asked whether a copy of the Notice to Proceed (Paleontology) (Form DI–9005) should be submitted with a permit report.

Response: Copies of DI Form 9005 should be provided in all reports, especially final permit reports.

Comment: Two commenters asked that the Repository Receipt for Collections (Form DI–9007) be provided to the bureaus by the permittee, not the repository, as this is a permit responsibility and should not create a separate burden for the repository.

Response: The bureaus agree. Submission of Form DI–9007 has always been, and will continue to be, the responsibility of the permittee. Copies of Form DI–9007 should be shared with the repository, but it is not the repository's responsibility to produce or submit the form.

In summary, DOI accepted all comments pertaining to information collection from the public and incorporated them into the final rulemaking and forms. In addition, DOI reviewed all aspects of the forms and made a number of changes for clarity or made revisions where duplication was found. As a result, some of the form numbers have changed. To note, Forms DI–9005 and DI–9006 in the proposed rule were consolidated into one form, now Form DI–9006, Paleontology Permit Report, to be used as a cover sheet. Instructions for all forms were rewritten to align with the revisions to the forms. A table summarizing the form changes from the notice of proposed rule stage to the final rule follows:

TABLE SUMMARIZING THE DI FORM CHANGES

Notice of proposed rulemaking (12/7/2016) DI form Nos. and titles	Final rule: Changes to DI form Nos. and titles
9002—Paleontological Resource Use Permit Application	9002—Paleontology Permit Application.
9003—Paleontological Resource Use Permit	9003—Paleontology Permit.
9004—Paleontological Locality Form	9004—Paleontology Locality Record.
9005—Paleontological Permit Report Cover Sheet	9005—Notice to Proceed (Paleontology).
9006—Paleontology Consulting Report Cover Sheet	9006—Paleontology Permit Report Cover Sheet.
9007—Paleontology Work Notice to Proceed	9007—Repository Receipt of Collections (Paleontology).
9008—Repository Receipt for Collections (Paleontology)	

One additional change to the information collection is the deletion of the requirement to notify the bureaus of a change of personnel (previously referenced as § 49.75(a)(2), Change of Personnel in the proposed rule). Permit applicants are already required to submit the names and credentials of all individuals who will be responsible for supervising or conducting work under the permit when they apply for a permit. Burden hours and responses have been adjusted to acknowledge the deletion of this requirement. This final rule, at 43 CFR part 49, includes the updated information collection requirements for managing paleontological resources on DOI lands.

As part of our continuing effort to reduce paperwork and respondent burdens, DOI invites the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this 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.

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. Please provide a copy of your comments to the Departmental Information Collection Clearance Officer, Office of the Secretary/Office of the Chief Information Officer, 1849 C Street NW, Washington, DC 20240. Please reference OMB Control Number 1093–0008 in the subject line of your comments.''

The Privacy Act of 1974 (5 U.S.C. 552)

Records for the Paleontological Resources Preservation Act are maintained in a system of record. Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), DOI is issuing a public notice in the **Federal Register** of its intent to create the Privacy Act system of records titled, INTERIOR/DOI–20, Paleontological Resources Preservation System.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. DOI has determined that this rule will not have substantial direct effects on energy supply, distribution, or use, including a shortfall in supply or price increase. The rule has no bearing on energy development and will have no effect on the volume or consumption

of energy supplies. A Statement of Energy Effects is not required.

National Environmental Policy Act

This rule is categorically excluded from National Environmental Policy Act analysis under DOI categorical exclusion, 43 CFR 46.210(i), which covers ''Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively, or case-by-case.''

The categorical exclusion is appropriate and applicable for the following reasons. Several of the provisions of this rule are specifically administrative, financial, legal, or procedural in nature, and therefore are subject to the first part of the categorical exclusion. For instance, the provisions for permit modification, suspension, revocation, or cancellation are all administrative or procedural in character, as are the rule's provisions establishing procedures to challenge any of these decisions. Similarly, the rule sets forth specifics of the administration of civil and criminal penalties associated with violation of the provisions of the rule and of PRPA.

Both the establishment of the permit system, and future decisions to close lands to casual collecting (and, conversely, to open lands to casual collecting where that use is not already authorized) are subject to the second part of the categorical exclusion. Issuance of a permit (whether programmatic or individual in scope) for the collection of paleontological resources itself requires agency compliance with NEPA. Moreover, a permit must contain permit conditions, supported by appropriate NEPA analysis, that ensure the underlying project or action will continue to meet regulatory requirements throughout the entire duration of the permit. Likewise, any decision to close or open lands to casual collecting also requires agency compliance with NEPA and may contain conditions, supported by appropriate NEPA analysis, that ensure the appropriate management of these resources. Because the environmental effects of this rule are too speculative and conjectural to lend themselves to meaningful analysis, and the environmental consequences of any of these decisions will later be subject to the NEPA process at the time the permit application or proposed opening or closing to casual collecting is evaluated and before a decision is made, the rule is subject to the second part of DOI categorical exclusion, 43 CFR 46.210(i).

Pursuant to 43 CFR 46.205(c), DOI has reviewed its reliance upon this categorical exclusion against the list of extraordinary circumstances, at 43 CFR 46.215, and has found that none applies to this rule. Therefore, neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required for this rulemaking.

Even though neither an EA nor an EIS must be prepared for this rule, the BLM elected to prepare an EA to inform decision-makers regarding the possible effects of two specific provisions as applied to the public lands BLM manages, as allowed under DOI's regulations implementing NEPA, 43 CFR 46.300(b)(1). BLM-administered lands are open to casual collection of paleontological resources unless specifically closed by a site-specific decision. As such, casual collection has been and will continue to occur on certain public lands.

PRPA provides specific authority and limits under which this activity can take place. In particular, PRPA allows for ''casual collecting,'' which is defined as ''the collecting of a reasonable amount of common invertebrates and plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools resulting in only negligible disturbance to the Earth's surface and other resources'' (Pub. L. 111–11, section 6301(1), 123 Stat. 1172), and specifies that the Secretary of the Interior is to determine how these terms are to be defined. The rule's definitions for ''negligible disturbance'' and ''reasonable amount'' describe the conditions limiting any casual collection activities on certain public lands managed by the BLM. The BLM prepared an EA for these definitions. The EA may be found at *www.blm.gov/paleontology.*

Drafting Information

This rule reflects the efforts of staff in BLM, Reclamation, FWS, NPS, and OHA. This action is taken pursuant to delegated authority.

List of Subjects

36 CFR Part 2

Environmental protection, National parks, Reporting and recordkeeping requirements.

43 CFR Part 49

Casual collecting, Civil penalties, Collecting, Commercial value, Confidentiality, Criminal penalties, Curation, Museums, Natural resources, Paleontological resources, Paleontology, Permits, Prohibited acts, Prohibitions, Public awareness, Public education, Recreation, Reporting and recordkeeping requirements, Repository, Research, Scientific principles, Scientific value.

43 CFR Part 8360

Penalties, Public lands, Recreation activities, Recreation and recreation areas.

50 CFR Part 27

Wildlife refuges.

For reasons stated in the preamble, the Department of the Interior amends title 36 of the CFR by amending part 2, title 43 of the CFR by adding part 49 and amending part 8360, and title 50 of the CFR by amending part 27, as set forth below:

TITLE 36: PARKS, FORESTS, AND PUBLIC PROPERTY

PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

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

Authority: 54 U.S.C. 100101, 100751, 320102.

■ 2. Amend § 2.1 by revising the note at the end of the section to read as follows:

§ 2.1 Preservation of natural, cultural and archeological resources.

* * * * *

Note 1 to § 2.1

The Secretary's regulations concerning archeological resources are found in 43 CFR part 3. The regulations concerning paleontological resources are found in 43 CFR part 49.

■ 3. Amend § 2.5 by revising the note at the end of the section to read as follows:

§ 2.5 Research specimens.

* * * * *

Note 1 to § 2.5

The Secretary's regulations on the preservation, use, and management of fish and wildlife are found in 43 CFR part 24. The regulations concerning archeological resources are found in 43 CFR part 3. The regulations concerning paleontological resources are found in 43 CFR part 49.

TITLE 43: PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

■ 4. Add part 49 to title 43 to read as follows:

PART 49—PALEONTOLOGICAL RESOURCES PRESERVATION

Subpart A—Preserving, Managing, and Protecting Paleontological Resources

Sec.
49.1 What does this part do?
49.5 What terms are used in this part?
49.10 Does this part affect existing authorities?
49.15 When does this part not apply?
49.20 Does this part create new rights or entitlements?
49.25 What information concerning the nature and specific location of paleontological resources is confidential?
49.30 How will the bureaus conduct inventory, monitoring, and preservation activities?
49.35 How will the bureaus foster public education and awareness?
49.40 May the bureaus restrict access to an area?

Subpart B—Paleontological Resources Permitting; Requirements, Modifications, and Appeals

49.100 When is a permit required to collect paleontological resources on Federal land?
49.105 Who can receive a permit?
49.110 What are permit applicant qualification requirements?
49.115 Where must a permit application be filed and what information must it include?
49.120 How will a bureau make a decision about a permit application?
49.125 What terms and conditions will a permit contain?
49.130 When and how may a permit be modified, suspended, revoked, or cancelled?
49.135 Can a permit-related decision be appealed?
49.140 What is the process for appealing a permit-related decision?
49.145 Has OMB approved the information collection provisions of this part?

Subpart C—Management of Paleontological Resource Collections

49.200 Where are collections deposited?
49.205 What are the requirements for approving a repository to receive a collection?
49.210 What terms and conditions must agreements between the bureau and approved repository contain?
49.215 What are the standards for managing the collections?

Subpart D—Prohibited Acts

49.300 What acts are prohibited?

Subpart E—Criminal Penalties

49.400 What criminal penalties apply to violations of this part?

Subpart F—Civil Penalties

49.500 When can the Federal land manager assess a civil penalty?
49.505 When and how does the Federal land manager serve a notice of violation?
49.510 What is included in the notice of violation?
49.515 How is an objection to a notice of violation and proposed civil penalty made and resolved?
49.520 When will the Federal land manager issue a final assessment of civil penalty?
49.525 How will the Federal land manager calculate the amount of a proposed and final assessment of civil penalty?
49.530 How will the Federal land manager issue the final assessment of civil penalty?
49.535 What are the options and timeframe to respond to the final assessment of civil penalty?
49.540 What procedures govern the DCHD hearing process initiated by a request for hearing on the final assessment?
49.545 What will be included in the administrative law judge's decision?
49.550 How can the administrative law judge's decision be appealed?
49.555 What procedures govern an appeal of an administrative law judge's decision?
49.560 When must the civil penalty be paid?
49.565 When may a person assessed a civil penalty seek judicial review?
49.570 What happens if a civil penalty is not paid on time?
49.575 How will collected civil penalties be used?

Subpart G—Determining Scientific Value, Commercial Value, and the Cost of Response, Restoration, and Repair

49.600 How is ''scientific value'' determined for criminal and civil penalties?
49.605 How is ''commercial value'' determined for criminal and civil penalties?
49.610 How is the ''cost of response, restoration, and repair'' determined for criminal and civil penalties?

Subpart H—Forfeiture and Rewards

49.700 Will a violation lead to forfeiture of a paleontological resource?
49.705 What rewards may bureaus pay to those who assisted in enforcing this part?

Subpart I—Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands

49.800 Is casual collecting allowed on lands administered by NPS or FWS?
49.805 Where is casual collecting allowed?
49.810 What is casual collecting?

Authority: 16 U.S.C. 470aaa–aaa–11.

Subpart A—Preserving, Managing, and Protecting Paleontological Resources

§ 49.1 What does this part do?

This part:

(a) Directs the Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS) (collectively referred to as ''the bureaus'') to preserve, manage, and protect paleontological resources on Federal land using scientific principles and expertise;

(b) Coordinates paleontological resources management among the bureaus;

(c) Promotes public awareness; provides for collection under permit; clarifies that paleontological resources cannot be collected from Federal land for sale or purchase; establishes civil and criminal penalties; sets curation standards; and

(d) Authorizes casual collecting of common invertebrate and plant paleontological resources from certain BLM-administered land and certain Reclamation-administered land.

§ 49.5 What terms are used in this part?

The terms used in this part have the following definitions.

Act means title VI, subtitle D of the Omnibus Public Land Management Act on Paleontological Resources Preservation (16 U.S.C. 470aaa–470aaa–11).

Ad Hoc Board means an Ad Hoc Board of Appeals appointed by the Director, Office of Hearings and Appeals, Department of the Interior.

Approved repository means a Federal or non-Federal facility that provides for the curation of paleontological resources and that is approved by the Federal land manager to receive collections made under this part.

Associated records means original records or copies thereof, regardless of format, that include but are not limited to:

(1) Primary records relating to identification, evaluation, documentation, study, preservation, context, or recovery of a paleontological resource;

(2) Public records including, but not limited to, land status records, bureau reports, publications, court documents, and agreements; and

(3) Administrative records and reports generated during the permitting process that pertain to survey, excavation, or study of the paleontological resource.

Bureau means Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), or National Park Service (NPS).

Collection means paleontological resources that are removed from Federal land under the provisions of this part, and associated records.

Consumptive analysis means the alteration or destruction of a paleontological specimen or portion of a specimen for scientific research.

Cost of response, restoration, and repair means the costs to respond to a

violation of the provisions of this part or a permit issued under this part and the costs of restoration and repair of the paleontological resources or paleontological sites damaged as a result of the violation. Those costs are described in greater detail in § 49.610.

Curation means those activities pertinent to management and preservation of a collection over the long term according to professional museum and archival practices, including at a minimum:

(1) Accessioning, cataloging, labeling, and inventorying a collection;

(2) Identifying, evaluating, and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physical security controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection;

(6) Handling, cleaning, sorting, and stabilizing a collection in such a manner as to preserve it; and

(7) Lending a collection, or parts thereof, for scientific, educational or preservation purposes.

Day means a 24-hour calendar day.

DCHD means the Departmental Cases Hearings Division, Office of Hearings and Appeals, Department of the Interior.

Department or DOI means the Department of the Interior.

Deposit means placing a collection in an approved repository.

Federal land means land controlled or administered by the Secretary of the Interior, except for Indian land.

Federal land manager means the bureau personnel who implement the Act. Each bureau may have multiple Federal land managers. For paleontological resources from lands administered by BLM, ''Federal land manager'' is synonymous with ''authorized officer.'' Federal land managers draw upon appropriate scientific and technical expertise to make decisions and take actions.

Fossilized means evidence or remains of once-living organisms preserved by natural processes, such as burial in accumulated sediments, preserved in ice or amber, permineralized, or replaced by minerals, which may or may not alter the original organic content.

Indian land means land of federally recognized Indian Tribes or Indian individuals which is either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

Nature means features, characteristics, or attributes of the paleontological resource.

OHA means the Office of Hearings and Appeals, DOI.

OHA Director means the Director, Office of Hearings and Appeals, DOI.

Paleontological resource means any fossilized remains, traces, or imprints of organisms preserved in or on the Earth's crust, except for:

(1) Those that are found in an archaeological context and are an archaeological resource as defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)); or

(2) ''Cultural items,'' as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001); or

(3) Resources determined in writing by the Federal land manager to lack paleontological interest or not provide information about the history of life on earth, based on scientific and other management considerations.

Paleontological site means a locality, location, or area where a paleontological resource is found; the site can be relatively small or large.

Preparation means separation of paleontological resources from entombing matrix.

Specific location means any description or depiction of a place in such detail that it would allow a person to find a paleontological resource or the site from which it was collected.

State means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

Working collection means collections that, while still Federal property, are not intended for long-term preservation and care as museum property since they do not further paleontological knowledge, public education, or management of paleontological resources. Working collections are intended for use during education or ongoing research and may be consumed during the analysis process according to bureau policy. Some specimens and items may subsequently be designated museum property. Working collections may be discarded when it is determined there is no longer a need for the collection for future research or education or upon completion of the ongoing research according to standards set in bureau policy.

§ 49.10 Does this part affect existing authorities?

No. This part preserves the authority of the Secretary of the Interior and the bureaus under this and other laws and regulations to preserve, manage, and protect paleontological resources on Federal land.

§ 49.15 When does this part not apply?

(a) The regulations in this part do not invalidate, modify, or impose additional restrictions or permitting requirements on mineral, reclamation, or related multiple-use activities which the Department or a bureau may authorize or for which permits may be issued under the general mining, mineral leasing, geothermal leasing, or mineral materials disposal laws.

(b) The regulations in this part do not apply to Indian land.

(c) The regulations in this part do not apply to any land other than Federal land as defined in this part, or resources other than paleontological resources as defined in this part.

(d) On lands administered by BLM or Reclamation, the following are not subject to this part:

(1) Fossilized minerals, including coal, oil shale, bitumen, lignite, asphaltum, tar sands, and other economic minerals that are subject to existing mining or mineral laws and geological units and industrial minerals, including, but not limited to, phosphate, limestone, diatomaceous earth, coquina, chalk beds, and paleosols. However, paleontological resources that occur within in these units may be subject to this part;

(2) Petrified wood, defined at 30 U.S.C. 611.

(3) Conodonts.

§ 49.20 Does this part create new rights or entitlements?

(a) This part does not create any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in that capacity.

(b) Only an officer or employee of the United States acting in that capacity has standing to file a civil action in a court of the United States to enforce this part.

§ 49.25 What information concerning the nature and specific location of paleontological resources is confidential?

(a) Information concerning the nature and specific location of a paleontological resource is exempt from disclosure under the Freedom of Information Act and any other law unless the Federal land manager determines that the disclosure would:

(1) Further the purposes of the Act;

(2) Not create risk of harm to or theft or destruction of the resource or site containing the resource; and

(3) Be in accordance with other applicable laws.

(b) The Federal land manager may define bureau-specific confidentiality requirements that are consistent with paragraphs (a)(1) through (3) of this section.

(c) Information that is shared with a contractor, permittee, repository, or other partner in furtherance of the Act is not considered an official public disclosure for purposes of the Freedom of Information Act.

§ 49.30 How will the bureaus conduct inventory, monitoring, and preservation activities?

(a) The bureaus will develop plans and procedures for the inventory and monitoring of paleontological resources on and from Federal land in accordance with applicable laws and regulations.

(b) The bureaus will preserve, manage, and protect paleontological resources on and from Federal land using scientific principles and expertise.

(c) Activities under paragraphs (a) and (b) of this section will be coordinated with other agencies, non-Federal partners, the scientific community, and the general public where appropriate and practicable.

§ 49.35 How will the bureaus foster public education and awareness?

The bureaus will establish programs to increase public awareness about the significance of paleontological resources on or from Federal land. This effort will be coordinated with other agencies, non-Federal partners, the scientific community, and the general public where appropriate and practicable.

§ 49.40 May the bureaus restrict access to an area?

(a) The Federal land manager may restrict access to an area or close areas to collection of paleontological resources to protect paleontological or other resources or to provide for public safety.

(b) The regulations in this part do not preclude the use of other authorities that provide for area restrictions or closures on Federal land.

Subpart B—Paleontological Resources Permitting; Requirements, Modifications, and Appeals

§ 49.100 When is a permit required to collect paleontological resources on Federal land?

(a) A permit is required for any person to collect paleontological resources, except as allowed in provisions in subpart I of this part.

(b) A permit may be required by a Federal land manager for paleontological research or paleontological consulting activities that do not involve collection.

(c) A permit is required for Federal Government personnel, agents, or contractors to collect paleontological resources unless the bureau authorizes the action by programmatic or other means.

§ 49.105 Who can receive a permit?

(a) Applicants who demonstrate that they meet the qualification requirements described in § 49.110, who provide a complete application as described in § 49.115, and whose proposed activity meets the issuance criteria described in § 49.120 may receive a permit.

(b) Persons who do not meet the qualification requirements described in § 49.110, who do not provide a complete application as described in § 49.115, or whose proposed activity does not meet the issuance criteria described in § 49.120 will not receive a permit. However, they can perform work under an issued permit when appropriately supervised by a permittee.

§ 49.110 What are permit applicant qualification requirements?

(a) Permit applicant qualification requirements include:

(1) A degree from an accredited institution in a field of study relevant to paleontology, or demonstration of progress toward an advanced degree from an accredited institution in a field of study relevant to paleontology, or demonstrated training and experience commensurate to the nature and scope of the proposed activities;

(2) Experience in collecting, analyzing, summarizing, and reporting paleontological data, and preparing collections for long-term care; and

(3) Experience in equipping, staffing, organizing, conducting, and supervising fieldwork similar to the type, nature, and scope of the project proposed in the application.

(b) Past performance by the applicant will be considered. Past performance includes compliance with previous permits, relevant civil or criminal violations, or current indictments or charges.

§ 49.115 Where must a permit application be filed and what information must it include?

(a) A permit applicant must submit an application to the bureau that administers the Federal land where the proposed activity would be conducted. It is the permit applicant's responsibility to determine which bureau has jurisdiction, use that bureau's permit application form and process, and respond to that bureau's requests for information in a timely manner.

(b) Required information includes:

(1) The applicant's name, affiliation, and contact information.

(2) A current resume for the applicant and all other persons who oversee work under the permit, and any additional information demonstrating that the applicant possesses the qualifications required by § 49.110.

(3) A description, proposed start and end dates, and maps and other location information for the proposed work.

(4) Purpose, methods, and need for the proposed work, a scope of work or research plan, duration of the proposed work, logistical information, description of any paleontological resource collections that may be made under the permit, description of any existing collections known to have originated in this area, timetable for transfer to the proposed repository, and any additional information that will help the federal land manager identify the extent, nature, and potential impacts of the proposal.

(5) Bonding information, if required by the bureau.

(6) Name, location, and contact information of a proposed repository that agrees to receive the collection made under the permit.

(7) Anticipated costs of the permitted activity, including paleontological resource preparation and curation, and identification of the persons or organizations that will be responsible for these costs if the permit is approved;

(8) List of the applicant's past permits and record of compliance and non-compliance.

(9) An explanation of how the proposed collection would further paleontological knowledge or public education, or management of paleontological resources.

§ 49.120 How will a bureau make a decision about a permit application?

(a) The Federal land manager will evaluate the permit application and analyze impacts in accordance with applicable laws, regulations, and policies.

(b) The Federal land manager may issue a permit upon determining that:

(1) The applicant possesses the qualifications required by § 49.110;

(2) The permitted activity and any collection that would be made under the proposed permit would further paleontological knowledge, public education, or management of paleontological resources;

(3) The permitted activity would be consistent with the purpose and management objectives defined for the Federal land;

(4) The permitted activity would be conducted in a manner that would

avoid or minimize adverse effects to significant natural or cultural resources; and

(5) An approved repository has confirmed in writing that it is willing to accept the collection in accordance with the terms and conditions in the permit.

§ 49.125 What terms and conditions will a permit contain?

(a) Permit terms and conditions will include but are not limited to:

(1) Permittee and the approved repository named in the permit must not release, disclose, or share information about the specific location of paleontological resources unless the Federal land manager determines that the release, disclosure, or sharing is consistent with applicable policy.

(2) Permittee is responsible for maintaining a safe and secure paleontological site and for protecting paleontological and other resources from harm resulting from the work under the permit. Permittee is responsible for the actions of all persons working under the permit or invited by permittee to the site.

(3) Permittee, or a designee approved by the Federal land manager and named on the permit, must be onsite at all times when fieldwork is in progress and have a copy of the signed permit on hand.

(4) Permittee must comply with all vehicle or access restrictions, safety or environmental restrictions, local safety conditions or restrictions, and applicable Federal, State, and local laws.

(5) Permittee must acknowledge that the geographic area within the scope of the permit may be subject to other uses, and will take steps to avoid or minimize potential conflicts with such uses.

(6) Permittee will record specific location according to bureau requirements or permit terms and conditions.

(7) Permittee must report suspected or apparent resource damage or theft of paleontological or other resources to the Federal land manager as soon as possible, but not to exceed 48 hours after learning of the suspected or apparent damage or theft.

(8) Permittee must safeguard all paleontological resources collected under the permit and related data from the time of initial recovery until the collection is deposited with the approved repository named in the permit.

(9) Permittee acknowledges that all paleontological resources collected under the permit are Federal property.

(10) Permittee must deposit the collection in the approved repository named in the permit by the date specified in the permit and provide the bureau with a receipt for collections signed by an appropriate repository official who is not the permittee.

(11) A copy of the permit and other associated records must be kept with the collection during transport and provided to the approved repository named in the permit.

(12) If the permittee has not transferred the collection to the approved repository named in the permit by the date specified in the permit, the permittee must provide the Federal land manager a complete list and description of all paleontological resources collected and the current location of the paleontological resources.

(13) Permittee is responsible for the costs of the permitted activity, including fieldwork, data analysis, specimen preparation, report preparation, and initial curation of the collection and its associated records unless otherwise addressed in a separate written document.

(14) Permittees must submit annual reports, other reports, and copies of publications resulting from the collections made under the permit to the Federal land manager in accordance with bureau format and deadlines.

(15) Permittee must acknowledge the permitting bureau and the approved repository named in the permit in any report, publication, paper, news article, film, television program, or other media resulting from the work performed under the permit.

(16) The permit cannot be transferred.

(b) A permittee must continue to comply with the permit's terms and conditions in the event of permit modification, suspension, cancellation, revocation, or expiration unless specified otherwise by the Federal land manager.

(c) The Federal land manager may include in the permit additional terms and conditions necessary to carry out the purposes of this part, including a bond where warranted.

(d) For activities approved on lands administered by BLM or Reclamation, the Federal land manager may provide permittees with a notice to proceed, which contains site-specific guidance and stipulations for the permittee.

(e) Persons who do not comply with the terms of a permit issued under this part may be subject to permit modification, suspension, revocation, and/or civil or criminal penalties.

§ 49.130 When and how may a permit be modified, suspended, revoked, or cancelled?

(a) *Modification.* The Federal land manager may modify a permit at the permittee's request; or when resource, safety, or other administrative or management reasons make permit modification appropriate; or when there is a violation or a potential violation of a term or condition of a permit issued under this part.

(b) *Suspension.* The Federal land manager may suspend for up to 45 days activities under the permit when resource, safety, or other administrative or management reasons make permit suspension appropriate, or when the permittee violates a term or condition of the permit. If the issue prompting suspension is not resolved within the 45-day period, the Federal land manager may modify, revoke, or cancel the permit as appropriate to the specific circumstance.

(c) *Revocation.* The Federal land manager may revoke a permit when the permittee violates a term or condition of a permit, is later found to be ineligible for the permit, or fails to take the actions necessary for ending a suspension. The Federal land manager will revoke a permit immediately if any person working under the authority of the permit is convicted of a criminal offense under this part or assessed a civil penalty under this part.

(d) *Cancellation.* The Federal land manager may cancel a permit when the permittee requests cancellation, or when resource, safety, or other administrative or management reasons make permit cancellation appropriate. Cancellation of a permit does not imply fault on the part of the permittee.

(e) *Notification of modification, suspension, revocation, or cancellation.* (1) The Federal land manager will notify the permittee of the modification, suspension, revocation, or cancellation verbally or in writing. The Federal land manager will, as soon as practicable, confirm a verbal notification with a written notification. A written notification will be served on the permittee by certified mail, return receipt requested, or another verifiable delivery method, and will explain the reason for the modification, suspension, revocation, or cancellation.

(2) In the case of a suspension, the written notification will also include the conditions or actions necessary for ending the suspension; the anticipated duration of the suspension or schedule for resolution of the conditions that led to the suspension; and a statement that the permit will be modified, revoked, or

cancelled if the conditions that led to the suspension are not resolved.

(3) The written notification will inform the permittee how to appeal the modification, revocation, suspension, or cancellation.

(f) A modification, suspension, revocation, or cancellation is in full force and effective immediately upon the permittee's receipt of the written notification of the modification, suspension, revocation, or cancellation.

§ 49.135 Can a permit-related decision be appealed?

Yes. Permit applicants and permittees may appeal the denial of a permit application, and the modification, suspension, revocation, or cancellation of an issued permit.

§ 49.140 What is the process for appealing a permit-related decision?

A permit-related decision may be appealed using processes defined by the issuing bureau.

(a) Permit-related decisions by BLM may be appealed to the Interior Board of Land Appeals under the process explained at 43 CFR 4.400 through 4.438.

(b) Permit-related decisions by FWS may be appealed under the process explained at 50 CFR 36.41(i).

(c) Permit-related decisions by Reclamation may be appealed under the process used for other types of scientific research and collecting permits issued by Reclamation, which will be specified in writing in the permit-related decision.

(d) Permit-related decisions by NPS may be reconsidered under the process used for other types of scientific research and collecting permits issued by NPS, which will be specified in writing in the permit-related decision.

§ 49.145 Has OMB approved the information collection provisions of this part?

BLM, Reclamation, NPS, and FWS use the information collected under this part to manage and protect paleontological resources on and from Federal land. The Office of Management and Budget (OMB) reviewed and approved the information collection requirements contained in this part and assigned OMB Control No. 1093–0008. OMB has approved the information collection requirements for the NPS Research Permit and Reporting System, which includes paleontological permits, and assigned OMB Control No. 1024–0236. A Federal agency 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.

Subpart C—Management of Paleontological Resource Collections

§ 49.200 Where are collections deposited?

(a) A collection from Federal land made pursuant to a permit issued under this part will be deposited in a repository approved to receive the collection.

(b) The curation of paleontological resources collected from Federal land before September 1, 2022 is governed by the terms and conditions of the original collection permit or agreement, rather than by this part.

(c) The Federal land manager, in coordination with the permittee and repository staff, will ensure that the specimens in the collection that further paleontological knowledge, public education, or management of paleontological resources are curated in the approved repository. Specimens that do not further paleontological knowledge, public education, or management of paleontological resources may be placed in working collections or disposed of as determined by the Federal land manager in coordination with appropriate subject matter experts.

§ 49.205 What are the requirements for approving a repository to receive a collection?

(a) The bureaus may approve a repository if:

(1) Repository has facilities and staff that provide curation as defined in this part;

(2) Repository has a scope of collections statement or similar policy document that demonstrates the repository's willingness and ability to curate Federal paleontological resources;

(3) Repository has access to paleontological and/or curatorial staff with adequate experience to successfully prepare and curate paleontological resource collections;

(4) Repository's past and current performance meets applicable departmental standards; and

(5) Repository will not release specific location data to the public except as consistent with § 49.25 or as provided in an agreement between the repository and the bureau.

(b) Once a repository is approved to receive a collection, it will remain approved to curate the collection unless the Federal land manager, after consultation with the permittee and the repository, determines that one or more of the criteria in paragraph (a) of this section is not satisfied. The Federal land manager must refer to Departmental guidance to address this situation.

§ 49.210 What terms and conditions must agreements between the bureau and approved repository contain?

(a) The Federal land manager will review existing agreements between the bureau and the approved repository to determine if these agreements adequately address the management of the collection. If adequate agreements do not already exist, the Federal land manager will work with the repository to develop a new agreement to cover this collection as well as other collections as appropriate.

(b) Agreements between the bureau and approved repository will contain the following information as deemed appropriate by the parties:

(1) Statement (updated as necessary) that identifies the collection(s) at the approved repository.

(2) Statement that asserts Federal ownership of the collection(s).

(3) Statement of work to be performed by the approved repository.

(4) Statement of the duties and responsibilities of the bureau and of the approved repository for the long-term care of the collection(s).

(5) Statement that the collections are available for scientific and educational uses and that the specific location data may be shared consistent with the Federal land manager's determination under § 49.25.

(6) Description of any special procedures or restrictions for access to or use of collections, consumptive analysis, or reproductions.

(7) Description of when and how the collection(s) may be loaned to other entities, including general parameters such as loan duration, purpose, responsibility, insurance, tracking, and packing/shipping materials.

(8) Statement describing the frequency, methods, and reporting process for inventories.

(9) Statement that all exhibits, publications, and studies of paleontological resources will acknowledge the bureau that administers the collection(s).

(10) Statement describing how copies of any publications or reports resulting from study of the collection(s) will be made available by the publication or report writers to the bureau.

(11) Statement describing how collection management records will be made available to the bureau that administers the collection(s).

(12) Statement that employees of the repository will work to preserve and protect specimens in their care using best professional practices, and will take no actions whereby any of the collection(s) shall or may be

encumbered, seized, taken, sold, attached, lost, or stolen.

(13) Effective term of the agreement and procedures for modification, cancellation, suspension, extension, and termination of the agreement, including costs.

(14) Additional terms and conditions as needed to manage the collection(s).

(c) The agreement must be signed by an authorized representative of the approved repository and the Federal land manager.

§ 49.215 What are the standards for managing the collections?

(a) Each approved repository must:

(1) Curate museum collections as defined at § 49.5 and consistent with any agreements between the bureau and the approved repository;

(2) Obtain approval of the Federal land manager before conducting or allowing reproduction or consumptive analysis of part or all of the collection, unless this topic is addressed in an agreement between the bureau and the approved repository;

(3) Conduct inventories consistent with Departmental and bureau museum management standards, and report the results to the bureau.

(b) The Federal land manager, in coordination with the repository official and appropriate subject matter experts, may determine that specimens that are found to be redundant, lack adequate associated data, or otherwise are determined not to further paleontological knowledge, public education, or management of paleontological resources may be removed from museum collections and placed into working collections.

(c) The approved repository may charge reasonable fees, consistent with applicable law, to persons and/or institutions that deposit, use, or borrow specimens at that repository that were collected under this part. Fees may cover labor and material costs incurred by the repository for curating, handling, record keeping, and insuring the collection(s).

Subpart D—Prohibited Acts

§ 49.300 What acts are prohibited?

(a) A person may not:

(1) Excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resource located on Federal land unless this activity is conducted in accordance with the Act and this part.

(2) Exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if the person knew or should have known such resource to have been excavated or removed from Federal land in violation of any provision, rule, regulation, law, ordinance, or permit in effect under Federal law, including the Act and this part.

(3) Sell or purchase or offer to sell or purchase any paleontological resource if the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from Federal land.

(4) Make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from Federal land.

(b) A person may return to the Federal land manager paleontological resources collected or obtained in violation of the Act and this part without penalty if deemed appropriate by the Federal land manager.

Subpart E—Criminal Penalties

§ 49.400 What criminal penalties apply to violations of this part?

(a) Anyone who, on or after March 30, 2009, knowingly commits or counsels, procures, solicits, or employs another person to commit a prohibited act identified in subpart D of this part will, upon conviction, be assessed:

(1) Fines in accordance with 18 U.S.C. 641, 1361, 2314, and 1701, or imprisonment of up to 5 years, or both, if the sum of the scientific and commercial values of the paleontological resources involved and the cost of response, restoration, and repair of the resources and sites involved is more than $500; or

(2) Fines in accordance with 18 U.S.C. 641, 1361, 2314, and 1701, or imprisonment of up to 2 years, or both, if the sum of the scientific and commercial values of the paleontological resources involved and the cost of response, restoration, and repair of the resources and sites involved is $500 or less.

(b) Scientific and commercial values and the cost of response, restoration, and repair are determined in accordance with subpart G of this part.

(c) In the case of a second or subsequent violation by the same person, the amount of the penalties assessed under this subpart may be doubled.

(d) To the extent that a prohibited act under this subpart involves a violation of other applicable law, the violator may be subject to additional criminal penalties.

Subpart F—Civil Penalties

§ 49.500 When can the Federal land manager assess a civil penalty?

(a) The Federal land manager may assess a civil penalty upon any person who violates the provisions of this part or violates a permit issued under this part, in accordance with the process explained in this subpart.

(b) For purposes of this subpart, each violation is considered a separate offense.

§ 49.505 When and how does the Federal land manager serve a notice of violation?

When the Federal land manager believes that a person has committed a violation of this part, he or she may serve a notice of violation in person, by certified mail, return receipt requested, or other verifiable delivery method upon the person.

§ 49.510 What is included in the notice of violation?

A notice of violation will include:

(a) A concise statement of the facts believed to show a violation has occurred.

(b) A citation of the provisions of this part or a permit issued under this part alleged to have been violated.

(c) The amount of civil penalty proposed.

(d) Notification of the right to await the final assessment of civil penalty or to object to the notice of violation and proposed civil penalty, and the right to file a request for hearing of the final assessment of civil penalty. The notice must also inform the person of his or her right to seek judicial review upon the issuance of the final administrative order under this subpart.

(e) The name and contact information of the Federal land manager who is serving the notice of violation.

§ 49.515 How is an objection to a notice of violation and proposed civil penalty made and resolved?

(a) *Filing objection.* A person served with a notice of violation and proposed civil penalty may file a written objection with the Federal land manager within 30 days of the date the notice was received.

(b) *Content of objection.* The objection must:

(1) Clearly and concisely state the reasons why the person believes that the person did not commit a violation and/or that the proposed civil penalty should be reduced or eliminated;

(2) Be accompanied by any documentation supporting the person's reasons for objecting; and

(3) Be signed by the person or the person's authorized representative.

(c) *Issuing determination.* The Federal land manager will issue a determination, served on the person by a verifiable delivery method, based on the information contained in the written objection or furnished upon further request to the Federal land manager.

(d) *Content of determination.* In the determination, the Federal land manager will:

(1) Sustain the objection and revoke the notice of violation and proposed civil penalty, if the Federal land manager determines that the information warrants a conclusion that no violation occurred;

(2) Deny the objection, if the Federal land manager determines that the information warrants a conclusion that a violation occurred and that the proposed civil penalty should not be reduced or eliminated; or

(3) Deny the objection in part and sustain it in part, if the Federal land manager determines that the information warrants a conclusion that a violation has occurred, but that the proposed civil penalty should be reduced or eliminated.

§ 49.520 When will the Federal land manager issue a final assessment of civil penalty?

The Federal land manager will issue a final assessment of civil penalty:

(a) If the person served with a notice of violation and proposed civil penalty does not file a timely objection; or

(b) If the person does file a timely objection that is denied in whole or in part under § 49.515.

§ 49.525 How will the Federal land manager calculate the amount of a proposed and final assessment of civil penalty?

(a) The Federal land manager will determine the amount of the civil penalty by taking into account:

(1) The scientific or commercial value, whichever is greater as determined by the Federal land manager, of the paleontological resource involved;

(2) The cost of response, restoration, and repair of the paleontological resource and the paleontological site involved;

(3) Other factors that the Federal land manager considers relevant, such as prior violations or warnings or evidence of malicious intent;

(4) Information provided under § 49.515 or furnished to the Federal land manager upon his or her request; and

(5) Mitigating factors, which may include return of paleontological resources and whether the person will provide information that may assist the bureau.

(b) Scientific value, commercial value, and the cost of response, restoration, and repair of the paleontological resource and the paleontological site are determined in accordance with subpart G of this part.

(c) In the case of any subsequent violation by the same person, the Federal land manager may calculate a penalty in accordance with paragraph (a) of this section and double it for that subsequent violation.

(d) The maximum penalty assessed under paragraph (c) of this section for any one violation may not exceed the sum of:

(1) Two times the cost of response, restoration, and repair of paleontological resources and paleontological site damage; plus

(2) Two times the scientific or commercial value, whichever is greater as determined by the Federal land manager, of the paleontological resources and paleontological sites destroyed or not salvaged.

(e) The final assessment of civil penalty may be equal to, less than, or more than the proposed civil penalty.

§ 49.530 How will the Federal land manager issue the final assessment of civil penalty?

(a) The Federal land manager will serve the final assessment of civil penalty by certified mail, return receipt requested, or other verifiable delivery method.

(b) The final assessment of civil penalty will include:

(1) The facts and conclusions that are the basis for the Federal land manager's determination that a violation occurred;

(2) The basis for the Federal land manager's determination of the amount of civil penalty assessed;

(3) Notification of the rights to accept the final assessment of civil penalty or, alternatively, to file a request for hearing on the final assessment with a Departmental Cases Hearings Division (DCHD) administrative law judge under § 49.535(a)(2); and

(4) A statement that the civil penalty must be paid within 30 days of the date that the final assessment of civil penalty is received, unless the person served with the final assessment of civil penalty files a request for hearing in accordance with this subpart and the procedures specified in the notice.

§ 49.535 What are the options and timeframe to respond to the final assessment of civil penalty?

(a) *Response options.* A person who receives a final assessment of civil penalty may, within 30 days of the date the assessment is received, do one of the following:

(1) Accept the final assessment of civil penalty, either in writing, by payment of the final assessment, or by failing to timely file a request for hearing under paragraph (a)(2) of this section; or

(2) File a request for a hearing on the final assessment of civil penalty before a DCHD administrative law judge via:

(i) Registered or certified mail, return receipt requested, or other delivery service method, deliver receipt requested, at DCHD's address specified in the final assessment of the civil penalty; or

(ii) Electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the final assessment of civil penalty.

(b) *Content of request for hearing.* A request for hearing must:

(1) Be signed by the person who receives the final assessment of civil penalty or a representative qualified to represent that person under 43 CFR 1.3.

(2) Identify the final assessment of civil penalty being challenged.

(3) State clearly and concisely the reasons for challenging the final assessment, including the reasons why the person believes that he or she did not commit a violation and/or that the final assessment of civil penalty should be reduced or eliminated.

(4) State the relief sought and the basis for that relief.

(5) Be accompanied by the following documentation:

(i) A copy of the notice of violation and proposed civil penalty;

(ii) A copy of any objection and supporting documentation filed under § 49.515(a); and

(iii) A copy of the final assessment of civil penalty.

(6) Contain a certificate acknowledging service of the request for hearing with the documentation listed in paragraph (b)(5) of this section to the Office of the Solicitor at the address identified in paragraph (c) of this section.

(c) *Service of request for hearing.* The person filing a request for hearing must simultaneously send a copy of the request and the accompanying documentation via certified mail, return receipt requested, or other verifiable delivery method to the Solicitor of the Department of the Interior at the address specified in the final assessment of civil penalty.

(d) *Dismissal of hearing request.* (1) If the request for hearing is not received by DCHD within 30 days of the date of receipt of the final assessment, the request for hearing will not be

considered and the hearing will be dismissed.

(2) The request for hearing may be dismissed for failing to meet any of the requirements of paragraph (c) of this section.

(e) *Waiver of hearing right.* A person who accepts the final assessment under paragraph (a)(1) of this section waives the right to a hearing.

§ 49.540 What procedures govern the DCHD hearing process initiated by a request for hearing on the final assessment?

(a) Upon receipt of a request for hearing under § 49.535(a)(2), DCHD will assign an administrative law judge to preside over the hearing process and issue a decision. DCHD will promptly notify the parties of the assignment. Thereafter, all pleadings, papers, and other documents in the hearing process must be filed directly with that judge, with copies served on the other party.

(b) An attorney from the Office of the Solicitor, DOI, will represent the bureau. The attorney will enter his or her appearance on behalf of the bureau and file all motions and correspondence between the bureau and the person who filed the request for hearing. Subsequently, any service upon the bureau must be made to the attorney.

(c) To the extent not inconsistent with the provisions of this subpart, the rules in 43 CFR part 4, subparts A and B, and in 43 CFR 4.422 through 4.437 will apply to the hearing process under this subpart.

(d) The hearing will be conducted in accordance with 5 U.S.C. 554. The bureau will have the burden of proving by a preponderance of the evidence the fact of the violation and the basis for the amount of the civil penalty. Upon completion of the hearing and incorporation of the hearing transcript in the record, the administrative law judge will issue a written decision in accordance with § 49.545 and serve it on the parties.

§ 49.545 What will be included in the administrative law judge's decision?

(a) The administrative law judge's written decision will set forth:

(1) The findings of fact and conclusions of law;

(2) The reasons and bases for the findings; and

(3) An assessment of the penalty, if any.

(b) The amount of any penalty assessed will:

(1) Be determined in accordance with this subpart and subpart G of this part; and

(2) Not be limited by the amount of the penalty assessed by the Federal land manager under § 49.525 or by any offer of mitigation or remission previously made.

(c) The administrative law judge's decision will become effective 31 days from the date of the written decision unless a timely appeal of the decision is filed under § 49.550.

§ 49.550 How can the administrative law judge's decision be appealed?

(a) *Filing appeal.* Within 30 days of the date of the administrative law judge's decision, either party to the hearing process (the person who filed the request for hearing or the bureau) may appeal the administrative law judge's decision to the OHA Director by filing a notice of appeal via:

(i) Registered or certified mail, return receipt requested, or other delivery service method, delivery receipt requested, to the OHA Director's address specified in the administrative law judge's decision; or

(ii) Electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the administrative law judge's decision.

(b) *Content of notice of appeal.* The notice of appeal must:

(1) Be signed by the person filing the appeal or a representative qualified to represent that person under 43 CFR 1.3.

(2) Identify the administrative law judge's decision being appealed, including the DCHD docket number.

(3) State clearly and concisely the reasons for challenging the decision, including:

(i) The reasons why the person believes that he or she did not commit a violation or that the assessed civil penalty should be reduced or eliminated; and

(ii) A concise but complete statement of the facts relied upon to challenge the decision.

(4) State the relief sought and the basis for that relief.

(5) Be accompanied by the following documentation:

(i) A copy of the notice of violation and proposed civil penalty;

(ii) A copy of the final assessment of civil penalty; and

(iii) A copy of the administrative law judge's decision.

(6) Contain a certificate acknowledging service of the notice with the documentation listed in paragraph (b)(5) of this section on the other party to the hearing process in accordance with paragraph (c)(1) of this section.

(c) *Service.* The person filing a notice of appeal must simultaneously send a copy of:

(1) The notice and the accompanying documentation to the other party to the hearing process via:

(i) Certified mail, return receipt requested, or other verifiable delivery method to the other party's address listed on the administrative law judge's decision; or

(ii) Electronic means, if the other party has previously consented to that electronic means, in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the administrative law judge's decision; and

(2) The notice to DCHD via:

(i) Certified mail, return receipt requested, or other verifiable delivery method to DCHD's address listed on the administrative law judge's decision; or

(ii) Electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the administrative law judge's decision.

(d) *Dismissal of appeal.* If the notice of appeal is not received by the OHA Director within 30 days of the date of the administrative law judge's decision, the notice of appeal will not be considered and the appeal will be dismissed.

(e) *Stay of payment deadline.* If the administrative law judge's decision is appealed to the OHA Director, the deadline for payment of the penalty will be stayed pending resolution of the appeal.

§ 49.555 What procedures govern an appeal of an administrative law judge's decision?

(a) Upon receipt of a notice of appeal filed under § 49.550(a), the OHA Director will appoint an Ad Hoc Board of Appeals to consider the appeal and issue a decision thereon.

(b) To the extent not inconsistent with the provisions of this subpart, the rules in 43 CFR part 4, subparts A, B, and G, will apply to the appeal proceedings under § 49.550.

§ 49.560 When must the civil penalty be paid?

A person assessed a civil penalty has 30 days from the date of the final administrative decision in which to make full payment of the civil penalty, or agree to a payment schedule. For the purposes of this subpart, the final administrative decision is:

(a) The final assessment of civil penalty if the person served with the final assessment does not file a timely request for hearing under § 49.535(a)(2).

(b) The administrative law judge's decision on the request for hearing if a timely appeal to the OHA Director is not filed under § 49.550(a); or

(c) The decision of the Ad Hoc Board of Appeals if a timely appeal of the administrative law judge's decision was filed under § 49.550(a).

§ 49.565 When may a person assessed a civil penalty seek judicial review?

A person may file a petition for judicial review in the United States District Court for the District of Columbia or in the district where the violation occurred, within 30 days of the decision of the Ad Hoc Board of Appeals. For purposes of the Act and this part, that decision will be considered a final administrative order. The deadline for payment of the civil penalty will be stayed pending resolution of the judicial review.

§ 49.570 What happens if a civil penalty is not paid on time?

(a) If the civil penalty is not paid by the required deadlines, the United States may take action to collect the penalty assessed plus interest, attorneys' fees, and collection costs.

(b) Failure to pay a civil penalty assessed under this subpart is a debt to the United States.

(c) Failure to pay a civil penalty assessed under this subpart may prevent a person from obtaining a future authorization for activities related to paleontological resources on Federal land as well as receiving other future Federal funding or assistance.

(d) By assessing a civil penalty under this subpart, the United States does not waive the right to pursue other legal or administrative remedies.

§ 49.575 How will collected civil penalties be used?

Civil penalties collected under this subpart are available without further appropriation to the bureau that administers the Federal land or paleontological resources that were the subject of the violation, and may be used only to:

(a) Protect, restore, repair, prepare, and curate the paleontological resources and sites that were the subject of the action, and to protect, monitor, and study the resources and sites;

(b) Provide educational materials to the public about paleontological resources, paleontological sites, or resource protection; or

(c) Pay rewards under subpart H of this part.

Subpart G—Determining Scientific Value, Commercial Value, and the Cost of Response, Restoration, and Repair

§ 49.600 How is "scientific value" determined for criminal and civil penalties?

In determining a criminal or civil penalty, the scientific value of a paleontological resource will be based on the value of the scientific and educational information associated with the resource. This value is the estimated costs of obtaining the scientific and educational information from the disturbed paleontological resource or site if the prohibited act had not occurred. These costs may include, but are not limited to:

(a) Research design development;

(b) Fieldwork;

(c) Preparation of the paleontological specimen;

(d) Stabilization of the paleontological site;

(e) Scientific analysis;

(f) Curation;

(g) Preparation and production of reports or educational materials; and

(h) Lost visitor services or experience.

§ 49.605 How is "commercial value" determined for criminal and civil penalties?

In determining a criminal or civil penalty, the commercial value of a paleontological resource will be based on comparable sales information, appraisals, current market value, or other information for comparable resources. If there is no comparable sales information, appraisal, market value, or other information, the Federal land manager will determine the commercial value of the paleontological resource using other values such as scientific value under § 49.600 or the cost of response, restoration, and repair of the paleontological resource and/or paleontological site under § 49.610.

§ 49.610 How is the "cost of response, restoration, and repair" determined for criminal and civil penalties?

In determining a criminal or civil penalty, the cost of response, restoration, and repair of a paleontological resource and/or paleontological site will include, but not be limited to, the costs of:

(a) Law enforcement investigations;

(b) Immediate stabilization of the resource and the site;

(c) Response, restoration, and repair, including, but not limited to, reconstructing or stabilizing the resource or site, salvaging the resource or site, erecting physical barriers or other protective devices or signs to protect the site, and monitoring the site;

(d) Preparation of the paleontological specimen;

(e) Storage and curation of the resources; and

(f) Reporting upon the above activities.

Subpart H—Forfeiture and Rewards

§ 49.700 Will a violation lead to forfeiture of a paleontological resource?

(a) A paleontological resource related to a violation under this part is subject to forfeiture.

(b) The bureau may either deposit forfeited resources into an approved repository, or transfer or assign administration of the forfeited resources to Federal or non-Federal institutions to be used for scientific or educational purposes.

§ 49.705 What rewards may bureaus pay to those who assisted in enforcing this part?

(a) The bureau may pay a reward to the person or persons furnishing information leading to a finding of civil violation or criminal conviction under this part.

(b) The reward may be no more than half of the penalties collected. If several persons provide the information, the bureau may divide the reward among them.

(c) The funds for the reward may come from the penalties collected or from appropriated funds.

(d) An officer or employee of Federal, State, or local government who furnishes information or renders service in the performance of official duties is not eligible for a reward under this section.

Subpart I—Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands

§ 49.800 Is casual collecting allowed on lands administered by NPS or FWS?

No. Casual collecting of paleontological resources is not allowed on lands administered by NPS or FWS. On those lands, collecting any paleontological resource must be conducted in accordance with a permit as described in subpart B of this part.

§ 49.805 Where is casual collecting allowed?

(a) Casual collecting of common invertebrate or plant paleontological resources is allowed on lands administered by BLM, except on BLM-administered land that is closed to casual collecting in accordance with this part, other statutes, executive orders, regulations, proclamations, or land use plans.

(b) Casual collecting of common invertebrate or plant paleontological resources is allowed on lands administered by Reclamation only in locations where the bureau has established a special use area for casual

collecting using processes defined in 43 CFR part 423, Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies. Casual collecting is prohibited on Reclamation project land that is administered by NPS or FWS.

(c) Persons interested in casual collecting are responsible for learning which bureau manages the land where they would like to collect paleontological resources, learning if the land is open to casual collecting, and obtaining information about the managing bureau's casual collecting procedures.

§ 49.810 What is casual collecting?

(a) Casual collecting means the collecting without a permit of a reasonable amount of common invertebrate or plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools, resulting in only negligible disturbance to the Earth's surface or paleontological or other resources.

(1) *Common non-vertebrate paleontological resources* means common invertebrate or plant paleontological resources.

(2) *Reasonable amount* means a maximum of 25 pounds of common non-vertebrate paleontological resources per day per person. Where the common non-vertebrate paleontological resources are embedded in rock, the collector, using non-motorized hand tools, may remove a slab or cobble of rock that exceeds 25 pounds in order to preserve the integrity of the embedded specimen.

(3) *Negligible disturbance* means little or no change to the surface of the land and minimal or no effect to natural and other resources.

(4) *Non-commercial personal use* means a use other than for purchase, sale, financial gain, or research.

(5) *Non-powered hand tools* means tools that do not use or are not operated by a motor, engine, or other mechanized power source, and that can be hand-carried by one person.

(b) In order to preserve paleontological or other resources, or for other management reasons, the Federal land manager may establish area-specific limits on casual collecting, including, but not limited to, restricting the weight of common non-vertebrate paleontological resources; limiting the depth of disturbance; establishing dates or locations for collecting; or establishing what paleontological resources in a specific area are not common.

(c) In consultation with knowledgeable paleontologists, the Federal land manager will determine which non-vertebrate paleontological resources are scientifically rare or unique and are therefore not common.

(d) Collecting common non-vertebrate paleontological resources inconsistent with this subpart is a prohibited act and may result in civil or criminal penalties.

Subtitle B—Regulations Relating to Public Lands

SUBCHAPTER H—RECREATION PROGRAMS

PART 8360—VISITOR SERVICES

■ 5. Revise the authority citation for part 8360 to read as follows:

Authority: 16 U.S.C. 470aaa, *et seq.;* 670, *et seq.;* 877, *et seq.;* 1241, *et seq.;* and 1281c; and 43 U.S.C. 315a and 1701 *et seq.*

■ 6. Revise § 8360.0–3 to read as follows:

§ 8360.0–3 Authority.

The regulations of this part are issued under the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, *et seq.*), the Sikes Act (16 U.S.C. 670g), the Taylor Grazing Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 18, 1960, as amended, (16 U.S.C. 877, *et seq.*), the National Trails System Act (16 U.S.C. 1241, *et seq.*), and the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*).

■ 7. Amend § 8365.1–5 by revising paragraph (b) to read as follows:

§ 8365.1–5 Property and resources.

* * * * *

(b) Except on developed recreation sites and areas, or where otherwise prohibited and posted, it is permissible to collect from the public lands reasonable amounts of the following for noncommercial purposes:

(1) Commonly available renewable resources such as flowers, berries, nuts, seeds, cones and leaves;

(2) Nonrenewable resources such as rocks, mineral specimens, and semiprecious gemstones;

(3) Petrified wood as provided under subpart 3622 of this title;

(4) Mineral materials as provided under subpart 3604 of this title;

(5) Forest products for use in campfires on the public lands. Other collection of forest products shall be in accordance with the provisions of part 5500 of this title; and

(6) Common invertebrate and plant paleontological resources as provided under part 49 of this title.

* * * * *

TITLE 50—WILDLIFE AND FISHERIES

PART 27—PROHIBITED ACTS

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

Authority: 5 U.S.C. 685, 752, 690d; 16 U.S.C. 460k, 460*l*–6d, 664, 668dd, 685, 690d, 715i, 715s, 725; 43 U.S.C. 315a.

■ 9. Amend § 27.63 by adding paragraph (c) to read as follows:

§ 27.63 Search for and removal of other valued objects.

* * * * *

(c) Permits are required for the collection of paleontological resources on national wildlife refuges in accordance with the provisions of 43 CFR part 49.

Joan M. Mooney,

Principal Deputy Assistant Secretary, Policy, Management and Budget.

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