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Rules and Regulations

Federal Register

Vol. 88, No. 226

Monday, November 27, 2023

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31517; Amdt. No. 4087]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 27, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 27, 2023.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, or,

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

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removing SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Air Missions (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date of at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on November 10, 2023.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

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

■ 2. Part 97 is amended to read as follows:

Effective 28 December 2023

Sheldon, IA, SHL, RNAV (GPS) RWY 33, Amdt 1F
Macomb, IL, MQB, RNAV (GPS) RWY 27, Amdt 1D
Elkhart, IN, KEKM, RNAV (GPS) RWY 18, Orig–C
Elkhart, IN, KEKM, RNAV (GPS) RWY 27, Orig–D
Tompkinsville, KY, KTZV, Takeoff Minimums and Obstacle DP, Amdt 1
Grand Rapids, MI, KGRR, RNAV (GPS) RWY 35, Amdt 1D
Beatrice, NE, KBIE, RNAV (GPS) RWY 14, Amdt 1D
Beatrice, NE, KBIE, RNAV (GPS) RWY 18, Amdt 2E
Beatrice, NE, KBIE, RNAV (GPS) RWY 36, Amdt 2D
Hartington, NE, 0B4, RNAV (GPS) RWY 31, Orig–G
Nebraska City, NE, KAFK, RNAV (GPS) RWY 15, Amdt 1A
Nebraska City, NE, KAFK, RNAV (GPS) RWY 33, Amdt 1A
Angleton/Lake Jackson, TX, LBX, RNAV (GPS) RWY 17, Amdt 2C
Lockhart, TX, 50R, RNAV (GPS) RWY 36, Orig–C
Appleton, WI, KATW, RNAV (GPS) RWY 21, Amdt 2F

Effective 25 January 2024

Auburn, CA, KAUN, Takeoff Minimums and Obstacle DP, Amdt 2
Auburn, CA, KAUN, YUBBA ONE Graphic DP
Atlanta, GA, KATL, ILS PRM RWY 8L (CLOSE PARALLEL), ILS PRM RWY 8L (CLOSE PARALLEL) (SA CAT I), ILS PRM RWY 8L (CLOSE PARALLEL) (CAT II), ILS PRM RWY 8L (CLOSE PARALLEL) (CAT III), Amdt 3, CANCELED
Atlanta, GA, KATL, ILS PRM RWY 8R (CLOSE PARALLEL), Amdt 3, CANCELED
Atlanta, GA, KATL, ILS PRM 9L (CLOSE PARALLEL), Amdt 3, CANCELED
Atlanta, GA, KATL, ILS PRM RWY 26L (CLOSE PARALLEL), Amdt 3, CANCELED
Atlanta, GA, KATL, ILS PRM RWY 26R (CLOSE PARALLEL), ILS PRM RWY 26R (CLOSE PARALLEL) (SA CAT I), ILS PRM RWY 26R (CLOSE PARALLEL) (SA CAT II), Amdt 4, CANCELED
Atlanta, GA, KATL, ILS PRM RWY 27R (CLOSE PARALLEL), Amdt 4, CANCELED
Atlanta, GA, KATL, RNAV (GPS) PRM RWY 8R (SIMULTANEOUS CLOSE PARALLEL), Orig–A, CANCELED
Atlanta, GA, KATL, RNAV (GPS) PRM RWY 9L (SIMULTANEOUS CLOSE PARALLEL), Orig–E, CANCELED
Atlanta, GA, KATL, RNAV (GPS) PRM RWY 26L (SIMULTANEOUS CLOSE PARALLEL), Orig, CANCELED
Atlanta, GA, KATL, RNAV (GPS) PRM RWY 27R (SIMULTANEOUS CLOSE PARALLEL), Orig, CANCELED
Atlanta, GA, KATL, RNAV (GPS) PRM Y RWY 8L (SIMULTANEOUS CLOSE PARALLEL), Orig–A, CANCELED
Atlanta, GA, KATL, RNAV (GPS) PRM Y RWY 26R (SIMULTANEOUS CLOSE PARALLEL), Orig–A, CANCELED
Milledgeville, GA, MLJ, NDB RWY 28, Amdt 6
Milledgeville, GA, MLJ, RNAV (GPS) RWY 10, Amdt 3
Milledgeville, GA, MLJ, RNAV (GPS) RWY 28, Amdt 3
Milledgeville, GA, KMLJ, Takeoff Minimums and Obstacle DP, Amdt 2
Guam, GU, PGUM, ILS OR LOC RWY 6L, Amdt 4C
Guam, GU, PGUM, ILS OR LOC RWY 6R, Orig–E
Guam, GU, PGUM, NDB RWY 24R, Amdt 1B
Guam, GU, PGUM, RNAV (GPS) Y RWY 6L, Amdt 1C
Guam, GU, PGUM, RNAV (GPS) Y RWY 6R, Amdt 1D
Guam, GU, PGUM, RNAV (GPS) Y RWY 24L, Amdt 1D
Guam, GU, PGUM, RNAV (GPS) Y RWY 24R, Amdt 2B
Guam, GU, PGUM, Takeoff Minimums and Obstacle DP, Amdt 2
Guam, GU, PGUM, VOR OR TACAN RWY 24R, Amdt 1B
Perry, IA, KPRO, RNAV (GPS) RWY 14, Orig
Perry, IA, KPRO, RNAV (GPS) RWY 14, Orig–B, CANCELED
Perry, IA, KPRO, RNAV (GPS) RWY 32, Amdt 1B, CANCELED
Perry, IA, KPRO, RNAV (GPS) RWY 32, Orig
Perry, IA, KPRO, Takeoff Minimums and Obstacle DP, Amdt 1
Sterling/Rockfalls, IL, KSQI, LOC BC RWY 7, Amdt 7
Terre Haute, IN, KHUF, VOR RWY 23, Amdt 21A, CANCELED
Colby, KS, KCBK, NDB RWY 17, Amdt 2A, CANCELED
Norton, KS, KNRN, Takeoff Minimums and Obstacle DP, Amdt 2
Oakley, KS, KOEL, NDB RWY 34, Amdt 3C, CANCELED
Lake Charles, LA, LCH, VOR–A, Amdt 15
Lake Charles, LA, LCH, VOR–B, Amdt 9
Hyannis, MA, KHYA, Takeoff Minimums and Obstacle DP, Amdt 4
Montevideo, MN, KMVE, VOR RWY 14, Amdt 5D, CANCELED
St Louis, MO, KSUS, ILS OR LOC RWY 26L, Orig–F
St Louis, MO, KSUS, RNAV (GPS) RWY 26L, Amdt 1A
St Louis, MO, KSUS, RNAV (GPS) RWY 26R, Amdt 1B
Greenville, MS, KGLH, ILS OR LOC RWY 18L, Amdt 11
Greenville, MS, KGLH, RNAV (GPS) RWY 18L, Amdt 1
Greenville, MS, KGLH, RNAV (GPS) RWY 18R, Amdt 1
Greenville, MS, KGLH, RNAV (GPS) RWY 36L, Amdt 1
Greenville, MS, KGLH, RNAV (GPS) RWY 36R, Amdt 1
Greenville, MS, KGLH, Takeoff Minimums and Obstacle DP, Amdt 1
Greenville, MS, KGLH, VOR RWY 18R, Amdt 1
Moriarty, NM, 0E0, Takeoff Minimums and Obstacle DP, Orig–B
Watertown, NY, KART, RNAV (GPS) RWY 28, Amdt 2
Lebanon, OH, I68, NDB–A, Amdt 6A, CANCELED
Portland, OR, PDX, TACAN RWY 28L, Amdt 2
Sherman/Denison, TX, KGYI, ILS OR LOC RWY 17L, Amdt 2
Port Angeles, WA, KCLM, ILS OR LOC RWY 9, Amdt 3B
Port Angeles, WA, KCLM, RNAV (GPS) RWY 9, Amdt 1B
Port Angeles, WA, KCLM, RNAV (GPS) RWY 27, Amdt 1D
Port Angeles, WA, KCLM, Takeoff Minimums and Obstacle DP, Amdt 3B
Port Angeles, WA, KCLM, WATTR EIGHT Graphic DP

[FR Doc. 2023–25953 Filed 11–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31518; Amdt. No. 4088]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 27, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 27, 2023.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Air Missions (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in an FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ‘‘significant regulatory action’’ under Executive Order 12866; (2) is not a ‘‘significant rule’’ under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on November 10, 2023.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

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

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
28–Dec–23	CA	Santa Rosa	Charles M Schulz—Sonoma County.	3/0468	10/5/23	ILS OR LOC RWY 32, Amdt 19C.
28–Dec–23	PA	Reading	Reading Rgnl/Carl A Spaatz Fld.	3/2093	10/19/23	RNAV (GPS) RWY 31, Orig.
28–Dec–23	AR	Pine Bluff	Pinebluff Rgnl/Grider Fld	3/4744	8/16/23	ILS OR LOC RWY 18, Amdt 3E.
28–Dec–23	CA	Los Angeles	Los Angeles Intl	3/6286	10/5/23	RNAV (GPS) Y RWY 25L, Amdt 5.

[FR Doc. 2023–25955 Filed 11–24–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0198; FRL–11435–01–OCSPP]

Tolpyralate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tolpyralate in or on barley, wheat and livestock commodities. ISK Biosciences Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 27, 2023. Objections and requests for hearings must be received on or before January 26, 2024, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the SUPPLEMENTARY INFORMATION).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0198, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and for the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Francisco Llarena-Arias, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0198 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before January 26, 2024. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0198, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/

DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 20, 2022 (87 FR 30855) (FRL–9410–13–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F8958) by ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio, 44077. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide tolpyralate, 1-[[1-ethyl-4-[3-(2-methoxyethoxy)-2-methyl-4-(methylsulfonyl)benzoyl]-1H-pyrazol-5-yl]oxy]ethyl methyl carbonate including its metabolite MT–2153, in or on barley, grain at 0.015 parts per million (ppm); barley, hay at 0.2 ppm; barley, straw at 0.08 ppm; wheat, grain at 0.01 ppm; wheat, forage at 0.02 ppm; wheat, hay at 0.05 ppm; wheat, straw at 0.03 ppm. That document referenced a summary of the petition prepared by ISK Biosciences Corporation, the registrant, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing. Based upon review of the data supporting the petition, EPA is establishing tolerances for residues in livestock commodities. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of 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.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to 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. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for tolpyralate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with tolpyralate follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections of the rule that repeat what has been previously published in tolerance rulemakings for the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemaking and republishing the same sections is unnecessary and duplicative. EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published a number of tolerance rulemakings for tolpyralate, in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to tolpyralate and established tolerances for residues of that chemical. EPA is incorporating previously published sections from those rulemakings as described further in this rulemaking, as they remain unchanged.

A. Toxicological Profile

For a discussion of the Toxicological Profile of tolpyralate, see Unit III.A. of the July 27, 2017, rulemaking (82 FR 34877) (FRL–9964–15).

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. The PODs and levels of concern have not changed from the previous rulemaking and EPA incorporates the background information in the July 27, 2017, rulemaking. In addition, a summary of the toxicological endpoints for tolpyralate used for human risk assessment can be found in the document titled Tolpyralate: Human Health Risk Assessment for the Proposed Uses on Wheat and Barley and Addition of Aerial Application for Corn. (hereinafter ''Tolpyralate Human Health Risk Assessment'') in docket ID number EPA–HQ–OPP–2022–0198 in *regulations.gov.*

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to tolpyralate, EPA considered exposure under the petitioned-for tolerances as well as all existing tolpyralate tolerances in 40 CFR 180.696. EPA assessed dietary exposures from tolpyralate in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for tolpyralate. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) under the Continuing Survey of Food Intake by Individuals (CSFII) and the Centers for Disease Control (CDC) under the National Health and Nutrition Examination Survey/What We Eat in America (NHANES/WEIA) 2005–2010. As to residue levels in food, EPA assumed tolerance level residues for all commodities and 100% crop treated.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) under the Continuing Survey of Food Intake by Individuals (CSFII) and the CDC under the National Health and Nutrition Examination Survey/What We Eat in America (NHANES/WEIA) 2005–2010. As to residue levels in food, EPA assumed tolerance level residues for all commodities and 100% crop treated.

iii. *Cancer.* The Agency has determined that quantification of risk using a non-linear approach (*i.e.,* reference dose or RfD), for tolpyralate will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to tolpyralate. As a result, the chronic dietary exposure assessment is protective for potential cancer risk, and a separate cancer exposure assessment was not conducted.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for tolpyralate. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The estimates for drinking water exposure have not changed since the previous tolerance rulemaking; the additional uses do not impact the previous calculations for drinking water exposure estimates. For a discussion of the dietary exposure of drinking water of tolpyralate, see Unit III.C.2. of the July 27, 2017, rulemaking.

3. *From non-dietary exposure.* There are no residential (non-occupational) exposures associated with the new proposed uses and tolpyralate is not registered for any use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* The Agency is required to consider the cumulative risks of pesticides sharing a common mechanism of toxicity. The Agency has determined that the HPPD inhibitors, which include tolpyralate, share a common mechanism of toxicity as discussed in the *HPPD Inhibiting Herbicides: State of the Science* paper (K. Yozzo and M. Perron, 09/18/2020, TXR No. 0058084, D439367). As explained in that document, the members of this group share the ability to bind to and inhibit the HPPD enzyme, resulting in elevated systemic tyrosine levels and common apical outcomes that are mediated by tyrosine, including ocular and developmental effects. In 2021, after establishing a common mechanism grouping for the HPPD inhibitors, the Agency conducted the *P-Hydroxyphenyl-Pyruvate Dioxygenase (HPPD) Inhibitors Cumulative Risk Assessment: Benzobicyclon, Bicyclopyrone, Isoxaflutole, Mesotrione, Pyrasulfotole, Tembotrione, Tolpyralate, and Topramezone* (J. Godshall, 06/30/2021, D462487) and concluded that cumulative exposures to HPPD inhibitors (based on proposed and registered pesticidal uses at the time the assessment was conducted) did not present risks of concern.

An updated cumulative risk assessment (CRA) was not performed for the proposed new uses of tolpyralate on barley and wheat. The tolerances for tolpyralate being established in this rulemaking for barley, wheat and livestock commoditiest, do not impact the screening-level CRA based on low recommended tolerance levels relative to other HPPD inhibitors in the Cumulative Assessment Group (CAG). Therefore, an updated CRA is not necessary for tolpyralate.

D. Safety Factor for Infants and Children

EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor from 10X to 1X. See Unit III.D of July 27, 2017, rulemaking (82 FR 34877) (FRL–9964–15) for a discussion of the Agency's rationale for that determination.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate margin of exposure (MOE) exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to tolpyralate will occupy 1.0% of the aPAD for females 13 to 49 years old, the only population relevant for assessing acute exposure to tolpyralate.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to tolpyralate from food and water will utilize 2.7% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. There are no residential uses for tolpyralate.

3. *Short-term risk.* A short-term adverse effect was identified; however, tolpyralate is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for tolpyralate.

4. *Intermediate-term risk.* An intermediate-term adverse effect was identified; however, tolpyralate is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for tolpyralate.

5. *Aggregate cancer risk for U.S. population.* Based on the discussion in Unit III.A., the chronic dietary exposure assessment is protective for potential cancer risk. Therefore, EPA does not expect exposure to tolpyralate to pose aggregate cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to tolpyralate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (ISK Biosciences Method JSM0433) for plant commodities is a LC–MS/MS method that can be used to analyze for parent tolpyralate. It has been developed and independently validated and is adequate to enforce the established and proposed tolerances. For all matrices and analytes, the level of quantification (LOQ), defined as the lowest level of method validation (LLMV) or lowest spiking level where acceptable precision and accuracy data were obtained, was determined to be 0.01 ppm. The limit of detection (LOD) was 0.004 ppm.

Adequate enforcement methodology (ISK Biosciences Method D96518) for livestock commodities is a LC–MS/MS method that can be used to analyze for parent tolpyralate and the metabolite MT–2153 concurrently. It has been developed and independently validated and is adequate to enforce the established and proposed tolerances. For all matrices and analytes, the level of quantification (LOQ), defined as the lowest level of method validation (LLMV) or lowest spiking level where acceptable precision and accuracy data were obtained, was determined to be 0.01 ppm. The limit of detection (LOD) was 0.003 ppm.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for tolpyralate.

C. Revisions to Petitioned-For Tolerances

The tolerances being established for the proposed new uses of tolpyralate are based on values obtained using the OECD MRL calculator and submitted residue data. The tolerances being established are consistent with the values in the petition, with the exception of barley, grain, which is established at 0.01 ppm instead of 0.015 ppm to correct a typo that was published in the **Federal Register** of May 20, 2022 (87 FR 30855) (FRL–9410–13–OCSPP). EPA is establishing tolerances for residues in livestock commodities due to an update in the dietary burden calculation.

As part of the review of the petition, a revised Maximum Reasonable Dietary Burden (MRDB), including the potential contributions of barley and wheat were evaluated. As indicated in EPA's regulation, 40 CFR 180.6, when finite pesticide chemical residues will be found in livestock commodities as a result of the use of a pesticide in or on animal feedstuffs, EPA will establish tolerances in livestock commodities to accommodate those residues. The additional uses of tolpyralate on barley and wheat will result in an increase in the MRDB for beef and dairy cattle and consequently necessitate increasing tolerances for tolpyralate residues in ruminant commodities. New tolerance levels in ruminant commodities were determined using the Langmuir model, and based on that analysis, EPA is establishing tolerances for residues in or on cattle, byproducts at 0.02 ppm; goat, byproducts at 0.02 ppm; horse, byproducts at 0.02 ppm and sheep, byproducts at 0.02 ppm.

V. Conclusion

Therefore, tolerances for plant commodities are established for residues of tolpyralate, 1-[[1-ethyl-4-[3-(2-methoxyethoxy)-2-methyl-4-(methylsulfonyl)benzoyl]-1H-pyrazol-5-yl]oxy]ethyl methyl carbonate in or on barley, grain at 0.01 ppm; barley, hay at 0.2 ppm; barley, straw at 0.08 ppm wheat, grain at 0.01 ppm; wheat, forage at 0.02 ppm; wheat, hay at 0.05 ppm and; wheat, straw at 0.03 ppm. Compliance with the tolerance levels specified below is to be determined by measuring only tolpyralate, 1-[[1-ethyl-4-[3-(2-methoxyethoxy)-2-methyl-4-(methylsulfonyl)benzoyl]-1H-pyrazol-5-yl]oxy]ethyl methyl carbonate, in or on the commodity.

In addition, tolerances for livestock commodities are established for residues of tolpyralate, 1-[[1-ethyl-4-[3-(2-methoxyethoxy)-2-methyl-4-(methylsulfonyl)benzoyl]-1H-pyrazol-5-yl]oxy]ethyl methyl carbonate and metabolite MT–2153 [1-ethyl-5-hydroxy-1H-pyrazol-4-yl-3-(2-methoxyethoxy)-4-mesyl-2-methylphenyl ketone], in or on cattle, byproducts at 0.02 ppm; goat, byproducts at 0.02 ppm; horse, byproducts at 0.02 ppm and sheep, byproducts at 0.02 ppm. Compliance with the tolerance levels specified below is to be determined by measuring tolpyralate, 1-[[1-ethyl-4-[3-(2-methoxyethoxy)-2-methyl-4-(methylsulfonyl)benzoyl]-1H-pyrazol-5-yl]oxy]ethyl methyl carbonate and metabolite MT–2153 [1-ethyl-5-hydroxy-1H-pyrazol-4-yl-3-(2-methoxyethoxy)-4-mesyl-2-methylphenyl ketone], in or on the commodity.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 16, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 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 § 180.696 by:

■ a. Designating the introductory text of paragraph (a) as paragraph (a)(1) and the table in newly designated paragraph (a)(1) as table 1 to paragraph (a)(1).

■ b. Adding, in alphabetical order, in newly designated table 1 to paragraph (a)(1), the entries ''Barley, grain''; ''Barley, hay''; ''Barley, straw''; ''Wheat, forage''; ''Wheat, grain''; ''Wheat, hay''; and ''Wheat, straw''.

■ c. Add paragraph (a)(2).

The additions read as follows:

§ 180.696 Tolpyralate; tolerances for residues.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
Barley, grain	0.01
Barley, hay	0.2
Barley, straw	0.08
* * * *	*
Wheat, forage	0.02
Wheat, grain	0.01
Wheat, hay	0.05
Wheat, straw	0.03

(2) Tolerances are established for residues of tolpyralate, 1-[[1-ethyl-4-[3-(2-methoxyethoxy)-2-methyl-4-(methylsulfonyl)benzoyl]-1H-pyrazol-5-yl]oxy]ethyl methyl carbonate and metabolite MT–2153 [1-ethyl-5-hydroxy-1H-pyrazol-4-yl-3-(2-methoxyethoxy)-4-mesyl-2-methylphenyl ketone], in or on the livestock commodities in table 2 to this paragraph (a)(2). Compliance with the tolerance levels specified in table 2 to this paragraph (a)(2) is to be determined by measuring tolpyralate, 1-[[1-ethyl-4-[3-(2-methoxyethoxy)-2-methyl-4-(methylsulfonyl)benzoyl]-1H-pyrazol-5-yl]oxy]ethyl methyl carbonate and metabolite MT–2153 [1-ethyl-5-hydroxy-1H-pyrazol-4-yl-3-(2-methoxyethoxy)-4-mesyl-2-methylphenyl ketone], in or on the commodity.

TABLE 2 TO PARAGRAPH (a)(2)

Commodity	Parts per million
Cattle, byproducts	0.02
Goat, byproducts	0.02
Horse, byproducts	0.02
Sheep, byproducts	0.02

* * * * *

[FR Doc. 2023–25871 Filed 11–24–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 402

Office of the Secretary

45 CFR Part 102

[CMS–6061–CN]

RIN 0938–AT86

Medicare Program; Medicare Secondary Payer and Certain Civil Money Penalties; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors in the final rule that appeared in the October 11, 2023 **Federal Register** titled ''Medicare Program; Medicare Secondary Payer and Certain Civil Money Penalties''.

DATES: *Effective date:* This correcting document is effective December 11, 2023.

FOR FURTHER INFORMATION CONTACT: Brian Broznowicz, (410) 786–3349.

SUPPLEMENTARY INFORMATION:

I. Background

This correcting document identifies and corrects errors in FR Doc. 2023–22282 of October 11, 2023 (88 FR 70363). The provisions in this correction document are effective as if they had been included in the document published October 11, 2023. Accordingly, the corrections are effective December 11, 2023.

II. Summary of Errors

On page 70363, we inadvertently omitted a part of the header.

On page 70372, we made an error in the Words of Issuance.

On page 70373, we made technical errors in the amendatory instructions as well as the headings, entries, and table notes in the civil monetary penalty adjustment table at 45 CFR 102.3.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule in accordance with 5 U.S.C. 553(b) of the Administrative Procedure Act (APA). The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that this final rule correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document merely corrects typographical and technical errors in the final rule, and it does not make substantive changes to the policies or the implementing regulations that were adopted in the final rule. As a result, this final rule correcting document is intended to ensure that the information in the final rule accurately reflects the policies and regulatory amendments adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the minor corrections in this document into the final rule or delaying the effective date would be unnecessary, as we are not altering our policies or regulatory changes, but rather, we are simply correctly implementing the policies and regulatory changes that we previously proposed, requested comment on, and subsequently finalized. This final rule correcting document is intended solely to ensure that the final rule accurately reflects these policies and regulatory changes. Furthermore, additional notice and comment procedures would be contrary to the public interest because it is in the public's interest to ensure that the final rule accurately reflects our policies and regulatory changes. Therefore, for all of the reasons cited above, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2023–22282 of October 11, 2023 (88 FR 70363), we are making the following corrections:

■ 1. On page 70363, second column, lines 5 and 6, the header of the document is corrected to read as follows:

42 CFR Part 402

Office of the Secretary

45 CFR Part 102

■ 2. On page 70372, first column, the fifth full paragraph (Words of Issuance) is corrected to read as follows:

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

■ 3. On page 70373, starting in the third column, amendatory instruction 5 and the accompanying regulatory text is corrected to read as follows:

■ 5. Section 102.3 is amended in table 1 by—

■ a. Revising the entries for ''1395y(b)(6)(B)'' and ''1395y(b)(7)(B)(i)''; and

■ b. Adding an entry for ''1395y(b)(8)(E)(i)'' in alphanumerical order.

The revisions and addition read as follows:

§ 102.3 Penalty adjustment and table.

* * * * *

TABLE 1 TO § 102.3—CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS

U.S.C. section(s)	CFR[1]	HHS agency	Description[2]	Date of last penalty, figure or adjustment[3]	2022 maximum adjusted penalty ($)	2023 maximum adjusted penalty[4] ($)
*	*	*	*	*	*	*
42 U.S.C.:						
*	*	*	*	*	*	*
1395y(b)(6)(B)	42 CFR 402.1(c)(20), 402.105(a).	CMS	Penalty for any entity that knowingly, willfully, and repeatedly fails to complete a claim form relating to the availability of other health benefits in accordance with statute or provides inaccurate information relating to such on the claim form.	2022	3,701	3,988
1395y(b)(7)(B)(i)	42 CFR 402.1(c)(21), 402.105(a).	CMS	Penalty for any entity serving as insurer, third party administrator, or fiduciary for a group health plan that fails to provide information that identifies situations where the group health plan is or was a primary plan to Medicare to the HHS Secretary.	2022	1,325	1,428
*	*	*	*	*	*	*
1395y(b)(8)(E)(i)	42 CFR 402.1(c)(22), 402.105(b)(2).	CMS	Penalty for any entity serving as insurer, third party administrator, or fiduciary for a non-group health plan that fails to provide information that identifies situations where the group health plan is or was a primary plan to Medicare to the HHS Secretary.	2022	1,325	1,428
*	*	*	*	*	*	*

[1] Some HHS components have not promulgated regulations regarding their civil monetary penalty-specific statutory authorities.
[2] The description is not intended to be a comprehensive explanation of the underlying violation; the statute and corresponding regulation, if applicable, should be consulted.
[3] Statutory or Inflation Act Adjustment.
[4] OMB Memorandum *M–16–06,* Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, published February 24, 2016, guided agencies on initial ''catch-up'' adjustment requirements, and *M–17–11,* Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, published December 16, 2016; followed by *M–18–03, M–19–04, M–20–05, M–21–10, M–22–07,* and *M–23–05* guided agencies on annual adjustment requirements.

* * * * *

Elizabeth J. Gramling,

Executive Secretary, Department of Health and Human Services.

[FR Doc. 2023–25696 Filed 11–24–23; 8:45 am]

BILLING CODE 4120–01–P

Proposed Rules

Federal Register

Vol. 88, No. 226

Monday, November 27, 2023

DEPARTMENT OF ENERGY

10 CFR Part 1008

[DOE–HQ–2023–0058]

RIN 1903–AA14

Privacy Act of 1974: Implementation of Exemptions

AGENCY: U.S. Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE, the Department) is giving notice of a newly established System of Records pursuant to the Privacy Act of 1974 for the Department of Energy—DOE–78 Data Analytics Program Records in this proposed rulemaking. The Department proposes to exempt portions of the System of Records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: To be assured of consideration, written comments on this proposed rulemaking must be received at one of the addresses listed in the **ADDRESSES** section, on or before December 27, 2023. Comments received following the aforementioned date may be considered if it is practical to do so. Please refer to section IV (Public Participation—Submission of Comments) for additional information on the comment period.

ADDRESSES: You may submit comments identified by docket number DOE–HQ–2023–0058, as follows:

Federal eRulemaking Portal: www.regulations.gov. Include the docket number DOE–HQ–2023–0058 in the ''Enter Keyword or ID'' field and click on ''Search.'' On the next web page, click on ''Submit a Comment'' action and follow the instructions in the portal.

Mail/Hand Delivery/Courier [for paper, disk, or CD-ROM submissions] to: Ken Hunt, U.S. Department of Energy, 1000 Independence Avenue SW, Office 8H–085, Washington, DC 20585.

Comments received, including any personal information, will be posted without change to *www.regulations.gov.*

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. The *www.regulations.gov* web page contains instructions on how to access all documents, including public comments, in the docket. See section IV of this document for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kyle David, U.S. Department of Energy, 1000 Independence Avenue SW, Office 8H–085, Washington, DC 20585; facsimile: (202) 586–8151; email: *kyle.david@hq.doe.gov,* telephone: (240) 686–9485.

SUPPLEMENTARY INFORMATION:

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I. Authority and Background

A. Authority

DOE has broad authority to manage the agency's collection, use, processing, maintenance, storage, and disclosure of Personally Identifiable Information (PII) pursuant to the following authorities: 42 United States Code (U.S.C.) 7101 *et seq.,* 50 U.S.C. 2401 *et seq.,* 5 U.S.C. 1104, 5 U.S.C. 552, 5 U.S.C. 552a, 42 U.S.C. 7254, 5 U.S.C. 301, and 42 U.S.C. 405 note.

B. Background

The Privacy Act of 1974 (the Act) (5 U.S.C. 552a) embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''System of Records.'' A ''System of Records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

II. Discussion

DOE is claiming exemptions from certain requirements of the Privacy Act for one System of Records: DOE–78 Data Analytics Program Records.

DOE–78 Data Analytics Program Records will aggregate, store, and use data that the Office of the Inspector General (OIG) has the legal authority to collect and maintain to perform statistical analytics, data science, link analysis, and other mathematical techniques. The primary goal of this work is to identify anomalies that may indicate systemic or specific risks as well as activities that indicate mismanagement, fraud, abuse, waste, unlawful or unethical activity in DOE programs and operations. The analysis may support other parts of OIG by helping to identify specific areas for OIG attention or the development of risk indicators. Other parts of OIG may use the analytic output of the system to determine predication or indication for audits, inspections, evaluations, and investigations, including joint refinement of preliminary analysis, under their specific authorities.

For this System of Records, DOE claims exemptions to paragraphs (c)(3) and (4); (d)(1) through (4); (e)(1) through (3), (4)(G), (4) (H), and (4)(I); (e)(5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5). These exemptions are needed to protect information relating to DOE activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DOE's ability to obtain information from third parties and other sources; and to protect the privacy of third parties; to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by many federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and overall law enforcement process, the applicable exemptions may be waived on a case-by-case basis.

A System of Records Notice for DOE–78 Data Analytics Program Records is also published in this issue of the **Federal Register**.

Exemptions for DOE–78 Data Analytics Program Records from these particular paragraphs of the Act are justified, on a case-by-case basis to be determined at the time a request is made for the following reasons:

From paragraphs (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DOE as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

From paragraph (d) (Access to Records) because access to the records contained in this System of Records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DOE or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to nuclear or energy sector security.

From paragraph (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

From paragraph (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

From paragraph (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From paragraphs (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of paragraph (d) for the reasons noted above, and therefore DOE is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the System of Records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

From paragraph (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with paragraph (e)(5) would preclude DOE agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

From paragraph (e)(8) (Notice on Individuals) because compliance would interfere with DOE's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

From paragraph (g) (Civil Remedies) to the extent that the system is exempt from other specific paragraphs of the Privacy Act.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866, 13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, 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 specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this proposed regulatory action is not a ''significant regulatory action'' within the scope of E.O. 12866. Accordingly, this action is not subject to review under E.O. 12866 by OIRA of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth below.

This proposed rule would update DOE's policies and procedures concerning the disclosure of records held within a System of Records pursuant to the Privacy Act of 1974. This proposed rule would apply only to activities conducted by DOE's federal employees and contractors, who would be responsible for implementing the rule requirements. DOE does not expect there to be any potential economic impact of this proposed rule on small businesses. Small businesses, therefore, should not be adversely impacted by the requirements in this proposed rule. For these reasons, DOE certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act of 1995

This proposed rule does not impose a collection of information requirement subject to review and approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (NEPA), DOE has analyzed this proposed action in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion (CX) for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE has determined that this proposed rule is covered under the CX found in DOE's NEPA regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, because it is an amendment to an existing regulation that does not change the environmental effect of the amended regulation and, therefore, meets the requirements for the application of this CX. *See* 10 CFR 1021.410. Therefore, DOE has determined that this proposed rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and does not require an Environmental Assessment or an Environmental Impact Statement.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for the affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; (6) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of the standards. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not preempt State law and 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. No further action is required by Executive Order 13132.

G. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that has ''Tribal'' implications and imposes substantial direct compliance costs on Indian Tribal governments. DOE has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and Tribal governments, and the private sector. (Pub. L. 104–4, sec. 201 *et seq.* (codified at 2 U.S.C. 1531 *et seq.*)). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant Federal intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at: *www.energy.gov/gc/guidance-opinions* under ''Guidance & Opinions'' (Rulemaking)). DOE examined the proposed rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate 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 in any year. Accordingly, no further assessment or analysis is required under UMRA.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OIRA, which is part of OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under Executive Order 12866, or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This proposed regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

L. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). Pursuant to OMB Memorandum M–19–15, *Improving Implementation of the Information Quality Act* (April 24, 2019), DOE published updated guidelines which are available at: *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.*

DOE has reviewed this proposed rule and will ensure that information produced under this regulation remains consistent with the applicable OMB and DOE guidelines.

IV. Public Participation—Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments with respect to this proposed rule using the method described in the **ADDRESSES** section at the beginning of this proposed rule. To help the Department review the submitted comments, commenters are requested to reference the paragraph(s), (*e.g.,* § 1008.22(d)), to which they refer where possible.

1. *Submitting comments www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable by DOE's Office of Privacy Management and Compliance staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment. However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only

first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through *www.regulations.gov* will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

2. *Confidential Business Information.* Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data he or she believes to be confidential and exempt by law from public disclosure should submit two well-marked copies: one copy of the document marked ''CONFIDENTIAL'' including all the information believed to be confidential, and one copy of the document marked ''NON–CONFIDENTIAL'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination as to the confidentiality of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

3. *Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

V. Approval by the Office of the Secretary of Energy

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 1008

Administration practice and procedure, Freedom of information, Privacy, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on November 9, 2023, by Ann Dunkin, Senior Agency Official for Privacy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 20, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, the Department of Energy proposes to amend part 1008 of chapter X of title 10 of the Code of Federal Regulations as set forth below:

PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

■ 1. The authority citation for part 1008 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 5 U.S.C. 552a.

■ 2. Amend § 1008.12 by adding paragraphs (a)(2)(iii); (b)(1)(ii)(N); (b)(2)(ii)(Q) and (b)(3)(ii)(S) to read as follows:

§ 1008.12 Exemptions.

(a) * * *

(2) * * *

(iii) *Data Analytics Program Records (DOE–78).* This System of Records is being exempted pursuant to paragraph (j)(2) of the Act to enable the Office of the Inspector General in the performance of its law enforcement function. The system is exempted from paragraphs (c)(3) and (4); (d)(1) through (4); (e)(1) through (3), (4)(G), (4)(H), and (4)(I); (e)(5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5). The system is exempt from these provisions for the following reasons: notifying an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or granting access to an investigative file could:

(A) Interfere with investigative and enforcement proceedings and with co-defendants' right to a fair trial;

(B) Disclose the identity of confidential sources and reveal confidential information supplied by these sources; and

(C) Disclose investigative techniques and procedures.

(b) * * *

(1) * * *

(ii) * * *

(N) Data Analytics Program Records (DOE–78).

(2) * * *

(ii) * * *

(Q) Data Analytics Program Records (DOE–78).

(3) * * *

(ii) * * *

(S) Data Analytics Program Records (DOE–78).

* * * * *

[FR Doc. 2023–25982 Filed 11–24–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131756–11]

RIN 1545–BI49

Transactions Between Related Persons and Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would update regulations regarding whether persons are treated as related persons who are subject to certain special rules pertaining to transactions with partnerships. The regulations affect

partnerships that enter into transactions with related persons that result in gain or loss on a sale or exchange of property or result in a difference in the time at which income and deductions are recognized because of the persons' different methods of accounting.

DATES: Written or electronic comments and requests for a public hearing must be received by February 26, 2024. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–131756–11). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of Treasury (Treasury Department) and the IRS will publish any comments submitted electronically and comments submitted on paper to the IRS's public docket. *Send paper submissions to:* CC:PA:LPD:PR (REG–131756–11), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations relating to section 267, Livia Piccolo, (202) 317–7007 (not a toll-free number); concerning the proposed regulation relating to section 707, Charles D. Wien, (202) 317–5279 (not a toll-free number); and concerning the submission of comments and requests for a public hearing, Vivian Hayes, (202) 317–6960 (not a toll-free number) or by sending an email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 267 and 707 of the Internal Revenue Code (Code) relating to the disallowance or deferral of deductions for losses and expenses in certain transactions with partnerships and related persons (proposed regulations). The proposed regulations would remove § 1.267(b)–1(b) and amend § 1.267(a)–1 to remove the application of Questions and Answers 2 and 3 in § 1.267(a)–2T(c) for taxable years ending on or after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. In addition, the proposed regulations would amend § 1.707–1(b).

In general, section 267(a)(1) provides that a taxpayer may not deduct a loss on the sale or exchange of property with a related person as defined in section 267(b). Section 267(a)(2) sets forth a ''matching rule'' that provides that if because of a payee's method of accounting, an amount is not (unless paid) includible in the payee's gross income, the taxpayer (payor) may not deduct the otherwise deductible amount until the payee includes the amount in gross income if the taxpayer and payee are related persons within the meaning of section 267(b) on the last day of the taxpayer's taxable year in which the amount otherwise would have been deductible.

As part of enacting the Internal Revenue Code of 1954, Public Law 83–591, ch. 736, 68A Stat. 1 (1954), Congress added section 707(b)(1) to the Code to address the sale or exchange of property between a partnership and a partner owning, directly or indirectly, more than 50 percent of the capital or profit interest in the partnership. 68A Stat. at 243. Given a lack of statutory and regulatory guidance addressing transactions between a partnership and a related person who was not a partner, the Treasury Department and the IRS issued § 1.267(b)–1(b) in 1958. *See* TD 6312, 23 FR 7035 (Sep. 11, 1958).

Section 1.267(b)–1(b) applies an aggregate theory of partnerships to provide that any transaction described in section 267(a) between a partnership and a person other than a partner is considered as occurring between the other person and the members of the partnership separately. Specifically, § 1.267(b)–1(b) provides that if the other person and a partner are within any of the relationships specified in section 267(b), no deductions with respect to the transaction between the other person and the partnership will be allowed: (i) to the related partner to the extent of the related partner's distributive share of partnership deductions for losses or unpaid expenses or interest resulting from the transactions, and (ii) to the other person to the extent the related partner acquires an interest in any property sold to or exchanged with the partnership by the other person at a loss, or to the extent of the related partner's distributive share of the unpaid expenses or interest payable to the partnership by the other person as a result of the transaction.

The U.S. Tax Court upheld the validity of § 1.267(b)–1(b) and its use of the aggregate theory in *Casel* v. *Commissioner,* 79 T.C. 424 (1982). However, subsequent statutory changes to sections 267 and 707(b) have made § 1.267(b)–1(b) inconsistent with the statute.

In 1982, Congress enacted section 3(h)(1) of the Subchapter S Revision Act of 1982, Public Law 97–354, 96 Stat. 1669, 1689 (1982) to add section 267(b)(10) to the Code to disallow a deduction resulting from a transaction between a commonly-controlled partnership and an S corporation. Specifically, section 267(b)(10) provides that an S corporation and a partnership were related persons if the same persons owned more than 50 percent of the outstanding stock of the S corporation and more than 50 percent of the capital interest or the profits interest in the partnership.

In 1984, Congress enacted section 174(b)(1) of the Tax Reform Act of 1984 (TRA 1984), Public Law 98–369, 98 Stat. 494, 705 (1984), to add section 267(e) to the Code generally to extend the matching rule of section 267(a)(2) to transactions between a partnership and a partner or a person related to a partner (within the meaning of sections 267(b) or 707(b)(1)). Congress also enacted section 174(b)(3) of the TRA 1984, 98 Stat. at 707, to amend section 267(b)(10) to include C corporations as well as S corporations.

In 1985, the Treasury Department and the IRS issued § 1.267(a)–2T(c) to provide guidance for transactions between related partnerships. Consistent with the legislative history of the TRA 1984, the regulations generally apply an aggregate theory of partnerships in deferring deductions according to the partners' aggregate interests in the payor partnership. *See* S. Rep. No. 98–169, 98th Cong., 2nd Sess., at 496 and n. 17 (1984); TD 7991, 49 FR 46992 (Nov. 30, 1984).

In the Tax Reform Act of 1986 (TRA 1986), Public Law 99–514, 100 Stat. 2085 (1986), Congress amended section 707(b) in two ways. First, Congress revised sections 707(b)(1)(A) and 707(b)(2)(A) to expand the application of those provisions to a person who is not a partner and modified section 707(b)(2) to reduce the thresholds described in that section from more than 80 percent of profits or capital to more than 50 percent of profits or capital for purposes of treating recognized gain between related persons as ordinary income. As amended by section 1812(c)(3) of the TRA 1986, 100 Stat. at 2834, the loss disallowance rules of section 707(b)(1)(A) and the character of gain rules of section 707(b)(2)(A) apply to transactions between a partnership and any person (a partner or non-partner) who directly or indirectly owns more than 50 percent of the capital or profits interest in the partnership. *See* sections 707(b)(1)(A), (b)(2)(A), and (b)(3).

Second, in enacting section 642(a)(2) of the TRA 1986, 100 Stat. at 2284, Congress amended section 707(b)(1)(B) to provide that for purposes of the matching rule in section 267(a)(2), two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests are treated as related persons within the meaning of section 267(b). The related committee reports state that the modifications to section 707(b), and in particular to section 707(b)(1)(B), were intended to replace Questions and Answers 2 and 3 of § 1.267(a)–2T(c). *See* H. Rept. No. 99–426, 99th Cong., 1st Sess., at 940 and n. 7 (1986), 1986–3 C.B. Vol. 2, at 940 and n. 7; S. Rep. No. 99–313, 99th Cong., 2nd Sess., at 960 and n. 7, 1986–3 C.B. Vol. 3, 959, 960 and n. 7.

Explanation of Provisions

The statutory changes to sections 267 and 707(b) enacted since 1982 indicate that Congress intended for a partnership to be viewed as an entity, rather than as an aggregate of its partners, in applying the rules of sections 267 and 707(b). Therefore, the loss disallowance rules of sections 267(a)(1) and 707(b)(1), the gain recharacterization rules of section 707(b)(2), and the matching rule of section 267(a)(2) similarly should be applied at the partnership level and not the partner level. Accordingly, the rules relating to partnerships in § 1.267(b)–1(b) and § 1.267(a)–2T(c), Questions and Answers 2 and 3, do not conform to Congress's view of how section 267 should be applied to partnerships.

To conform the regulations under section 267 with the current statute, the proposed regulations propose: (1) to remove § 1.267(b)–1(b), (2) to amend § 1.267(a)–1 to reflect the rules in Questions and Answers 1 and 4 in § 1.267(a)–2T(c) as § 1.267(a)–1(d)(2) and (3); and (3) to amend § 1.267(a)–1 to terminate the application of Questions and Answers 2 and 3 in § 1.267(a)–2T(c). The regulations under § 1.267(a)–2T(b), which provide questions and answers applying section 267(a)(2) and (b) generally, would continue to apply. The Treasury Department and IRS are aware that some of the citations in the existing regulations under section 267 may be outdated due to subsequent legislative and regulatory changes. However, the rules in these questions and answers remain substantively accurate. For example, Question 1 under § 1.267(a)–2T(b) refers to the completed contract method under § 1.451–3(d). The substance of this answer remains correct; however, the correct citation to the completed contract method is now under § 1.460–4(d). Modifications to update incorrect citations in § 1.267(a)–2T(b) are outside the scope of these proposed regulations. Finally, these proposed regulations also revise § 1.707–1(b) to conform to the statutory changes made to sections 267 and 707(b).

Proposed Applicability Date

These regulations are proposed to apply to taxable years ending on or after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**. Thus, § 1.267(b)–1(b) would be removed, and the revisions to § 1.267(a)–1 would apply to taxable years ending on or after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**. Similarly, the revisions to § 1.707–1(b) would apply to sales or exchanges of property with respect to controlled partnerships in taxable years ending on or after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Special Analyses

I. Regulatory Impact Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

These proposed regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure statements. However, a taxpayer may continue to be required to report on Form 1065, *U.S. Return of Partnership Income,* information about partners that own directly or indirectly more than 50 percent of the partnership. Data on the number of affected taxpayers is not available.

For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)) (PRA), the reporting burden associated with the collection of information for Form 1065 will be reflected in the PRA submission associated with the income tax returns under the OMB control number 1545–0123.

The overall burden estimates associated with the OMB control number 1545–0123 is an aggregate number related to the entire package of forms associated with the applicable OMB control number and will include, but not isolate, the estimated burden of the tax forms that will be created or revised as a result of these proposed regulations. These numbers are therefore not specific to any burden imposed by these proposed regulations. The burdens have been reported for other income tax regulations that rely on the same information collections and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burdens imposed by tax provisions prior to the Act. No burden estimates specific to the forms affected by the proposed regulations are currently available. For the OMB control numbers discussed in this paragraph, the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type-basis rather than a provision-specific basis. Those estimates capture both changes made by the Act and those that arise out of discretionary authority exercised in the proposed regulations (when final) and other regulations that affect the compliance burden for that form.

The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize paperwork burden. In addition, when available, drafts of IRS forms are posted for comment at *https://appsirs.gov/app/pickleist/lit/draftTaxForms.htm.* IRS forms are available at *https://www.irs.gov/forms-instructions.* Forms will not be finalized until after they have been approved by OMB under the PRA.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS certify that this proposal will not have a significant economic impact on a substantial number of small entities. The proposed regulations would remove certain outdated regulations under section 267 that apply an aggregate theory of partnerships and relocate other regulations that are not intended to be obsoleted. These regulations would preserve the status quo by updating the existing regulations to reflect the currently effective statutory provisions. Accordingly, this proposal is unlikely to have a significant economic impact on any small entities affected. The Treasury Department and the IRS invite comments on the impact on small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, nor does this rule include any Federal mandate that may exceed the threshold for the private sector.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Comments and Requests for a Public Hearing

Consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the ''ADDRESSES'' section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic and paper comments submitted will be available at *https://www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**. Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these proposed regulations is Livia Piccolo of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

* * * * *

■ **Par. 2.** Section 1.267(a)–1 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 1.267(a)–1 Deductions disallowed.

* * * * *

(d) *Rules for partnerships under the Tax Reform Act of 1984*—(1) *In general.* Paragraphs (d)(2) and (d)(3) of this section provide rules under section 267(a) and related provisions, as amended by section 174 of the Tax Reform Act of 1984, Public Law 98–369, 98 Stat. 494, 705 (1984), applicable specifically to partnerships for taxable years ending on or after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**]. Section 1.267(a)–2T(c) does not apply to taxable years ending on or after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(2) *Application of section 267(a) to disallow losses and defer otherwise deductible amounts at the partnership (entity) level.* If a loss realized by a partnership from a sale or exchange of property is disallowed under section 267(a)(1), that loss does not enter into the computation of the partnership's taxable income. If an amount that otherwise would be deductible by a partnership is deferred by section 267(a)(2), that amount does not enter into the computation of the partnership's taxable income until the taxable year of the partnership in which falls the day on which the amount is includible in the gross income of the person to whom payment of the amount is made.

(3) *Application of section 267(e)(5)(C)(ii).* The phrase *incurred at an annual rate not in excess of 12 percent* in section 267(e)(5)(C)(ii) refers to interest that accrues but is not includible in the income of the person to whom payment is to be made during the taxable year of the payor. Thus, in determining whether the requirements of section 267(e)(5) (providing an exception to certain provisions of section 267 for certain expenses and interest of partnerships owning low income housing) are met with respect to a transaction, the requirement of section 267(e)(5)(C)(ii) will be satisfied, even though the total interest (both stated and unstated) paid or accrued in any taxable year of the payor taxpayer exceeds 12 percent, if the interest in excess of 12 percent per annum, compounded semi-annually, on the outstanding loan balance (principal and accrued but unpaid interest) is includible in the income of the person to whom payment is to be made no later than the last day of such taxable year of the payor taxpayer.

(e) *Applicability date.* Paragraph (d) of this section applies to taxable years ending on or after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

■ **Par. 3.** Section 1.267(b)–1 is amended by revising paragraph (b) to read as follows:

§ 1.267(b)–1. Relationships.

* * * * *

(b) *Applicability date.* This section applies to taxable years ending on or after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

■ **Par. 4.** Section 1.707–1 is amended by:

■ 1. Removing the language ''partner'' in paragraph (b)(1)(i) and adding the language ''person'' in its place;

■ 2. Removing the language ''the provisions of subdivision (i) of this subparagraph,'' in paragraph (b)(1)(ii) and adding the language ''paragraph (b)(1)(i) of this section,'' in its place;

■ 3. Adding new paragraph (b)(1)(iii);

■ 4. Removing the language ''partner'' in paragraph (b)(2) and adding the language ''person'' in its place;
■ 5. Removing the language ''80 percent'' in the first and second sentences of paragraph (b)(2) and adding the language ''50 percent'' in its place; and
■ 6. Revising paragraph (b)(3).

The additions and revision read as follows:

§ 1.707–1 Transactions between partner and partnership.

* * * * *

(b) * * *

(1) * * *

(iii) For purposes of matching deductions and income in the case of expenses and interest under section 267(a)(2), two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests in each partnership will be treated as persons specified in section 267(b).

* * * * *

(3) *Ownership of a capital or profits interest.* For the purpose of applying section 707(b), the rules for constructive ownership of stock provided in section 267(c)(1), (2), (4), and (5) apply in determining the extent to which a capital interest or profits interest in a partnership is owned, directly or indirectly, by any person, including a person who does not own a partnership interest prior to application of 267(c). For example, where trust T is a partner in the partnership ABT, and AW, A's wife, is the sole beneficiary of the trust, the ownership of a capital and profits interest in the partnership by T will be attributed to AW both for the purpose of further attributing the ownership of such interest to A and for determining whether AW is a constructive owner of an interest in the partnership. See section 267(c) (1), (2), and (5). Accordingly, if A, B, and T are equal partners in ABT, because AW is treated as constructively owning the one-third capital and profits interest in ABT owned by T and AW's ownership is attributed to A, A will be considered as owning a more than 50 percent capital and profits interest in ABT, and a loss sustained by A on a sale or exchange of property with ABT will be disallowed by section 707(b)(1)(A). Similarly, because AW is treated as constructively owning the one-third capital and profits interest in ABT owned by T and is attributed the ownership of A's capital and profits interest in ABT, AW will be considered as owning a more than 50 percent capital and profits interest in ABT and a loss sustained by AW on a sale or exchange of property with ABT would also be disallowed by section 707(b)(1)(A).

* * * * *

■ **Par. 5.** Section 1.707–9 is amended by:
■ 1. Revising the section heading;
■ 2. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c); and
■ 3. Adding new paragraph (a).

The addition and revision read as follows:

§ 1.707–9. Applicability dates and transitional rules.

(a) *Section 1.707–1.* Paragraphs (b)(1)(i) through (iii), (b)(2), and (b)(3) of § 1.707–1 apply to sales or exchanges of property with respect to controlled partnerships in taxable years ending on or after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

* * * * *

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–25715 Filed 11–24–23; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104194–23]

RIN 1545–BQ70

Long-Term, Part-Time Employee Rules for Cash or Deferred Arrangements Under Section 401(k)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document sets forth a proposed regulation that would amend the rules applicable to plans that include cash or deferred arrangements under section 401(k) to provide guidance with respect to long-term, part-time employees. The proposed regulation reflects statutory changes made by the SECURE Act and the SECURE 2.0 Act that relate to long-term, part-time employees. The proposed regulation would affect participants in, beneficiaries of, employers maintaining, and administrators of plans that include cash or deferred arrangements. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by January 26, 2024. A public hearing on this proposed regulation has been scheduled for March 15, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by January 26, 2024. If no outlines are received by January 26, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on March 13, 2024. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the public hearing must be received by March 12, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–104194–23) by following the online instructions for submitting comments. Requests to speak at or attend the public hearing must be submitted as prescribed in the ''Comments and Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on *www.regulations.gov.* Send paper submissions to: CC:PA:01:PR (REG–104194–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, call Kara M. Soderstrom at (202) 317–6799 or Jason E. Levine at (202) 317–4148; concerning submission of comments, the hearing, and the access code to attend the hearing by telephone, call Vivian Hayes at (202) 317–6901 (not toll-free numbers) or email *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 401 of the Internal Revenue Code (Code). This proposed regulation would amend § 1.401(k)–5 to set forth rules and definitions applicable to long-term, part-time employees under section 112 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94, 133 Stat. 2534 (2019)), and sections 125 and 401 of the SECURE 2.0 Act of 2022 (SECURE

2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328, 136 Stat. 4459 (2022)).

I. Statutory and Regulatory Framework

Section 401(k)(1) of the Code provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it includes a cash or deferred arrangement (CODA) that is a qualified CODA. Under section 401(k)(2), a CODA (generally, an arrangement providing for an election by an employee between contributions to a plan or payments directly in cash) is a qualified CODA only if it satisfies certain requirements. Section 401(k)(2)(B) provides that contributions made pursuant to a qualified CODA (referred to as elective contributions) may not be distributed before the occurrence of certain events, and section 401(k)(2)(C) provides that amounts attributable to the elective contributions must be nonforfeitable at all times. Section 401(k)(2)(D) limits the period of service that a plan may require an employee to complete with the employer or employers maintaining the plan in order to be eligible to participate in the qualified CODA.

Pursuant to section 401(k)(3)(A), a CODA is not treated as a qualified CODA unless: (1) the group of eligible employees under the CODA satisfies the requirements of section 410(b)(1), and (2) elective contributions under the CODA satisfy the actual deferral percentage (ADP) test in section 401(k)(3)(A)(ii). Under section 401(k)(3)(C), the elective contributions (including elective contributions that are designated Roth contributions) under a qualified CODA satisfy the requirements of section 401(a)(4) for a plan year with respect to the amount of those contributions if the contributions satisfy the ADP test for the plan year. As an alternative to satisfying the annual ADP test, a plan may satisfy the provisions of section 401(k)(11) (a SIMPLE 401(k) plan), the ADP safe harbor provisions of section 401(k)(12) (a traditional safe harbor section 401(k) plan), section 401(k)(13) (a qualified automatic contribution arrangement (QACA) safe harbor section 401(k) plan), or section 401(k)(16) (a starter 401(k) deferral-only arrangement).

Under section 401(m)(1), the matching contributions and employee contributions under a defined contribution plan satisfy the requirements of section 401(a)(4) for a plan year with respect to the amount of those contributions only if the actual contribution percentage (ACP) test in section 401(m)(2) is satisfied for the plan year. With respect to matching contributions, as an alternative to satisfying the annual ACP test, a plan may satisfy the provisions of section 401(m)(10) (which parallel the SIMPLE 401(k) provisions of section 401(k)(11)), or the ACP safe harbor provisions of section 401(m)(11) (a traditional safe harbor section 401(m) plan) or section 401(m)(12) (a QACA safe harbor section 401(m) plan).

The Treasury Department and the IRS issued comprehensive regulations under section 401(k) and (m) on December 29, 2004 (TD 9169, 69 FR 78143). Since they were issued, the regulations have been updated a number of times. For example, the regulations were amended to reflect certain statutory changes (*see* TD 9237, 71 FR 6, and TD 9324, 72 FR 21103, providing guidance with respect to designated Roth contributions under section 402A; and TD 9447, 74 FR 8200, providing guidance with respect to section 401(k)(13)) and to address discrete issues unrelated to statutory changes (*see* TD 9319, 72 FR 16878, relating to the definition of compensation; TD 9641, 78 FR 68735, relating to mid-year amendments to safe harbor plan designs; and TD 9835, 83 FR 34469, relating to whether qualified nonelective contributions and qualified matching contributions must be nonforfeitable when contributed to the plan).

The regulations were most recently amended on September 23, 2019 (TD 9875, 84 FR 49651) to reflect statutory changes related to the restriction on distribution of elective contributions under section 401(k)(2)(B).

II. SECURE Act Changes to Section 401(k) Regarding Long-Term, Part-Time Employees

Prior to the enactment of the SECURE Act, section 401(k)(2)(D) provided that a qualified CODA was not permitted to require, as a condition of participation, that an employee complete a period of service that extended beyond the period permitted under section 410(a)(1) (disregarding section 410(a)(1)(B)(i) [1]). In general, the period permitted under section 410(a)(1) is the later of attainment of age 21 or completion of a 12-month period during which the employee has at least 1,000 hours of service.

Section 112(a) of the SECURE Act amended section 401(k)(2)(D) of the Code to provide that a qualified CODA must permit certain employees to participate in the CODA even if they do not have at least 1,000 hours of service in a 12-month period. Under section 401(k)(2)(D) (as added by section 112(a)(1) of the SECURE Act, but prior to amendment by the SECURE 2.0 Act), a qualified CODA may not require, as a condition of participation, that an employee complete a period of service that extends beyond the close of the earlier of: (1) the period permitted under section 410(a)(1) (disregarding section 410(a)(1)(B)(i)); or (2) subject to section 401(k)(15), the first period of three consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service.

Section 112(a)(2) of the SECURE Act also amended the Code to add section 401(k)(15), which sets forth additional provisions related to section 401(k)(2)(D)(ii). Section 401(k)(15)(A) provides that section 401(k)(2)(D)(ii) will not apply to an employee unless the employee has attained the age specified in section 410(a)(1)(A)(i) by the close of the last of the 12-month periods described in section 401(k)(2)(D)(ii). Section 401(k)(15)(B) (as added by section 112(a)(2) of the SECURE Act, but prior to amendment by the SECURE 2.0 Act), modified certain nondiscrimination, minimum coverage, top-heavy, and vesting requirements with respect to employees who become eligible to participate in a qualified CODA solely by reason of section 401(k)(2)(D)(ii).

Section 401(k)(15)(B)(i)(I) (as added by section 112(a)(2) of the SECURE Act, but prior to amendment by the SECURE 2.0 Act) provided that, notwithstanding section 401(a)(4), an employer is not required to make nonelective or matching contributions on behalf of employees who are eligible to participate in a qualified CODA solely by reason of section 401(k)(2)(D)(ii), even if those contributions are made on behalf of other employees eligible to participate in the arrangement. Under section 401(k)(15)(B)(i)(II) (as added by section 112(a)(2) of the SECURE Act, but prior to amendment by the SECURE 2.0 Act), an employer may elect to exclude employees who are eligible to participate in a qualified CODA solely by reason of section 401(k)(2)(D)(ii) from the application of sections 401(a)(4), 401(k)(3), 401(k)(12), 401(k)(13), 401(m)(2), and 410(b).

Section 401(k)(15)(B)(ii) provides that an employer may elect to exclude all employees who are eligible to participate in a plan maintained by the employer solely by reason of section 401(k)(2)(D)(ii) from the application of the top-heavy vesting and benefit

[1] Section 410(a)(1)(B)(i) provides that a plan may require employees to complete 2 years of service (rather than 1) if accrued benefits under the plan are 100 percent nonforfeitable after not more than 2 years of service.

requirements under section 416(b) and (c).

Under section 401(k)(15)(B)(iii) (as added by section 112(a) of the SECURE Act, but prior to amendment by the SECURE 2.0 Act), an employee described in section 401(k)(15)(B)(i) must be credited with a year of service for purposes of determining whether the employee has a nonforfeitable right to employer contributions (other than elective contributions) under the arrangement for each 12-month period during which the employee is credited with at least 500 hours of service. In addition, section 401(k)(15)(B)(iii) modifies the break-in-service rules of section 411(a)(6) for the employee by substituting ''at least 500 hours of service'' for ''more than 500 hours of service'' for purposes of applying section 411(a)(6)(A).

Under section 401(k)(15)(B)(iv) (as added by section 112(a) of the SECURE Act, but prior to amendment by the SECURE 2.0 Act), if an employee who is eligible to participate in a qualified CODA solely by reason of section 401(k)(2)(D)(ii) of the Code subsequently satisfies the requirements of section 410(a)(1)(A)(ii) without regard to section 401(k)(2)(D)(ii), then the special provisions of section 401(k)(15)(B)(i) and (ii) cease to apply to the employee as of the first plan year beginning after the plan year in which the employee satisfies the requirements of section 410(a)(1)(A)(ii) without regard to section 401(k)(2)(D)(ii). However, the cessation does not apply to the special vesting rules of section 401(k)(15)(B)(iii).

Section 401(k)(15)(C) provides that section 401(k)(2)(D)(ii) does not apply to employees described in section 410(b)(3). This includes, among others, employees covered by a collective bargaining agreement with respect to which retirement benefits were the subject of good faith bargaining and nonresident aliens who have no earned income from the employer that constitutes U.S.-source income.

Section 401(k)(15)(D)(i) provides that the entry date rules of section 410(a)(4) apply to an employee who is eligible to participate in a qualified CODA solely by reason of section 401(k)(2)(D)(ii). Section 401(k)(15)(D)(ii) provides that 12-month periods are determined in the same manner as under the last sentence of section 410(a)(3)(A).

Prior to amendment by the SECURE 2.0 Act, section 112(b) of the SECURE Act provided that the amendments made by section 112 apply to plan years beginning after December 31, 2020, except that, for purposes of section 401(k)(2)(D)(ii) of the Code, 12-month periods beginning before January 1, 2021, are not taken into account. The effect of disregarding 12-month periods beginning before January 1, 2021, is that employees generally will not become eligible to participate in a CODA pursuant to section 401(k)(2)(D)(ii) until plan years beginning on or after January 1, 2024.

On September 2, 2020, the Treasury Department and the IRS released Notice 2020–68, 2020–38 IRB 567, which includes guidance with respect to section 112 of the SECURE Act. Q&A C–1 of Notice 2020–68 explains that, although section 112(b) of the SECURE Act excludes 12-month periods beginning before January 1, 2021, for purposes of determining an employee's eligibility to participate in a qualified CODA under section 401(k)(2)(D)(ii) of the Code, section 112(b) of the SECURE Act does not exclude 12-month periods beginning before January 1, 2021, for purposes of determining an employee's nonforfeitable right to employer contributions (other than elective contributions) under section 401(k)(15)(B)(iii) of the Code. However, as described in section III.A of this Background, section 125(d) of the SECURE 2.0 Act expands the scope of the disregard of 12-month periods beginning before January 1, 2021, to include the vesting rules of section 401(k)(15)(B)(iii).

The Treasury Department and the IRS received three written comments in response to Notice 2020–68. All written comments responding to Notices 2020–68 are available for public inspection and copying at *http://www.regulations.gov* or upon request. These comments are discussed in section I of the Explanation of Provisions portion of this preamble.

III. SECURE 2.0 Act Changes to Section 401(k) Regarding Long-Term, Part-Time Employees and to Section 112(b) of the SECURE Act

A. Section 125 of the SECURE 2.0 Act

Section 125 of the SECURE 2.0 Act generally expands upon the rules set forth in section 112 of the SECURE Act. Section 125(a)(1) of the SECURE 2.0 Act amends the minimum participation standards of section 202 of the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406, 88 Stat. 829), as amended (ERISA) to add section 202(c) of ERISA. Section 202(c) of ERISA adds rules, which apply to either a qualified CODA or a salary reduction agreement described in section 403(b) of the Code, that are comparable to the rules of section 401(k)(2)(D)(ii) and (k)(15). Section 125(a)(2)(B)(ii) of the SECURE 2.0 Act amends the employer election provisions of section 401(k)(15)(B)(i) of the Code to refer to employees who are eligible to participate in the arrangement solely by reason of section 401(k)(2)(D)(ii) or by reason of section 401(k)(2)(D)(ii) and section 202(c)(1)(B) of ERISA.

In addition, section 125(c) of the SECURE 2.0 Act amends the period of service under section 401(k)(2)(D)(ii) of the Code by replacing ''3'' with ''2''. Thus, as amended by section 125(c) of the SECURE 2.0 Act, section 401(k)(2)(D) of the Code provides that a qualified CODA may not require, as a condition of participation, that an employee complete a period of service that extends beyond the close of the earlier of: (1) the period permitted under section 410(a)(1) (disregarding section 410(a)(1)(B)(i)); or (2) subject to section 401(k)(15), the first period of two consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service.

Section 125(d) of the SECURE 2.0 Act amends section 112(b) of the SECURE Act by replacing the reference to section 401(k)(2)(D)(ii) of the Code with references to both section 401(k)(2)(D)(ii) and (k)(15)(B)(iii). Thus, as amended by section 125(d) of the SECURE 2.0 Act, section 112(b) of the SECURE Act provides that 12-month periods beginning before January 1, 2021, are not taken into account for purposes of either the eligibility rule described in section 401(k)(2)(D)(ii) or the vesting rules of section 401(k)(15)(B)(iii).

Section 125(e) of the SECURE 2.0 Act amends the special rules for cash or deferred arrangements using alternative methods of meeting nondiscrimination requirements under section 416(g)(4)(H) of the Code to provide that the term ''top-heavy plan'' does not include a plan solely because that plan does not provide nonelective or matching contributions to employees described in section 401(k)(15)(B)(i).

The amendments made by section 125(a) and (c) of the SECURE 2.0 Act apply to plan years beginning after December 31, 2024. The amendments made by section 125(d) and (e) of the SECURE 2.0 Act take effect as if included in section 112 of the SECURE Act.

B. Section 401 of the SECURE 2.0 Act

Section 401 of the SECURE 2.0 Act sets forth amendments relating to the SECURE Act. Section 401(a)(2) of the SECURE 2.0 Act includes technical amendments relating to section 112 of the SECURE Act that take effect as if included in section 112 of the SECURE Act.

Section 401(a)(2)(A) of the SECURE 2.0 Act amends the employer election provisions of section 401(k)(15)(B)(i)(II) of the Code to include the ACP safe harbor provisions of section 401(m)(11) and (12). Thus, as amended by section 401(a)(2)(A) of the SECURE 2.0 Act, section 401(k)(15)(B)(i)(II) of the Code permits an employer to elect to exclude employees who are eligible to participate in a qualified CODA solely by reason of section 401(k)(2)(D)(ii) (or by reason of section 401(k)(2)(D)(ii) and section 202(c)(1)(B) of ERISA) from the application of those ACP safe harbor provisions, in addition to the other Code provisions listed in section 401(k)(15)(B)(i)(II).

Section 401(a)(2)(B) of the SECURE 2.0 Act amends the vesting rules of section 401(k)(15)(B)(iii) of the Code by replacing ''under the arrangement'' with ''under the plan''. Thus, section 401(a)(2)(B) of the SECURE 2.0 Act clarifies that section 401(k)(15)(B)(iii) of the Code applies for purposes of determining whether an employee described in section 401(k)(15)(B)(i) has a nonforfeitable right to employer contributions (other than elective contributions) under the plan that includes the arrangement.

Section 401(a)(2)(C) of the SECURE 2.0 Act amends the special rules under section 401(k)(15)(B)(iv) of the Code by replacing ''section 410(a)(1)(A)(ii)'' with ''paragraph (2)(D)''. Thus, section 401(a)(2)(C) of the SECURE 2.0 Act clarifies that the special rules of section 401(k)(15)(B)(iv) of the Code apply if an employee who is eligible to participate in a qualified CODA solely by reason of section 401(k)(2)(D)(ii) (or by reason of section 401(k)(2)(D)(ii) and section 202(c)(1)(B) of ERISA) subsequently satisfies the requirements of section 401(k)(2)(D) without regard to section 401(k)(2)(D)(ii).

C. Section 501 of the SECURE 2.0 Act

In general, under section 501(a) and (b) of the SECURE 2.0 Act, for a qualified plan that is not an applicable collectively bargained plan or a governmental plan within the meaning of section 414(d) of the Code, the deadline to adopt a plan amendment that is made pursuant to any amendment made by the SECURE 2.0 Act or pursuant to any regulation issued by the Secretary or the Secretary of Labor (or a delegate of either such Secretary) under the SECURE 2.0 Act is the last day of the first plan year beginning on or after January 1, 2025, or such later date as the Secretary may prescribe. The plan amendment deadline for an applicable collectively bargained plan or a governmental plan, as defined in section 414(d), is the last day of the first plan year beginning on or after January 1, 2027, or such later date as the Secretary may prescribe.

Section 501(c)(1) of the SECURE 2.0 Act amends section 601(b)(1) of the SECURE Act, which provides rules with respect to a plan amendment made pursuant to a provision of the SECURE Act or regulations thereunder, to align the deadline to adopt such a plan amendment with the deadline that applies to a plan amendment that is made pursuant to a provision of the SECURE 2.0 Act.

Whether a plan amendment is made pursuant to section 112 of the SECURE Act, related provisions of the SECURE 2.0 Act, or any regulation relating to those provisions, does not depend on whether any employees could become eligible to participate in the CODA as long-term, part-time employees (as discussed in section I.B of the Explanation of Provisions) under the terms of the amended plan. For example, if a plan that is not an applicable collectively bargained plan or a governmental plan is maintained on a calendar-year basis and provides that, in order to be eligible to make a cash or deferred election under the CODA in the plan, an employee is required to complete a 12-month period during which the employee is credited with at least 1,000 hours of service, but the employer intends to amend the plan to provide that, effective January 1, 2024, each employee is eligible to make a cash or deferred election as soon as administratively practicable after the employee's employment commencement date, then the intended plan amendment would be made pursuant to section 112 of the SECURE Act and related provisions of the SECURE 2.0 Act. Accordingly, if the plan is operated in accordance with the intended plan amendment, then the plan amendment would not be required to be adopted before the deadline that applies to the plan under section 501 of the SECURE 2.0 Act (that is, December 31, 2025, or such later date as the Secretary may prescribe).

Explanation of Provisions

I. Section 1.401(k)–5

A. Overview

This proposed regulation would amend § 1.401(k)–5 (which is reserved for mergers and acquisitions under the existing regulations) to reflect the rules for long-term, part-time employees under section 112 of the SECURE Act and sections 125 and 401 of the SECURE 2.0 Act. Proposed § 1.401(k)–5 defines ''long-term, part-time employee,'' and, with respect to each long-term, part-time employee, requires a qualified CODA to satisfy the participation requirements of proposed § 1.401(k)–5(c) and requires the plan that includes the CODA to satisfy the vesting requirements of proposed § 1.401(k)–5(d). In addition, proposed § 1.401(k)–5(e) provides guidance regarding nonelective and matching contributions made to the plan on behalf of long-term, part-time employees, and proposed § 1.401(k)–5(f) provides guidance regarding certain elections that the employer or employers maintaining the plan may make with respect to long-term, part-time employees.

B. Long-Term, Part-Time Employees

1. Definition

Section 401(k)(15) provides special rules for ''long-term, part-time employees,'' but does not define the term. The rules in section 401(k)(15) apply to employees who are eligible to participate in a qualified CODA solely by reason of section 401(k)(2)(D)(ii), or by reason of section 401(k)(2)(D)(ii) and section 202(c)(1)(B) of ERISA. Under section 112(b) of the SECURE Act, section 401(k)(2)(D)(ii) of the Code generally is effective for plan years beginning after December 31, 2020, but, pursuant to section 125(c) of the SECURE 2.0 Act, section 401(k)(2)(D)(ii) of the Code is amended to replace ''3'' with ''2'' effective for plan years beginning after December 31, 2024. Thus, section 401(k)(15) applies to employees who are eligible to participate in a qualified CODA solely by reason of completing two consecutive 12-month periods or, with respect to a plan year beginning before 2025, three consecutive 12-month periods (referred to as ''the applicable number of consecutive 12-month periods'') during each of which the employee is credited with at least 500 hours of service. However, section 401(k)(15)(A) provides that section 401(k)(2)(D)(ii) does not apply to an employee unless the employee has satisfied the age requirement of section 410(a)(1)(A)(i) by the close of the last of the 12-month periods described in section 401(k)(2)(D)(ii). In addition, section 401(k)(15)(C) provides that section 401(k)(2)(D)(ii) does not apply to employees described in section 410(b)(3).

Based on the provisions of section 401(k)(15) described in the preceding paragraph, proposed § 1.401(k)–5(b)(1)(i) generally would define a ''long-term, part-time employee'' as an employee who is eligible to participate in a qualified CODA solely by reason of having: (1) completed two consecutive 12-month periods (under proposed § 1.401(k)–5(b)(1)(iii), ''three consecutive 12-month periods'' would be substituted for ''two consecutive 12-month periods'' with respect to a plan year beginning in 2024) during each of which the employee is credited with at least 500 hours of service (as defined in section 410(a)(3)(C)); and (2) attained the age specified in section 410(a)(1)(A)(i) by the close of the last of those 12-month periods. However, under proposed § 1.401(k)–5(b)(1)(ii), long-term, part-time employees would not include: (1) certain employees who are covered by a collective bargaining agreement, (2) employees who are nonresident aliens and who receive no earned income from the employer that constitutes income from sources within the United States, or (3) any other employees described in section 410(b)(3).

Although section 401(k)(15)(C) provides that section 401(k)(2)(D)(ii) does not apply to employees described in section 410(b)(3), section 401(k)(15) does not provide any exceptions from the maximum permissible service requirement of section 401(k)(2)(D)(ii) for a qualified CODA in: (1) a governmental plan (as defined in section 414(d)),[2] or (2) a church plan (as defined in section 414(e)) with respect to which the election provided by section 410(d) has not been made. In addition to the general request for comments on this proposed regulation, comments are specifically requested with respect to the application of section 401(k)(15) to a qualified CODA in such a governmental plan or church plan, including the application of proposed § 1.401(k)–5(d)(1)(ii) (which would clarify that, for purposes of proposed § 1.401(k)–5(d), section 411 will be treated as if it applies to the plan, taking into account the modifications provided in proposed § 1.401(k)–5(d)(1)(i) and (iii)).

2. Eligibility To Participate

As explained in section I.B.1 of this Explanation of Provisions, an employee would be a long-term, part-time employee under the proposed regulation only if the employee became eligible to participate in a qualified CODA solely by reason of having completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service. The Treasury Department and the IRS received comments in response to Notice 2020–68 requesting clarification that the rules of section 401(k)(15) do not apply to an employee who becomes eligible to participate in a qualified CODA prior to completing the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service (for example, an employee who, upon hire, is immediately eligible to make a cash or deferred election under the arrangement).

Under this proposed regulation, an employee would not be a long-term, part-time employee unless the employee becomes eligible to participate in a qualified CODA solely by reason of having completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service (as defined in section 410(a)(3)(C)). Thus, an employee who becomes eligible to participate in a qualified CODA by reason of having completed any other service requirement (or who is immediately eligible to participate in the CODA) would not be a long-term, part-time employee, and the rules of section 401(k)(15)(B) would not apply to the employee, even if the employee is classified by the employer or employers maintaining the plan as a part-time employee.

The Treasury Department and the IRS received a comment in response to Notice 2020–68 requesting clarification regarding the application of the rules of section 401(k)(15) to employees who were immediately eligible to participate in a qualified CODA if the plan is later amended to require employees to complete the period of service described in section 401(k)(2)(D) in order to participate in the CODA. Under this proposed regulation, an employee who was immediately eligible to participate in a qualified CODA or who became eligible to participate based on completing another permissible service requirement (for example, completing a 1-year period of service under section 410(a)(1)(A)(ii)) would not become a long-term, part-time employee merely because the plan is amended prospectively to require employees hired on or after the effective date of the amendment to complete the period of service described in section 401(k)(2)(D). This is because the employee was not eligible to participate in the CODA solely by reason of completing the applicable number of consecutive 12-month periods with at least 500 hours of service during each period.

3. Elapsed Time Method of Crediting Service

Under the elapsed time method of crediting service set forth in § 1.410(a)–7, a plan generally is required to take into account the period of time that elapses while an employee is employed with the employer or employers maintaining the plan, regardless of the actual number of hours the employee would have been credited with during that period. For purposes of determining an employee's eligibility to participate, a plan generally may not require an employee to complete more than a 1-year period of service under the elapsed time method (regardless of whether the employee is classified by the employer or employers maintaining the plan as a part-time employee).

The Treasury Department and the IRS received a comment in response to Notice 2020–68 requesting that a plan be permitted to determine an employee's eligibility to participate as a long-term, part-time employee using the elapsed time method. In general, this proposed regulation would permit a plan to use the elapsed time method to determine an employee's eligibility to participate in a qualified CODA. However, under the elapsed time method, an employee's eligibility to participate is not based upon the actual completion of a specified number of hours of service during a 12-month period. Therefore, an employee who becomes eligible to participate in a qualified CODA under the elapsed time method would not be eligible to participate solely by reason of completing the applicable number of consecutive 12-month periods with at least 500 hours of service during each period and would not be a long-term, part-time employee.

In addition, this proposed regulation does not include an amendment to the elapsed time rules under § 1.410(a)–7. Therefore, a plan may not require an employee, including an employee who is classified as a part-time employee, to complete more than a 1-year period of service under the elapsed time method

[2] Pursuant to section 401(k)(4)(B)(ii) and § 1.401(k)–1(e)(4), a CODA included in a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof, does not satisfy the requirements to be a qualified CODA if the arrangement is adopted after May 6, 1986. However, this adoption deadline for a qualified CODA does not apply to a CODA included in a rural cooperative plan or a plan of an employer that is an Indian Tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian Tribal government (determined in accordance with section 7871(d)), an agency or instrumentality of an Indian Tribal government or subdivision thereof, or a corporation chartered under Federal, State or Tribal law that is owned in whole or in part by any of those entities.

in order to be eligible to participate in a qualified CODA.

4. Equivalency Methods of Crediting Service

As an alternative to the general method of crediting service, which is based upon the actual counting of hours of service, a plan may credit hours of service using equivalency methods permitted under 29 CFR 2530.200b–3. Any equivalency method (or methods) used by a plan must be set forth in the plan document. For example, a plan generally may determine the number of hours of service to be credited to employees on the basis of months of employment if an employee is credited with 190 hours of service for each month for which the employee would be required to be credited with at least 1 hour of service. Under this equivalency method, the hours of service credited to an employee for each month are not affected by whether the employee is classified by the employer or employers maintaining the plan as a part-time employee.

The Treasury Department and the IRS received a comment in response to Notice 2020–68 requesting that a plan be permitted to determine an employee's eligibility to participate as a long-term, part-time employee using an equivalency method to credit hours of service and requesting guidance regarding the application of the equivalency methods for purposes of determining an employee's eligibility to participate as a long-term, part-time employee (for example, whether the minimum number of hours that must be credited under an equivalency method would be reduced). Because an employee is credited with a specified number of hours under both the general method of crediting service and the equivalency methods, this proposed regulation would permit either the general method of crediting service or an otherwise permissible equivalency method to be used to determine whether an employee is credited with at least 500 hours of service during a 12-month period. However, for purposes of determining an employee's eligibility to participate as a long-term, part-time employee, this proposed regulation does not include an amendment reducing the number of hours that otherwise would be credited to the employee under the applicable equivalency method.

C. Participation

1. Time of Participation

This proposed regulation would set forth rules regarding the date by which a long-term, part-time employee must become eligible to make a cash or deferred election under a qualified CODA (that is, rules regarding the latest permissible entry date for a long-term, part-time employee).

The Treasury Department and the IRS received a comment in response to Notice 2020–68 requesting confirmation that a plan may use the same entry date rules for long-term, part-time employees as it does for other eligible employees. Under section 401(k)(15)(D)(i), the entry date rules of section 410(a)(4) apply to an employee who is eligible to participate in an arrangement solely by reason of section 401(k)(2)(D)(ii). Accordingly, proposed § 1.401(k)–5(c)(1) reflects the rules of section 410(a)(4), including the rule in § 1.410(a)–4(b) relating to the treatment of an employee who separates from service prior to the employee's scheduled entry date.

2. Determination of 12-Month Periods

Under section 410(a)(5)(A), in general, all years of service with the employer or employers maintaining the plan must be taken into account in computing an employee's period of service for purposes of section 410(a)(1). Similarly, proposed § 1.401(k)–5(c)(2)(i) would clarify that, in general, all 12-month periods during which an employee is credited with at least 500 hours of service with the employer or employers maintaining the plan must be taken into account for purposes of determining whether an employee is eligible to participate as a long-term, part-time employee. For example, 12-month periods during which an employee is included in a classification of employees who are ineligible to participate in the qualified CODA generally must be taken into account for purposes of determining whether the employee is eligible to participate as a long-term, part-time employee. However, pursuant to section 112(b) of the SECURE Act, 12-month periods beginning before January 1, 2021, are not taken into account for purposes of determining whether an employee is eligible to participate as a long-term, part-time employee.

With respect to an employee who is not yet eligible to participate in a qualified CODA, the rules of proposed § 1.401(k)–5(c)(2)(i) would not affect the requirement that the employee complete the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service in order to be eligible to participate as a long-term, part-time employee. Thus, if an employee who is not yet eligible to participate in a qualified CODA completes a 12-month period during which the employee is credited with fewer than 500 hours of service, then any prior 12-month periods during which the employee was credited with at least 500 (but less than 1,000) hours of service during each period would not be taken into account for purposes of determining whether the employee is eligible to participate in the CODA as a long-term, part-time employee.

However, this proposed regulation does not include any provisions similar to the break-in-service rules under section 410(a)(5) for purposes of determining whether an employee is eligible to participate as a long-term, part-time employee. Thus, if an employee has become eligible to participate as a long-term, part-time employee, then the employee's eligibility to participate as a long-term, part-time employee would not be affected by the employee's completion of one or more 12-month periods during each of which the employee is credited with fewer than 500 hours of service (although, as explained in section I.D.1 of this Explanation of Provisions, a long-term, part-time employee is not required to be credited with a year of vesting service with respect to a 12-month period during which the employee is credited with fewer than 500 hours of service). Similarly, if a former employee who was eligible to participate as a long-term, part-time employee is rehired by an employer maintaining the plan, then the 12-month periods during which the employee previously was credited with at least 500 hours of service with an employer maintaining the plan must be taken into account for purposes of determining whether the rehired employee is eligible to participate as a long-term, part-time employee.[3]

The Treasury Department and the IRS received a comment in response to Notice 2020–68 requesting clarification that the long-term, part-time employee rules of section 401(k)(15) could apply to an employee even if 12-month periods beginning before January 1,

[3] If a former employee who previously was eligible to participate in a qualified CODA (but who was not eligible to participate as a long-term, part-time employee) is rehired by an employer maintaining the plan, then the employee generally would be immediately eligible to participate again in the CODA based on the employee's prior service with the employer or employers maintaining the plan. Therefore, that former employee would not be eligible to participate in the qualified CODA as a long-term, part-time employee after being rehired. However, if the former employee's eligibility service is disregarded because the plan applies the provisions of section 410(a)(5)(D), then that former employee may become eligible to participate in the qualified CODA as a long-term, part-time employee after being rehired.

2021, are used to determine the employee's eligibility to participate in the qualified CODA. However, because section 112(b) of the SECURE Act provides that 12-month periods beginning before January 1, 2021, are not taken into account for purposes of section 401(k)(2)(D)(ii), this proposed regulation would exclude any 12-month period beginning before January 1, 2021, for purposes of determining whether an employee is eligible to participate as a long-term, part-time employee. Therefore, an employee would not be a long-term, part-time employee under the proposed regulation if one or more 12-month periods beginning before January 1, 2021, were taken into account for purposes of determining whether the employee completed the applicable number of consecutive 12-month periods during each of which the employee was credited with at least 500 hours of service.

This proposed regulation also includes rules regarding the date on which a 12-month period may begin for purposes of determining an employee's eligibility to participate as a long-term, part-time employee.

The Treasury Department and the IRS received a comment in response to Notice 2020–68 requesting confirmation that, although an employee's initial 12-month period for purposes of determining whether the employee is eligible to participate as a long-term, part-time employee must be based on the employee's date of hire, subsequent 12-month periods for the employee may be based on the plan year. Under section 401(k)(15)(D)(ii), 12-month periods are determined in the same manner as under the last sentence of section 410(a)(3)(A). Accordingly, under proposed § 1.401(k)–5(c)(2)(ii), an employee's initial 12-month period would begin on the first day for which the employee is entitled to be credited with an hour of service; however, the terms of the plan may provide that, beginning with the plan year that commences within that initial 12-month period, subsequent 12-month periods are determined by reference to the first day of the plan year. Moreover, the subsequent 12-month periods with respect to an employee may be determined by reference to the first day of the plan year regardless of whether the employee is credited with at least 500 hours of service during the employee's initial 12-month period (provided that the employee is not credited with at least 1,000 hours of service during the employee's initial 12-month period).

If the plan provides that 12-month periods (after an employee's initial 12-month period) are determined by reference to the first day of the plan year, an employee's initial 12-month period and second 12-month period are treated as consecutive 12-month periods for purposes of determining the employee's eligibility to participate as a long-term, part-time employee. Therefore, if an employee is credited with at least 500 (but less than 1,000) hours of service during each of those 12-month periods, the employee has completed two consecutive 12-month periods with at least 500 hours of service during each period for purposes of determining the employee's eligibility to participate as a long-term, part-time employee. This is the case even though an employee may be credited with certain hours of service for both the initial 12-month period and the second 12-month period. For an employee hired prior to January 1, 2021, this proposed regulation provides that 12-month periods beginning before January 1, 2021, are not taken into account for purposes of determining whether the employee is eligible to participate as a long-term, part-time employee. Thus, if 12-month periods after an employee's initial 12-month period are determined by reference to the first day of the plan year, then, with respect to an employee who was hired prior to January 1, 2021, the first 12-month period for purposes of determining whether the employee is eligible to participate as a long-term, part-time employee generally would be determined by reference to the first day of the first plan year beginning on or after January 1, 2021.

3. Eligibility Conditions Not Based on Age or Service

The Treasury Department and the IRS received comments in response to Notice 2020–68 requesting clarification that an employee who otherwise would be eligible to participate in a qualified CODA as a long-term, part-time employee may be excluded from participating in the CODA if the employee is a member of a job classification that is not based on age or service and whose members are excluded from participating in the CODA under the terms of the plan.

In response to these comments, this proposed regulation would address whether a plan may impose conditions that are not based on age or service in order for an employee to be eligible to participate in a qualified CODA as a long-term, part-time employee. In general, section 401(k)(15) does not preclude a plan that includes a CODA from establishing conditions that must be satisfied in order for an employee to be eligible to participate in the CODA. However, a CODA will fail to satisfy section 401(k)(2)(D) if, as a condition of participation, the plan imposes an age or service requirement (or imposes a condition that has the effect of an age or service requirement) that requires an employee to complete a period of service with the employer or employers maintaining the plan that extends beyond the close of the earlier of the periods described in section 401(k)(2)(D)(i) and (ii).

Accordingly, proposed § 1.401(k)–5(c)(3) would clarify that the long-term, part-time employee rules of § 1.401(k)–5 do not preclude a plan from establishing an eligibility condition that must be satisfied in order for an employee to participate in the CODA, provided that the condition is not a proxy for imposing an age or service requirement (that is, the condition does not have the effect of imposing an age or service requirement with the employer or employers maintaining the plan) that requires an employee to complete a period of service with the employer or employers maintaining the plan that extends beyond the close of the earlier of the periods described in section 401(k)(2)(D)(i) and (ii).[4] However, with respect to an employee who otherwise would be eligible to participate in a qualified CODA as a long-term, part-time employee, but who is excluded from participating as a long-term, part-time employee due to conditions imposed by the plan, the rules of section 401(k)(15)(B)(i) and (ii) (disregarding long-term, part-time employees for purposes of nondiscrimination and coverage testing and top-heavy benefits) do not apply to that excluded employee.

In addition, the maximum period of service that the employer or employers maintaining a plan may require under section 401(k)(2)(D) applies regardless of an employee's job classification. For example, it would not be permissible for an employee classified as a temporary employee to be required to complete a period of service that is described in section 401(k)(2)(D)(ii). This would not be permissible because section 401(k)(2)(D) provides that a qualified CODA may not require, as a condition of participation, that an employee complete a period of service that extends beyond the close of the earlier of the periods described in section 401(k)(2)(D)(i) and (ii). Thus, if the employee were to complete the period described in section 410(a)(1) (determined without regard to section

[4] The rules of proposed § 1.401(k)–5(c)(3) are intended to align with those of § 1.410(a)–3(d) and (e).

410(a)(1)(B)(i)), then the employee must become eligible to participate in the CODA under section 401(k)(2)(D)(i).

Proposed § 1.401(k)–5(c)(1)(iii) would provide rules addressing the date of participation that apply in the case of an employee who would otherwise be eligible to participate in the arrangement as a long-term, part-time employee but who does not participate solely because the employee does not satisfy the plan's eligibility conditions (other than age or service) as of the date the employee would have participated in the arrangement had the employee satisfied those conditions. If such an employee later satisfies those conditions, then the employee must become eligible to participate in the arrangement immediately upon satisfying those conditions.

4. Elective Contributions

To avoid a circumvention of the requirement that a long-term, part-time employee be eligible to make elective contributions under a qualified CODA, proposed § 1.401(k)–5(c)(4) would provide, in general, that the right to make elective contributions by a long-term, part-time employee who is an eligible non-highly compensated employee (NHCE) may not be restricted in a manner that would not be permitted for an NHCE under a safe harbor section 401(k) plan under § 1.401(k)–3(c)(6). However, a SIMPLE 401(k) plan would be permitted to limit the amount of elective contributions made by a long-term, part-time employee under the plan to the extent needed to satisfy the elective contribution limitation for SIMPLE 401(k) plans under section 401(k)(11)(B)(i)(I) and (m)(10)(A).

D. Vesting

1. Years of Vesting Service Taken Into Account

This proposed regulation would provide vesting rules for purposes of determining whether a long-term, part-time employee (or former long-term, part-time employee, as explained in section I.D.2 of this Explanation of Provisions) has a nonforfeitable right to employer contributions under the plan (other than elective contributions).

In general, the nonforfeitable right of a long-term, part-time employee (or former long-term, part-time employee) to employer contributions under the plan (other than elective contributions) would be determined under the rules of section 411. However, pursuant to section 401(k)(15)(B)(iii), proposed § 1.401(k)–5(d)(1)(i)(A) would provide that each 12-month period during which a long-term, part-time employee (or former long-term, part-time employee) is credited with at least 500 hours of service (as defined in section 410(a)(3)(C)) with the employer or employers maintaining the plan is treated as a year of vesting service.

The Treasury Department and the IRS received a comment in response to Notice 2020–68 requesting clarification that, for purposes of determining vesting service for a long-term, part-time employee, a plan may use the same vesting computation period that it uses for other employees and is not required to use the long-term, part-time employee's eligibility computation period. Under section 411(a)(5)(A), a vesting computation period generally may be a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor). Section 401(k)(15)(D)(ii) provides that 12-month periods are determined in the same manner as under the last sentence of section 410(a)(3)(A). However, the introductory language of section 401(k)(15) states that it applies ''for purposes of paragraph (2)(D)(ii)'' (that is, the eligibility rules of section 401(k)(2)(D)(ii)). Based on this language, this proposed regulation would apply the rule under section 401(k)(15)(D)(ii) for purposes of section 401(k)(2)(D)(ii) but would not extend the application of that rule to the vesting rules of section 401(k)(15)(B)(iii). Accordingly, in response to this comment, proposed § 1.401(k)–5(d)(1)(i)(A) would clarify that a plan may designate any 12-consecutive month period that is not prohibited for use under section 411(a) for purposes of determining a long-term, part-time employee's (or former long-term, part-time employee's) vesting service.

In addition, pursuant to section 401(k)(15)(B)(iii), proposed § 1.401(k)–5(d)(1)(iii) would provide that, for purposes of determining whether a long-term, part-time employee (or former long-term, part-time employee) has incurred a 1-year break in service, section 411(a)(6)(A) is applied by substituting ''at least 500 hours of service'' for ''more than 500 hours of service.''

This proposed regulation also would provide guidance regarding 12-month periods that must be taken into account for purposes of determining a long-term, part-time employee's (or former long-term, part-time employee's) years of vesting service. As described in section II of the Background portion of this preamble, Q&A C–1 of Notice 2020–68 provides that, unless a long-term, part-time employee's years of service may be disregarded under section 411(a)(4) (for example, years of service before the employee attains age 18), all years of service with the employer or employers maintaining the plan must be taken into account for purposes of determining the long-term, part-time employee's nonforfeitable right to employer contributions under section 401(k)(15)(B)(iii), including 12-month periods beginning before January 1, 2021.

However, section 125(d) of the SECURE 2.0 Act amended section 112(b) of the SECURE Act (effective as if included in section 112 of the SECURE Act) to provide that 12-month periods beginning before January 1, 2021, are not taken into account for purposes of either the eligibility rule described in section 401(k)(2)(D)(ii) or the vesting rules of section 401(k)(15)(B)(iii). Thus, Q&A C–1 of Notice 2020–68 was effectively rendered obsolete by the enactment of section 125(d) of the SECURE 2.0 Act.

Accordingly, proposed § 1.401(k)–5(d)(1)(i)(B) generally would require that all 12-month periods of service with the employer or employers maintaining the plan must be taken into account for purposes of determining the nonforfeitable right of a long-term, part-time employee (or former long-term, part-time employee) to employer contributions (other than elective contributions), unless the period of service of the employee may be disregarded under section 411(a) (which takes into account section 411(a)(4), (a)(6), and (a)(7)(B)). In addition, proposed § 1.401(k)–5(d)(1)(i)(B) would reflect section 125(d) of the SECURE 2.0 Act by permitting any 12-month period beginning before January 1, 2021, to be excluded for purposes of determining the nonforfeitable right of a long-term, part-time employee (or former long-term, part-time employee) to employer contributions (other than elective contributions) under the plan.

2. Former Long-Term, Part-Time Employees

This proposed regulation would provide rules for an employee who becomes eligible to participate in a qualified CODA as a long-term, part-time employee but who subsequently completes 1 year of service under section 410(a)(1)(A)(ii) or who ceases to satisfy the plan's eligibility conditions (other than age or service conditions).

Under section 401(k)(15)(B)(iv), the rules of section 401(k)(15)(B) (other than the vesting rules of section 401(k)(15)(B)(iii)) cease to apply to any employee as of the first plan year beginning after the plan year in which the employee satisfies the requirements of section 401(k)(2)(D) without regard to section 401(k)(2)(D)(ii) (that is, satisfies the requirements of section 410(a)(1)(A)(ii) without regard to section 410(a)(1)(B)(i)). Thus, the nondiscrimination and coverage testing provisions of section 401(k)(15)(B)(i) and the top-heavy benefit provisions of section 401(k)(15)(B)(ii) cease to apply to any employee as of the first plan year beginning after the plan year in which the employee satisfies the requirements of section 401(k)(2)(D) without regard to section 401(k)(2)(D)(ii), but the vesting rules of section 401(k)(15)(B)(iii) continue to apply to the employee.

Proposed § 1.401(k)–5(d)(2) would reflect the rules of section 401(k)(15)(B)(iv) by providing that an employee ceases to be a long-term, part-time employee and becomes a former long-term, part-time employee as of the first day of the first plan year beginning after the plan year in which the employee satisfies the requirements of section 401(k)(2)(D) without regard to section 401(k)(2)(D)(ii). The nondiscrimination provisions of proposed § 1.401(k)–5(e)(1) (which are explained in section I.E.1 of this Explanation of Provisions) and the employer election provisions of proposed § 1.401(k)–5(f)(1) and (2) (which are explained in section I.F of this Explanation of Provisions) would not apply to a former long-term, part-time employee (regardless of whether the former long-term, part-time employee subsequently completes one or more 12-month periods during each of which the employee is credited with at least 500 (but less than 1,000) hours of service). However, the vesting rules of proposed § 1.401(k)–5(d)(1) (as explained in section I.D.1 of this Explanation of Provisions) would continue to apply to a former long-term, part-time employee. Thus, a former long-term, part-time employee would continue to be credited with a year of vesting service for any 12-month period during which the former long-term, part-time employee is credited with at least 500 hours of service with the employer or employers maintaining the plan (unless the period of service may be disregarded under section 411(a)).

The Treasury Department and the IRS received a comment in response to Notice 2020–68 requesting clarification regarding the application of the vesting rules of section 401(k)(15)(B)(iii) and (iv) with respect to an employee who: (1) becomes eligible to participate as a long-term, part-time employee, but who subsequently completes 1 year of service under section 410(a)(1)(A)(ii); or (2) becomes eligible to participate because the employee completed 1 year of service under section 410(a)(1)(A)(ii), but who also completes (before or after becoming eligible to participate) one or more 12-month periods during each of which the employee is credited with at least 500 (but less than 1,000) hours of service.

Under this proposed regulation, the vesting rules of proposed § 1.401(k)–5(d)(1) would continue to apply to a long-term, part-time employee who completes 1 year of service under section 410(a)(1)(A)(ii). However, an employee who becomes eligible to participate in a qualified CODA because the employee completes 1 year of service under section 410(a)(1)(A)(ii) would not be eligible to participate in the CODA solely by reason of completing the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service. Therefore, the employee would not be a long-term, part-time employee, and the vesting rules of proposed § 1.401(k)–5(d)(1) would not apply to the employee (regardless of whether the employee also completes, before or after becoming eligible to participate in the qualified CODA, one or more 12-month periods during each of which the employee is credited with at least 500 (but less than 1,000) hours of service).

Section 401(k)(15) does not address a long-term, part-time employee who ceases to satisfy a plan's eligibility conditions (other than age or service conditions) for participation in the qualified CODA included in the plan. However, this proposed regulation would provide rules similar to those of section 401(k)(15)(B)(iv) with respect to a long-term, part-time employee who ceases to be eligible to participate in a qualified CODA. Therefore, proposed § 1.401(k)–5(d)(2)(ii) would provide that a long-term, part-time employee becomes a former long-term, part-time employee as of the first day of the first plan year beginning after the earlier of the plan year in which the employee: (1) satisfies the requirements of section 401(k)(2)(D) without regard to section 401(k)(2)(D)(ii); or (2) ceases to satisfy the plan's eligibility conditions (other than age or service conditions). Regardless of the reason that a long-term, part-time employee becomes a former long-term, part-time employee, this proposed regulation would provide that the nondiscrimination provisions of proposed § 1.401(k)–5(e)(1) and the employer election provisions of proposed § 1.401(k)–5(f)(1) and (2) do not apply to a former long-term, part-time employee (although the vesting rules of proposed § 1.401(k)–5(d)(1) would continue to apply to a former long-term, part-time employee).

Unlike the rules that would apply to a long-term, part-time employee who becomes a former long-term, part-time employee by reason of satisfying the requirements of section 401(k)(2)(D) without regard to section 401(k)(2)(D)(ii) (that is, by reason of having completed 1 year of service under section 410(a)(1)(A)(ii)), proposed § 1.401(k)–5(d)(2)(iii) would provide that a long-term, part-time employee who ceases to satisfy the plan's eligibility conditions (other than age or service conditions) during a plan year generally will return to long-term, part-time employee status as of the first day of the plan year during which the employee again satisfies those conditions. However, that employee would not return to long-term, part-time employee status if the employee also is a former long-term, part-time employee by reason of having completed 1 year of service under section 410(a)(1)(A)(ii). Although proposed § 1.401(k)–5(d)(2)(iii) would permit an employee's status to change from that of a former long-term, part-time employee to a long-term, part-time employee during the plan year, this proposed regulation would not permit an employee to be both a long-term, part-time employee and a former long-term, part-time employee for that plan year. Similarly, under this proposed regulation, if a long-term, part-time employee ceases to satisfy the plan's eligibility conditions (other than age or service conditions) during a plan year, but again satisfies those conditions during the same plan year, the employee would remain a long-term, part-time employee for the entire plan year.

Accordingly, proposed § 1.401(k)–5(d)(2)(i) would define a former long-term, part-time employee as an employee who became eligible to participate in the arrangement as a long-term, part-time employee; subsequently ceased to be a long-term, part-time employee because the employee was described in proposed § 1.401(k)–5(d)(2)(ii)(A) or (B); and has not returned to long-term, part-time employee status in accordance with proposed § 1.401(k)–5(d)(2)(iii). Thus, under this proposed definition, an employee first must become eligible to participate in a qualified CODA as a long-term, part-time employee before the employee may become a former long-term, part-time employee.

E. Nonelective and Matching Contributions

1. General Rule

This proposed regulation reflects the nondiscrimination provisions of section 401(k)(15)(B)(i)(I). Proposed § 1.401(k)–5(e)(1) would provide that, notwithstanding section 401(a)(4), neither nonelective nor matching contributions are required to be made on behalf of long-term, part-time employees, even if those contributions are made on behalf of other eligible employees. However, as explained in section I.D.2 of this Explanation of Provisions, proposed § 1.401(k)–5(e)(1) would not apply to former long-term, part-time employees.

2. Coordination With Employer Elections

In addition to section 401(a)(4), other Code sections affect whether contributions must be made on behalf of long-term, part-time employees. Accordingly, proposed § 1.401(k)–5(e)(2) would address the safe harbor section 401(k) plan contribution requirements under section 401(k)(12) and (13), the safe harbor section 401(m) plan contribution requirements under section 401(m)(11) and (12), the top-heavy benefit requirements under section 416, and the SIMPLE 401(k) plan contribution requirements under section 401(k)(11) and (m)(10).

As explained in section I.F.1 of this Explanation of Provisions, this proposed regulation would provide that the employer or employers maintaining a plan are permitted to elect to exclude long-term, part-time employees for purposes of determining whether the plan satisfies the ADP safe harbor provisions of section 401(k)(12) and (13), the ACP safe harbor provisions of section 401(m)(11) and (12), and certain other nondiscrimination and coverage testing provisions. Similarly, as explained in section I.F.2 of this Explanation of Provisions, this proposed regulation would permit the employer or employers maintaining the plan to elect to exclude long-term, part-time employees for purposes of determining whether the plan satisfies the top-heavy vesting and benefit requirements of section 416(b) and (c). However, this proposed regulation would not permit an employer to elect to exclude long-term, part-time employees for purposes of determining whether a plan satisfies the SIMPLE 401(k) provisions of section 401(k)(11) and (m)(10).

Therefore, proposed § 1.401(k)–5(e)(2)(i) would clarify that if long-term, part-time employees are excluded for purposes of determining whether a plan satisfies the ADP safe harbor provisions of section 401(k)(12) or (13) (and, if applicable, the ACP safe harbor provisions of section 401(m)(11) or (12)), then the plan will not fail to satisfy those provisions merely because the employer does not make a nonelective or matching contribution on behalf of an eligible NHCE who is a long-term, part-time employee (or makes a nonelective or matching contribution that would not satisfy the safe harbor contribution requirements on behalf of the eligible NHCE). Similarly, proposed § 1.401(k)–5(e)(2)(ii) would clarify that if long-term, part-time employees are excluded for purposes of determining whether the plan satisfies the minimum benefit requirements of section 416(c) for the plan year, then the plan will not fail to satisfy the minimum benefit requirements of section 416(c) merely because the employer contribution (if any) made for the plan year on behalf of a non-key employee who is a long-term, part-time employee does not satisfy those requirements.

However, proposed § 1.401(k)–5(e)(2)(iii) would clarify that, because an employer may not elect under this proposed regulation to exclude long-term, part-time employees from the application of the SIMPLE 401(k) provisions of section 401(k)(11) and (m)(10), a plan intended to satisfy the SIMPLE 401(k) provisions of section 401(k)(11) or (m)(10) must satisfy the matching or nonelective contribution requirements of § 1.401(k)–4(e) with respect to long-term, part-time employees.

F. Employer Elections

1. Nondiscrimination and Coverage

This proposed regulation generally reflects the provisions of section 401(k)(15)(B)(i)(II). Section 401(k)(15)(B)(i)(II) permits an employer to elect to exclude long-term, part-time employees from the application of the nondiscrimination requirements of section 401(a)(4), the ADP test of section 401(k)(3), the ADP safe harbor provisions of section 401(k)(12) and (13), the ACP test of section 401(m)(2), the ACP safe harbor provisions of section 401(m)(11) and (12), and the minimum coverage requirements of section 410(b). Accordingly, proposed § 1.401(k)–5(f)(1) generally would permit an employer to elect to exclude long-term, part-time employees (but not former long-term, part-time employees, as explained in section I.D.2 of this Explanation of Provisions) for purposes of determining whether a plan satisfies those nondiscrimination and minimum coverage requirements.

The nondiscrimination and minimum coverage requirements listed in section 401(k)(15)(B)(i)(II) do not include the SIMPLE 401(k) provisions of section 401(k)(11) and (m)(10). Accordingly, an employer election under proposed § 1.401(k)–5(f)(1) would not exclude long-term, part-time employees for purposes of determining whether a plan satisfies the SIMPLE 401(k) requirements of section 401(k)(11) and (m)(10).

For purposes of section 410(b), if long-term, part-time employees are not excluded for purposes of determining whether the plan satisfies section 410(b) pursuant to an employer election under proposed § 1.401(k)–5(f)(1), then those employees generally will be otherwise excludable employees for purposes of section 410(b)(4)(B) and § 1.410(b)–6(b)(3) because those long-term, part-time employees will not have satisfied the service requirements of section 410(a)(1) (without regard to section 410(a)(1)(B)). However, former long-term, part-time employees who have completed 1 year of service under section 410(a)(1)(A)(ii) will not be otherwise excludable employees because those former long-term, part-time employees will have satisfied the minimum age and service requirements of section 410(a)(1) (without regard to section 410(a)(1)(B)).

The Treasury Department and the IRS received a comment in response to Notice 2020–68 requesting clarification that an employer may elect to exclude long-term, part-time employees for purposes of certain nondiscrimination and coverage testing provisions listed in section 401(k)(15)(B)(i)(II), but include long-term, part-time employees for other of those provisions. This proposed regulation would not provide for such an option because of the interconnection among the nondiscrimination and coverage testing provisions listed in section 401(k)(15)(B)(i)(II) and the risk that disregarding long-term, part-time employees for purposes of some (but not all) of those nondiscrimination and coverage testing provisions could result in discrimination against NHCEs who are not long-term, part-time employees. Accordingly, this proposed regulation would clarify that an employer election under proposed § 1.401(k)–5(f)(1) applies for purposes of every nondiscrimination and coverage testing provision listed in section 401(k)(15)(B)(i)(II) (to the extent the provision otherwise would apply to the plan) and applies with respect to all long-term, part-time employees who are eligible to participate in the qualified CODA.

With respect to a plan that is intended to satisfy the ADP safe harbor provisions of section 401(k)(12) or (13), this proposed regulation would clarify that an election under proposed § 1.401(k)–5(f)(1) must be set forth in the plan and satisfy the plan year requirements of § 1.401(k)–3(e). This proposed regulation would set forth a similar requirement for a plan that is intended to satisfy the ACP safe harbor provisions of section 401(m)(11) or (12). Therefore, with respect to these plans, in order for an election to satisfy the conditions of proposed § 1.401(k)–5(f)(1), the terms of the plan must provide clearly that long-term, part-time employees are excluded for purposes of the ADP safe harbor provisions of section 401(k)(12) or (13), the ACP safe harbor provisions of section 401(m)(11) or (12), and any other provisions under proposed § 1.401(k)–5(f)(1)(i) that otherwise would apply to the plan.

With respect to a plan that is not intended to satisfy the ADP safe harbor provisions of section 401(k)(12) or (13) or the ACP safe harbor provisions of section 401(m)(11) or (12) for a plan year, this proposed regulation would not require an election under proposed § 1.401(k)–5(f)(1) to be set forth in the plan. However, in order for the employer or employers maintaining the plan to make an election under proposed § 1.401(k)–5(f)(1), the terms of the plan would need to provide enabling language. Thus, in the case of a plan that is not intended to satisfy the ADP safe harbor provisions of section 401(k)(12) or (13) or the ACP safe harbor provisions of section 401(m)(11) or (12) for a plan year, if the plan document does not include enabling language, or an election under proposed § 1.401(k)–5(f)(1) is not made, then long-term, part-time employees would not be excluded for purposes of determining whether the plan satisfies the nondiscrimination requirements of section 401(a)(4), the ADP test of section 401(k)(3), the ACP test of section 401(m)(2), or the minimum coverage requirements of section 410(b) (to the extent those provisions would otherwise apply to the plan).

2. Top-Heavy

Proposed § 1.401(k)–5(f)(2) reflects the provisions of section 401(k)(15)(B)(ii), which permit an employer to elect to exclude all long-term, part-time employees from the application of the top-heavy vesting and benefit requirements under section 416(b) and (c). As explained in section I.D.2 of this Explanation of Provisions, the election under proposed § 1.401(k)–5(f)(2) would not apply to former long-term, part-time employees. In addition, this proposed regulation would clarify that an election under section 401(k)(15)(B)(ii) does not apply for purposes of determining whether a plan is a top-heavy plan (as defined in section 416(g)).

However, section 125(e) of the SECURE 2.0 Act amends the special rules under section 416(g)(4)(H) of the Code for cash or deferred arrangements using alternative methods of meeting nondiscrimination requirements to provide that the term ''top-heavy plan'' does not include a plan solely because that plan does not provide nonelective or matching contributions to employees described in section 401(k)(15)(B)(i). As explained in section I.E.2 of this Explanation of Provisions, a plan does not fail to satisfy the ADP safe harbor provisions of section 401(k)(12) or (13) or the ACP safe harbor provisions of section 401(m)(11) or (12) (including for purposes of applying section 416(g)(4)(H) of the Code) merely because the employer does not make a nonelective or matching contribution on behalf of an eligible NHCE who is a long-term, part-time employee, provided that long-term, part-time employees are excluded for purposes of determining whether the plan satisfies those provisions pursuant to an election that satisfies the requirements of proposed § 1.401(k)–5(f)(1). Accordingly, proposed § 1.401(k)–5(f)(2) would clarify that, in the case of an employer that makes an election described in proposed § 1.401(k)–5(f)(1) (which has the effect of excluding long-term, part-time employees for purposes of determining whether the plan satisfies the ADP and ACP safe harbor provisions), the plan will not fail to be excluded from the definition of a ''top-heavy plan'' under section 416(g)(4)(H) merely because the employer does not make nonelective or matching contributions on behalf of long-term, part-time employees (or makes nonelective or matching contributions that do not satisfy the requirements for safe harbor contributions).

The employer election regarding nondiscrimination and coverage testing under proposed § 1.401(k)–5(f)(1) and the employer election regarding top-heavy benefits under proposed § 1.401(k)–5(f)(2) would be separate elections. In order for an election to satisfy the conditions of proposed § 1.401(k)–5(f)(2), the terms of the plan would be required to provide that long-term, part-time employees are excluded from the application of the vesting and benefit requirements of section 416(b) and (c).

3. Additional Employer Contributions

As explained in section I.E of this Explanation of Provisions, this proposed regulation generally would not require an employer to make nonelective or matching contributions on behalf of a long-term, part-time employee. However, the Treasury Department and the IRS received a comment in response to Notice 2020–68 requesting clarification that an employer may elect under section 401(k)(15)(B)(i)(II) to exclude long-term, part-time employees from nondiscrimination and coverage testing, even if the employer makes employer contributions (other than elective contributions) on behalf of long-term, part-time employees under the plan.

Under this proposed regulation, an election to exclude long-term, part-time employees for purposes of nondiscrimination and coverage testing under proposed § 1.401(k)–5(f)(1), and an election to exclude long-term, part-time employees for purposes of top-heavy benefits under proposed § 1.401(k)–5(f)(2), would not be conditioned upon long-term, part-time employees being ineligible to receive employer contributions other than elective contributions under the plan. Accordingly, this proposed regulation generally would permit the employer or employers maintaining the plan to elect to exclude long-term, part-time employees under proposed § 1.401(k)–5(f)(1) and (2), even if the employer or employers maintaining the plan make nonelective or matching contributions on behalf of long-term, part-time employees under the plan. If a plan is intended to satisfy the ADP safe harbor provisions of section 401(k)(12) or (13), or the ACP safe harbor provisions of section 401(m)(11) or (12), and the employer elects to exclude long-term, part-time employees under proposed § 1.401(k)–5(f)(1) for purposes of determining whether the plan satisfies those provisions (and any other provisions under proposed § 1.401(k)–5(f)(1)(i) that otherwise would apply to the plan), then any nonelective or matching contributions made on behalf of long-term, part-time employees under the plan would not be safe harbor contributions for purposes of § 1.401(k)–3 or 1.401(m)–3 but, as described in section I.F.2 of this Explanation of Provisions, the plan would continue to be excluded from the definition of a ''top-heavy plan''.

II. Other Issues

A. Catch-Up Contributions and Roth Elective Contributions

Section 112 of the SECURE Act does not address whether a long-term, part-time employee may be a catch-up eligible participant for purposes of making catch-up contributions under section 414(v) and § 1.414(v)–1. However, § 1.414(v)–1(g)(3) provides that an employee is a catch-up eligible participant for a taxable year if: (1) the employee is eligible to make elective deferrals under an applicable employer plan (without regard to section 414(v) or § 1.414(v)–1), and (2) the employee's 50th or higher birthday would occur before the end of the employee's taxable year. An employee who is eligible to participate in a qualified CODA as a long-term, part-time employee would be eligible to make elective deferrals under an applicable employer plan for purposes of § 1.414(v)–1(g)(3). Accordingly, a long-term, part-time employee is a catch-up eligible participant for a taxable year if the employee's 50th or higher birthday would occur before the end of the employee's taxable year.

Under the universal availability requirements of section 414(v)(4) and § 1.414(v)–1(e), a section 401(k) plan (or other applicable employer plan) that offers catch-up contributions and that is otherwise subject to section 401(a)(4) generally will not satisfy the requirements of section 401(a)(4) unless all catch-up eligible participants who participate under any applicable employer plan maintained by the employer are provided an effective opportunity to make the same dollar amount of catch-up contributions. This proposed regulation would not amend the catch-up contribution rules of § 1.414(v)–1. However, as explained in section I.F.1 of this Explanation of Provisions, proposed § 1.401(k)–5(f)(1) would permit an employer to elect to exclude long-term, part-time employees for purposes of certain nondiscrimination and coverage testing provisions, including for purposes of section 401(a)(4). Therefore, long-term, part-time employees would be disregarded for purposes of the universal availability requirements of section 414(v)(4) and § 1.414(v)–1(e), if the employer elects to exclude long-term, part-time employees in accordance with the provisions of proposed § 1.401(k)–5(f)(1).

Similarly, section 401(k)(15) does not address whether a section 401(k) plan may permit a long-term, part-time employee to make designated Roth contributions. However, under § 1.401(k)–1(f)(1), a designated Roth contribution is an elective contribution under a qualified CODA that (to the extent permitted under the plan) satisfies certain conditions. Section 1.401(k)–1(f)(4) further provides that a designated Roth contribution must satisfy the requirements applicable to elective contributions made under a qualified CODA and is treated as an employer contribution for purposes of certain Code sections, including section 401(k). Accordingly, a section 401(k) plan may permit long-term, part-time employees to make designated Roth contributions.

Under § 1.401(k)–1(a)(4)(iv)(B), the right to make designated Roth contributions is a right or feature subject to the requirements of section 401(a)(4). However, if the employer elects to exclude long-term, part-time employees for purposes of determining whether a plan satisfies section 401(a)(4) in accordance with the provisions of proposed § 1.401(k)–5(f)(1), long-term, part-time employees would be disregarded for purposes of determining whether the right to make designated Roth contributions under the plan satisfies section 401(a)(4) and § 1.401(a)(4)–4.

B. Form 5500 and Form 5500–SF—Independent Qualified Public Accountant Audit

The Treasury Department and the IRS received a comment in response to Notice 2020–68 requesting that long-term, part-time employees be excluded for purposes of determining whether a plan is exempt from the requirement to be audited annually by an independent qualified public accountant (IQPA). The Treasury Department and the IRS also received a comment in response to Notice 2020–68 requesting that the determination of whether a plan is exempt from the annual audit requirement be based on the number of plan participants (including long-term, part-time employees) with account balances as of the beginning of the plan year, rather than the total number of participants at the beginning of the plan year. The annual audit requirement of section 103(a)(3) of ERISA falls under the regulatory and interpretive authority of the Department of Labor and is outside the scope of this proposed regulation.[5]

[5] After these comments were received, revisions were made to the forms and instructions for the Form 5500, ''Annual Return/Report of Employee Benefit Plan,'' and Form 5500–SF, ''Short Form Annual Return/Report of Small Employee Benefit Plan,'' for plan years beginning on or after January 1, 2023. The new instructions provide that only participants with an account balance are counted for purposes of the small plan audit waiver of annual examination and report of an IQPA under 29 CFR 2520.104–46. *See* 88 FR 11984 (February 24, 2023).

Proposed Applicability Date

Section 1.401(k)–5 is proposed to apply to plan years that begin on or after January 1, 2024. Prior to the date a Treasury decision revising § 1.401(k)–5 to implement rules for long-term, part-time employees is published in the **Federal Register**, taxpayers may rely on the rules set forth in this notice of proposed rulemaking.

Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at *www.irs.gov* or contact the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The information required under this regulation is considered usual and customary records kept by respondents during the normal course of business in administering their retirement plans. These customary business records impose no additional burden on respondents and are not required to be reviewed by the Office of Management and Budget (OMB) per 5 CFR 1320.3(b)(2).

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on several factors. First, the proposed regulation generally is intended to reflect certain statutory changes that affect section 401(k) plans. The proposed regulation primarily would conform the current regulations under section 401(k) with changes made by section 112 of the SECURE Act and sections 125 and 401 of the SECURE 2.0 Act.

Second, although the proposed regulation might affect a substantial number of small entities, the economic impact of the proposed regulation is not expected to be significant. The changes made by section 112 of the SECURE Act may require certain small entities that sponsor section 401(k) plans to revise the eligibility service requirements under those plans so that long-term, part-time employees are permitted to make cash or deferred elections. However, except with respect to SIMPLE 401(k) plans, those small entities would not be required to make nonelective or matching contributions on behalf of long-term, part-time employees. Any additional recordkeeping or administrative costs resulting from the participation of long-term, part-time employees in section 401(k) plans sponsored by small entities are not expected to be significant.

With respect to small entities that sponsor SIMPLE 401(k) plans, the proposed regulation would require those small entities to make nonelective or matching contributions under those SIMPLE 401(k) plans on behalf of any long-term, part-time employees in order to satisfy section 112 of the SECURE Act. However, if a small entity sponsors a section 401(k) plan, it is expected that the plan typically would be subject to the ADP test or designed to satisfy the requirements for a safe harbor section 401(k) plan, rather than be designed to satisfy the requirements for a SIMPLE 401(k) plan. Accordingly, the number of small entities that sponsor section 401(k) plans that are intended to satisfy the requirements for a SIMPLE 401(k) plan and are affected by the expanded participation requirements of section 112 of the SECURE Act is not expected to be substantial.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of this regulation on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The proposed regulation does not propose any rule that would include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The proposed regulation does not propose any rule that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

Comments and Public Hearing

Before a final regulation is adopted with respect to long-term, part-time employee rules for cash or deferred arrangements under § 1.401(k)–5, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulation. As described in section I.B.1 of the Explanation of Provisions, comments specifically are requested on the application of section 112 of the SECURE Act to a qualified CODA that is included in either (1) a governmental plan, or (2) a church plan with respect to which the election provided by section 410(d) has not been made.

All comments will be made available at *www.regulations.gov* or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for March 15, 2024, beginning at 10:00 a.m. ET in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit an outline of the topics to be addressed and the time to be devoted to each topic by January 26, 2024 as prescribed in the preamble under the **ADDRESSES** section. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by January 26, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–104194–23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–104194–23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–104194–23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–104194–23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–104194–23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–104194–23. Requests to attend the public hearing must be received by 5:00 p.m. ET on March 13, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–104194–23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for

REG–104194–23. Requests to attend the public hearing must be received by 5:00 p.m. ET on March 13, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during the hearing, please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by March 12, 2024.

Drafting Information

The principal authors of this regulation are Kara M. Soderstrom and Jason E. Levine, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes (EEE)). However, other personnel from the IRS and the Treasury Department participated in the development of this regulation.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.401(k)–5 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.401(k)–5 is also issued under 26 U.S.C. 401(m)(9).

* * * * *

■ **Par. 2.** Section 1.401(k)–5 is revised to read as follows:

§ 1.401(k)–5 Long-term, part-time employees.

(a) *Overview*—(1) *Rules applicable to long-term, part-time employees*—(i) *In general.* This section provides rules regarding long-term, part-time employees, as defined in paragraph (b)(1) of this section. A cash or deferred arrangement satisfies the requirements of section 401(k)(2)(D) of the Internal Revenue Code only if, with respect to each long-term, part-time employee—

(A) The employee becomes eligible to make a cash or deferred election under the arrangement in accordance with the participation requirements of paragraph (c) of this section; and

(B) The plan that includes the arrangement satisfies the vesting requirements of paragraph (d) of this section.

(ii) *Optional provisions.* A plan that includes a cash or deferred arrangement that satisfies the requirements of paragraphs (c) and (d) of this section may reflect the nonelective and matching contribution provisions of paragraph (e) of this section with respect to long-term, part-time employees (but not former long-term, part-time employees as defined in paragraph (d)(2)(i) of this section). In addition, an employer maintaining the plan may apply the employer election provisions of paragraph (f) of this section with respect to long-term, part-time employees (but not former long-term, part-time employees).

(2) *Rules applicable to former long-term, part-time employees. See* paragraph (d)(2) of this section for rules relating to former long-term, part-time employees.

(b) *Long-term, part-time employees*—(1) *Definition*—(i) *In general.* Except as provided in paragraph (b)(1)(ii) or (iii) of this section, *long-term, part-time employee* means an employee who is eligible to participate in the arrangement solely by reason of having—

(A) Completed two consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service (as defined in section 410(a)(3)(C)); and

(B) Attained the age specified in section 410(a)(1)(A)(i) by the close of the last of the 12-month periods described in paragraph (b)(1)(i)(A) of this section.

(ii) *Exclusion for certain employees.* Long-term, part-time employees do not include—

(A) Employees who are included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers if there is evidence that retirement benefits were the subject of good faith bargaining between those employee representatives and that employer or employers;

(B) Employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer that constitutes income from sources within the United States (within the meaning of section 861(a)(3)); or

(C) Any other employees described in section 410(b)(3).

(iii) *Plan years beginning in 2024.* With respect to a plan year beginning in 2024, paragraph (b)(1)(i)(A) of this section is applied by substituting three consecutive 12-month periods for two consecutive 12-month periods.

(2) *Examples.* The following examples illustrate the application of the definition of long-term, part-time employee under paragraph (b)(1) of this section, taking into account the determination of 12-month periods under paragraph (c)(2)(i) of this section. For purposes of the examples, each plan is maintained on a calendar-year basis, includes a cash or deferred arrangement, and each plan's provisions are effective as of January 1, 2024. For purposes of paragraphs (b)(2)(vi) through (xii) of this section (*Examples 6* through *12*), each plan provides that, in order to be eligible to make a cash or deferred election under the arrangement, an employee is required to complete a period of service with the employer maintaining the plan that extends until the close of the earlier of: a 12-month period during which the employee is credited with at least 1,000 hours of service, or three consecutive 12-month periods (excluding any 12-month period beginning before January 1, 2021) during each of which the employee is credited with at least 500 hours of service (however, effective January 1, 2025, each plan is amended to provide that the applicable number of consecutive 12-month periods during each of which an employee must be credited with at least 500 hours of service in order to participate in the arrangement is reduced from three to two). In addition, for purposes of paragraphs (b)(2)(vi) through (xii) of this section (*Examples 6* through *12*), each plan provides that, for purposes of determining whether an employee has satisfied the requirements of paragraph (b)(1)(i) of this section, 12-month periods are determined by reference to the employment commencement date of an employee, and each plan provides monthly entry dates for an eligible employee to commence participation in the arrangement. Except as provided in paragraphs (b)(2)(viii), (ix), and (x) of this section (*Examples 8, 9,* and *10*), each employee has attained age 21. Except as provided in paragraphs (b)(2)(xi) and (xii) of this section (*Examples 11* and *12*), none of the employees are described in section 410(b)(3).

(i) *Example 1.* (A) Employer A maintains Plan I. Plan I includes a cash or deferred arrangement under which each employee of Employer A is eligible to make a cash or deferred election as soon as administratively practicable after the employee's employment commencement date.

(B) None of the employees who are eligible to make a cash or deferred election under the arrangement in Plan I are long-term, part-time employees because none of those employees are eligible to participate in the arrangement solely by reason of having completed the number of consecutive 12-month periods that applies under paragraph (b)(1)(i)(A) or (b)(1)(iii) of this section (referred to as the applicable number of consecutive 12-month periods) during each of which the employee is credited with at least 500 hours of service.

(ii) *Example 2.* (A) Employer B maintains Plan J. Plan J provides that, in order to be eligible to make a cash or deferred election under the arrangement, each employee of Employer B is required to complete a 12-month period of service with Employer B during which the employee is credited with at least 500 hours of service.

(B) None of the employees who are eligible to make a cash or deferred election under the arrangement in Plan J are long-term, part-time employees because none of those employees are eligible to participate in the arrangement solely by reason of having completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service.

(iii) *Example 3.* (A) Employer C maintains Plan K. Plan K provides that, in order to be eligible to make a cash or deferred election under the arrangement, each employee of Employer C is required to complete a period of service with Employer C that extends until the close of the earlier of: a 12-month period during which the employee is credited with at least 1,000 hours of service, or two consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service.

(B) For the plan year beginning January 1, 2024, none of the employees who are eligible to make a cash or deferred election under the arrangement in Plan K are long-term, part-time employees because none of those employees are eligible to participate in the arrangement solely by reason of having completed three consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service.

(C) For plan years beginning on or after January 1, 2025, an employee who becomes eligible to participate in the arrangement in Plan K solely by reason of having completed two consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service would be a long-term, part-time employee. However, an employee who became eligible to participate in the arrangement before January 1, 2025, would not be a long-term, part-time employee for plan years beginning on or after January 1, 2025, because that employee did not become eligible to participate in the arrangement solely by reason of completing the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service.

(iv) *Example 4.* (A) Employer D maintains Plan L. Plan L provides that, in order to be eligible to make a cash or deferred election under the arrangement, each employee of Employer D is required to complete a 1-year period of service with Employer D using the elapsed time method of crediting service.

(B) None of the employees who are eligible to make a cash or deferred election under the arrangement in Plan L are long-term, part-time employees because none of those employees are eligible to participate in the arrangement solely by reason of having completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service.

(v) *Example 5.* (A) The facts are the same as in paragraph (b)(2)(iv)(A) of this section (*Example 4*), except that Plan L requires employees of Employer D who are classified as part-time employees to complete the applicable number of consecutive 1-year periods of service under paragraph (b)(1)(i)(A) or (b)(1)(iii) of this section with Employer D using the elapsed time method of crediting service.

(B) Plan L fails to satisfy the requirements of section 401(k)(2)(D)(i) because, under the elapsed time method of crediting service, a 1-year period of service is the maximum period that Plan L may require any employee to complete in order to participate in the arrangement.

(vi) *Example 6.* (A) Employer E maintains Plan M. For purposes of determining the eligibility of an employee to participate in the arrangement under Plan M, Plan M credits an employee with 190 hours of service for each month for which the employee would be required to be credited with at least 1 hour of service. Employees R and S are employees of Employer E who both have an employment commencement date of June 1, 2024. Employees R and S are both classified by Employer E as part-time employees. During the 12-month period beginning on June 1, 2024, Employee R has at least 1 hour of service each month for 6 months and, therefore, is credited with 1,140 hours of service. Employee R commences participation in the arrangement in Plan M on June 1, 2025. During each of the 12-month periods beginning on June 1, 2024, and June 1, 2025, Employee S is credited with at least 1 hour of service each month for 4 months and, therefore, is credited with 760 hours of service for the period. Employee S commences participation in the arrangement in Plan M on June 1, 2026.

(B) Employee R is not a long-term, part-time employee (or former long-term, part-time employee, as defined in paragraph (d)(2)(i) of this section) because Employee R is credited with 1,140 hours of service during the 12-month period beginning on June 1, 2024. Therefore, Employee R is not eligible to participate in the arrangement solely by reason of having completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service. However, Employee S is eligible to participate in the arrangement solely by reason of having completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service. Accordingly, Employee S is a long-term, part-time employee.

(vii) *Example 7.* (A) Employer G maintains Plan O. Employee U is an employee of Employer G with an employment commencement date of June 1, 2024. Employee U is classified by Employer G as a part-time employee. During the 12-month period beginning on June 1, 2024, Employee U is credited with 900 hours of service. During the 12-month period beginning on June 1, 2025, Employee U is credited with 1,100 hours of service. Employee U commences participation in the arrangement in Plan O on June 1, 2026. During the 12-month period beginning on June 1, 2026, Employee U is credited with 900 hours of service.

(B) Employee U is not a long-term, part-time employee (or former long-term, part-time employee) because Employee U is credited with 1,100 hours of service during the 12-month period beginning on June 1, 2025. Therefore, Employee U is not eligible to participate in the arrangement solely by reason of having completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service. The result would be the same even if Employee U also is credited with at least 500 (but less than 1,000) hours of service during the plan year beginning on June 1, 2027 (and therefore completes two consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service).

(viii) *Example 8.* (A) Employer H maintains Plan P. Plan P excludes any employees who have not yet attained age 21 from participating in the arrangement under Plan P. Employee V is an employee of Employer H with an employment commencement date of June 1, 2024, who attains age 18 on September 2, 2024. During the 12-month period beginning on June 1, 2024, Employee V is credited with 1,100 hours of service. During each of the 12-month periods beginning on June 1, 2025, and June 1, 2026, Employee V is credited with 600 hours of service. On September 2, 2027, Employee V attains age 21 and Employee V commences participation in the arrangement in Plan P on October 1, 2027.

(B) Employee V is not a long-term, part-time employee (or former long-term, part-time employee) because Employee V was credited with 1,100 hours of service during the 12-month period beginning on June 1, 2024, and, therefore, became eligible to participate in the arrangement by reason of completing a 12-month period with at least 1,000 hours of service and attaining age 21. Accordingly, Employee V did not become eligible to participate in the arrangement solely by reason of having completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service.

(ix) *Example 9.* (A) Employer I maintains Plan Q. Plan Q excludes any employees who have not yet attained age 21 from participating in the arrangement under Plan Q. Employee W is an employee of Employer I with an employment commencement date of June 1, 2024, who attains age 19 on October 3, 2024. During each of the 12-month periods beginning on June 1, 2024, and June 1, 2025, Employee W is credited with 600 hours of service for the period. During the 12-month period beginning on June 1, 2026, Employee W attains age 21 (on October 3, 2026), but is credited with only 400 hours of service.

(B) Employee W is not a long-term, part-time employee (or former long-term, part-time employee) because Employee W is credited with only 400 hours of service during the 12-month period in which Employee W attains age 21. Therefore, Employee W did not attain age 21 by the close of the last of the 12-month periods described in paragraph (b)(1)(i)(A) of this section. However, Employee W could become eligible to participate in the arrangement in Plan Q as a long-term, part-time employee as of June 1, 2029, if Employee W is credited with at least 500 (but less than 1,000) hours of service for each 12-month period beginning on June 1, 2027, and June 1, 2028.

(x) *Example 10.* (A) The facts are the same as in paragraph (b)(2)(ix)(A) of this section (*Example 9*), except that, during the 12-month period beginning on June 1, 2026, Employee W is credited with 600 hours of service, and Employee W commences participation in the arrangement in Plan Q on June 1, 2027.

(B) Employee W is credited with 600 hours of service for each 12-month period beginning on June 1, 2025, and June 1, 2026, and attains age 21 on October 3, 2026, which is by the close of the last of those 12-month periods. Accordingly, Employee W is a long-term, part-time employee.

(xi) *Example 11.* (A) Employer J maintains Plan R. Plan R excludes any employees who are included in a unit of employees covered by a collective bargaining agreement described in paragraph (b)(1)(ii)(A) of this section from participating in the arrangement under Plan R. Employee X is an employee of Employer J who is included in a unit of employees covered by a collective bargaining agreement described in paragraph (b)(1)(ii)(A) of this section, and who has an employment commencement date of June 1, 2024. During each of the 12-month periods beginning on June 1, 2024, and June 1, 2025, Employee X is credited with 600 hours of service for the period. During the 12-month period beginning on June 1, 2026, Employee X is credited with 1,100 hours of service. On June 2, 2027, Employee X ceases to be included in a unit of employees covered by a collective bargaining agreement described in paragraph (b)(1)(ii)(A) of this section and becomes eligible to participate in the arrangement.

(B) Employee X is not a long-term, part-time employee (or former long-term, part-time employee) because Employee X is credited with 1,100 hours of service during the 12-month period beginning on June 1, 2026. Therefore, Employee X is not eligible to participate in the arrangement solely by reason of having completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service.

(xii) *Example 12.* (A) The facts are the same as in paragraph (b)(2)(xi)(A) of this section (*Example 11*), except that, during the 12-month period beginning on June 1, 2026, Employee X is credited with only 600 hours of service.

(B) Employee X is eligible to participate in the arrangement solely by reason of having completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service. Accordingly, Employee X is a long-term, part-time employee.

(c) *Participation*—(1) *Time of participation*—(i) *In general.* Subject to the rules of this paragraph (c)(1) and paragraph (c)(4) of this section, a long-term, part-time employee who satisfies the plan's eligibility conditions (as described in paragraph (c)(3) of this section) must become eligible to make a cash or deferred election under the arrangement no later than the earlier of—

(A) The first day of the first plan year beginning after the date on which the long-term, part-time employee satisfied the requirements of paragraphs (b)(1)(i)(A) and (B) of this section; or

(B) The date 6 months after the date on which the long-term, part-time employee satisfied the requirements of paragraphs (b)(1)(i)(A) and (B) of this section.

(ii) *Employees who separate from service.* The requirements of paragraph (c)(1)(i) of this section do not apply to a long-term, part-time employee who separates from service and does not return to service with the employer or employers maintaining the plan before the date referred to in paragraph (c)(1)(i) of this section. However, if a long-term, part-time employee described in the prior sentence returns to service with the employer or employers maintaining the plan after the date referred to in paragraph (c)(1)(i) of this section and is otherwise eligible to participate in the arrangement, the long-term, part-time employee must be eligible to make a cash or deferred election immediately upon return to service with the employer or employers maintaining the plan.

(iii) *Change in status.* If an employee who would otherwise be eligible to participate in the arrangement as a long-term, part-time employee does not participate solely because the employee does not satisfy the plan's eligibility conditions (as described in paragraph (c)(3) of this section) as of the date referred to in paragraph (c)(1)(i) of this section, and the employee satisfies those conditions after that date, the employee must become eligible to participate in the arrangement immediately upon satisfying those conditions.

(2) *Determination of 12-month periods*—(i) *In general.* Except for any 12-month period beginning before January 1, 2021, all 12-month periods during which an employee is credited

with at least 500 hours of service with the employer or employers maintaining the plan must be taken into account for purposes of determining whether an employee has satisfied the requirements of paragraphs (b)(1)(i)(A) and (B) of this section.

(ii) *Initial and subsequent 12-month periods.* (A) The initial 12-month period with respect to an employee begins on the first day for which the employee is entitled to be credited with an hour of service.

(B) Beginning with the plan year that commences within the initial 12-month period described in paragraph (c)(2)(ii)(A) of this section, 12-month periods may be determined by reference to the first day of the plan year. If the preceding sentence applies, that initial 12-month period and the plan year that commences within the initial 12-month period are treated as consecutive 12-month periods.

(iii) *Examples.* The following examples illustrate the determination of 12-month periods under this paragraph (c)(2). For purposes of the examples, each plan includes a cash or deferred arrangement, is maintained on a calendar-year basis, and provides monthly entry dates for an eligible employee to commence participation in the arrangement. Each employee in the following examples has attained age 21, and none of the employees are described in section 410(b)(3). For purposes of paragraphs (c)(2)(iii)(A), (B), and (G) of this section (*Examples 1, 2,* and *7*), each plan provides that, for purposes of determining whether an employee has satisfied the requirements of paragraphs (b)(1)(i)(A) and (B) of this section, 12-month periods are determined by reference to the employment commencement date of an employee. For purposes of paragraphs (c)(2)(iii)(C) through (F) of this section (*Examples 3* through *6*), each plan provides that, for purposes of determining whether an employee has satisfied the requirements of paragraphs (b)(1)(i)(A) and (B) of this section, any 12-month period that begins after the first day of the initial 12-month period is determined by reference to the first day of the plan year. For purposes of paragraph (c)(2)(iii)(A) of this section and paragraphs (c)(2)(iii)(C) through (G) of this section (*Example 1* and *Examples 3* through *7*), each plan provides that, effective January 1, 2024, in order to be eligible to make a cash or deferred election under the arrangement, each employee is required to complete a period of service with the employer maintaining the plan that extends until the close of the earlier of: a 12-month period during which the employee is credited with at least 1,000 hours of service, or three consecutive 12-month periods (excluding any 12-month period beginning before January 1, 2021) during each of which the employee is credited with at least 500 hours of service. However, effective January 1, 2025, each plan is amended to provide that the applicable number of consecutive 12-month periods during each of which an employee must be credited with at least 500 hours of service in order to participate in the arrangement is reduced from three to two.

(A) *Example 1.* (*1*) Employer K maintains Plan S. Pursuant to paragraph (c)(2)(i) of this section, Plan S provides that any 12-month period beginning before January 1, 2021, is not taken into account for purposes of determining whether an employee has completed three consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service. Employee Y is an employee of Employer K with an employment commencement date of June 1, 2021. During each of the 12-month periods beginning on June 1, 2021, June 1, 2022, and June 1, 2023, Employee Y is credited with 600 hours of service for the period. Employee Y commences participation in the arrangement in Plan S on June 1, 2024.

(*2*) Employee Y is eligible to participate in the arrangement solely by reason of having completed three consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service, and Employee Y is a long-term, part-time employee. If Employee Y had an employment commencement date of June 1, 2020, and had been credited with 600 hours of service for the 12-month period beginning on June 1, 2020, then the result would be the same because, under the terms of the plan, the 12-month period beginning on June 1, 2020, would not be taken into account for purposes of determining whether Employee Y has completed three consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service and, therefore, Employee Y would become eligible to participate in the arrangement on June 1, 2024, as a long-term, part-time employee.

(B) *Example 2.* (*1*) Employer L maintains Plan T. Plan T provides that, in order to be eligible to make a cash or deferred election under the arrangement, each employee is required to complete a period of service with Employer L that extends until the close of the earlier of: a 12-month period during which the employee is credited with at least 1,000 hours of service; or the number of consecutive 12-month periods that applies under paragraph (b)(1)(i)(A) or (b)(1)(iii) of this section (referred to as the applicable number of consecutive 12-month periods), including 12-month periods beginning before January 1, 2021. Employee Z is an employee of Employer L with an employment commencement date of June 1, 2020. During each of the 12-month periods beginning on June 1, 2020, June 1, 2021, and June 1, 2022, Employee Z is credited with 600 hours of service for the period. Employee Z commences participation in the arrangement in Plan T on June 1, 2023.

(*2*) Plan T does not fail to satisfy the requirements of section 401(k)(2)(D) merely because, under the terms of Plan T, Employee Z commences participation in the arrangement on June 1, 2023. However, paragraph (c)(2)(i) of this section does not permit any 12-month period beginning before January 1, 2021 (including the 12-month period beginning on June 1, 2020), to be taken into account for purposes of determining whether an employee has completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service. Accordingly, Employee Z is not a long-term, part-time employee because Employee Z is not eligible to participate in the arrangement solely by reason of having completed the applicable number of consecutive 12-month periods (beginning on or after January 1, 2021) during each of which the employee is credited with at least 500 hours of service.

(C) *Example 3.* (*1*) Employer M maintains Plan U. Employee A is an employee of Employer M with an employment commencement date of March 1, 2023. During the 12-month period beginning on March 1, 2023, Employee A is credited with 400 hours of service. During each of the 12-month periods beginning on January 1, 2024, and January 1, 2025, Employee A is credited with 600 hours of service for the period. Employee A commences participation in the arrangement under Plan U on January 1, 2026.

(*2*) Plan U satisfies the requirements of paragraph (c)(2)(ii)(B) of this section with respect to Employee A. The fact that the 12-month period beginning March 1, 2023, is not a 12-month period for which Employee A is credited with at least 500 hours of service, does not prevent Employee A from being a long-term, part-time employee. Accordingly, Employee A is eligible to participate in the arrangement on January 1, 2026, solely by reason of having completed two consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service (that is, the 12-month periods beginning on January 1, 2024, and January 1, 2025), and Employee A is a long-term, part-time employee.

(D) *Example 4.* (*1*) Employer N maintains Plan V. Employee B is an employee of Employer N with an employment commencement date of December 1, 2023. During the 12-month period beginning on December 1, 2023, Employee B is credited with 600 hours of service. During the 12-month period beginning on January 1, 2024, Employee B is credited with 600 hours of service. Employee B commences participation in the arrangement under Plan V on January 1, 2025.

(*2*) Plan V satisfies the requirements of paragraph (c)(2)(ii)(B) of this section with respect to Employee B because the 12-month periods beginning on December 1, 2023, and January 1, 2024, are considered two consecutive 12-month periods. Accordingly, Employee B is eligible to participate in the arrangement on January 1, 2025, solely by reason of having completed two consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service, and Employee B is a long-term, part-time employee.

(E) *Example 5.* (*1*) Employer O maintains Plan W. Employee C is an employee of Employer O with an employment commencement date of August 1, 2020. During the 12-month period beginning on August 1, 2020, Employee C is credited with 600 hours of service. During each of the 12-month periods beginning on January 1, 2021, January 1, 2022, and January 1, 2023, Employee C is credited with 600 hours of service for the period. Employee C commences participation in the arrangement in Plan W on January 1, 2024.

(*2*) Plan W satisfies the requirements of paragraph (c)(2)(ii)(B) of this section with respect to Employee C. Pursuant to paragraph (c)(2)(i) of this section, Plan W does not take into account the 12-month beginning on August 1, 2020, for purposes of determining whether Employee C has completed three consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service. Accordingly, Employee C is eligible to participate in the arrangement on January 1, 2024, solely by reason of having completed three consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service (that is, the 12-month periods beginning on January 1, 2021, January 1, 2022, and January 1, 2023), and Employee C is a long-term, part-time employee.

(F) *Example 6.* (*1*) Employer P maintains Plan X. Employee D is an employee of Employer P with an employment commencement date of March 1, 2023. During the 12-month period beginning on March 1, 2023, Employee D is credited with 600 hours of service. During the 12-month period beginning on January 1, 2024, Employee D is credited with 400 hours of service. During each of the 12-month periods beginning on January 1, 2025, and January 1, 2026, Employee D is credited with 600 hours of service for the period. Employee D commences participation in the arrangement under Plan X on January 1, 2027.

(*2*) Plan X satisfies the requirements of paragraph (c)(2)(ii)(B) of this section with respect to Employee D. The 12-month period beginning on March 1, 2023 (for which Employee D is credited with 600 hours of service) is not taken into account for purposes of determining whether Employee D has completed the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service because Employee D is not credited with at least 500 hours of service during the 12-month period beginning on January 1, 2024. Accordingly, Employee D is eligible to participate in the arrangement on January 1, 2027, solely by reason of having completed two consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service (that is, the 12-month periods beginning on January 1, 2025, and January 1, 2026), and Employee D is a long-term, part-time employee.

(G) *Example 7.* (*1*) Employer Q maintains Plan Y. Employee E is an employee of Employer Q with an employment commencement date of June 1, 2023. During each of the 12-month periods beginning on June 1, 2023, and June 1, 2024, Employee E is credited with 600 hours of service for the period. Employee E commences participation in the arrangement in Plan Y on June 1, 2025. During the 12-month period beginning on June 1, 2025, Employee E is credited with 300 hours of service.

(*2*) Pursuant to paragraph (c)(2)(i) of this section, the 12-month periods beginning on June 1, 2023, and June 1, 2024, must be taken into account for purposes of determining whether Employee E is a long-term, part-time employee. This requirement is not changed merely because Employee E is not credited with at least 500 hours of service during the 12-month period beginning on June 1, 2025. Accordingly, Employee E does not cease to be a long-term, part-time employee merely because Employee E completes a 12-month period during which Employee E is credited with less than 500 hours of service.

(3) *Eligibility conditions not based on age or service*—(i) *In general.* Subject to paragraph (c)(3)(ii) of this section, the rules of this section do not preclude a plan from establishing an eligibility condition that must be satisfied in order for an employee to participate in the arrangement (for example, requiring as a condition of participation that an employee be employed within a specified job classification), provided that the condition is not a proxy for imposing an age or service requirement that requires an employee to complete a period of service with the employer or employers maintaining the plan that extends beyond the close of the earlier of the periods described in section 401(k)(2)(D)(i) and (ii).

(ii) *Eligibility conditions that are proxies for age or service.* For purposes of applying the rules of this section, a plan provision will be treated as a proxy for imposing an age or service requirement if the provision has the effect of imposing an age or service requirement with the employer or employers maintaining the plan.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (c)(3). For purposes of the examples, each plan includes a cash or deferred arrangement and is maintained on a calendar-year basis.

(A) *Example 1.* (*1*) Employer R maintains Plans Z and A. Effective January 1, 2024, Plan Z provides that, as a condition to participate in the arrangement, an employee must complete the number of consecutive 12-month periods that applies under paragraph (b)(1)(i)(A) or (b)(1)(iii) of this section (referred to as the applicable number of consecutive 12-month periods) during each of which the employee is credited with at least 500 hours of service. Effective January 1, 2024, Plan A provides that, as a condition to participate in the arrangement, an employee must complete a 12-month period during which the employee is credited with at least 1,000 hours of service.

(*2*) Because the provision of Plan Z that requires an employee to complete the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service in order to participate in the arrangement requires an employee to complete the period of service described in section 401(k)(2)(D)(ii), that provision requires an employee to complete a period of service with Employer R that extends beyond the close of the earlier of the period described in section 401(k)(2)(D)(i), or the period described in section 401(k)(2)(D)(ii). Accordingly, as of January 1, 2024, the arrangement under Plan Z fails to satisfy the requirements of section 401(k)(2)(D). Similarly, because Plan A requires an employee to complete a 12-month period during which the employee is credited with at least 1,000 hours of service in order to participate in the arrangement, as of January 1, 2024, the arrangement under Plan A fails to satisfy the requirements of section 401(k)(2)(D).

(B) *Example 2.* (*1*) Employer S maintains Plan B. Employer S is comprised of Divisions T and U. In order to be employed in Division T, an employee is required to be classified as a full-time employee, which Employer S defines as an employee who completes a 12-month period during which the employee is credited with at least 1,000 hours of service. All other employees of Employer S are employed in Division U. Effective January 1, 2024, Plan B provides that, as a condition to participate in the arrangement, an employee is required to be employed in Division T.

(*2*) Because the provision of Plan B that requires an employee to be employed in Division T in order to participate in the arrangement has the effect of requiring an employee to complete the period of service described in section 401(k)(2)(D)(i), that provision is treated as a service requirement under paragraph (c)(3)(ii) of this section. Accordingly, as of January 1, 2024, the arrangement under Plan B fails to satisfy the requirements of section 401(k)(2)(D) because the arrangement requires an employee to complete a period of service with Employer S that extends beyond the close of the earlier of: the period described in section 401(k)(2)(D)(i), or the period described in section 401(k)(2)(D)(ii).

(C) *Example 3.* (*1*) Employer V maintains Plan C. Prior to January 1, 2024, Plan C provided that an employee classified by Employer V as a part-time employee was ineligible to make a cash or deferred election under the arrangement unless the part-time employee completed a 12-month period during which the employee was credited with at least 1,000 hours of service with Employer V. Effective January 1, 2024, Plan C provides that an employee classified by Employer V as a part-time employee is ineligible to make a cash or deferred election under the arrangement unless the employee completes a period of service with Employer V that extends until the close of the earlier of: a 12-month period during which the employee is credited with at least 1,000 hours of service, or the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service (excluding any 12-month period beginning before January 1, 2021).

(*2*) Plan C does not fail to satisfy the requirements of section 401(k)(2)(D) merely because, effective January 1, 2024, Plan C provides that an employee classified as a part-time employee is ineligible to make a cash or deferred election under the arrangement unless the employee completes a period of service with Employer V that extends until the close of the earlier of: a 12-month period during which the employee is credited with at least 1,000 hours of service, or the applicable number of consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service (excluding any 12-month period beginning before January 1, 2021).

(4) *Elective contributions.* A cash or deferred arrangement satisfies the requirements of this paragraph (c)(4) only if the right to make elective contributions by a long-term, part-time employee who is an eligible NHCE is not restricted in a manner that would not be permitted for an NHCE under § 1.401(k)–3(c)(6). However, a SIMPLE 401(k) plan may limit the amount of elective contributions made by long-term, part-time employees under the plan to the extent needed to satisfy the elective contribution limitation for SIMPLE 401(k) plans under section 401(k)(11)(B)(i)(I) and (m)(10)(A).

(d) *Vesting*—(1) *Years of vesting service taken into account*—(i) *General rule.* For purposes of determining the nonforfeitable right of a long-term, part-time employee (or former long-term, part-time employee) to employer contributions under the plan (other than elective contributions)—

(A) Each 12-month period (which may be any 12-consecutive month period that is not prohibited for use under section 411(a)) during which the employee is credited with at least 500 hours of service (as defined in section 410(a)(3)(C)) with the employer or employers maintaining the plan is treated as a year of vesting service; and

(B) Except for any 12-month period beginning before January 1, 2021, all 12-month periods of service with the employer or employers maintaining the plan must be taken into account unless the period of service of the employee may be disregarded under section 411(a).

(ii) *Application of vesting rules.* For purposes of this paragraph (d), section 411 will be treated as if it applies to the plan, taking into account the modifications provided in paragraphs (d)(1)(i) and (iii) of this section.

(iii) *Break in service.* For purposes of determining whether a long-term, part-time employee (or former long-term, part-time employee) has incurred a 1-year break in service, section 411(a)(6)(A) is applied by substituting at least 500 hours of service for more than 500 hours of service.

(2) *Former long-term, part-time employees*—(i) *Definition.* A *former long-term, part-time employee* means an employee who—

(A) Became eligible to participate in the arrangement as a long-term, part-time employee;

(B) Subsequently ceased to be a long-term, part-time employee because the employee was described in paragraph (d)(2)(ii)(A) or (B) of this section; and

(C) Has not returned to long-term, part-time employee status in accordance with paragraph (d)(2)(iii) of this section.

(ii) *Timing.* A long-term, part-time employee becomes a former long-term, part-time employee as of the first day of the first plan year beginning after the earlier of the plan year in which the employee:

(A) Satisfies the requirements of section 401(k)(2)(D) without regard to section 401(k)(2)(D)(ii); or

(B) Ceases to satisfy the plan's eligibility conditions (other than age or service conditions).

(iii) *Return to long-term, part-time employee status.* If a long-term, part-time employee who ceases to satisfy the plan's eligibility conditions (other than age or service conditions) during a plan year subsequently satisfies those conditions, then the employee will return to long-term, part-time employee status as of the first day of the plan year during which the employee again satisfies those conditions. However, the preceding sentence does not apply if the employee is a former long-term, part-time employee because the employee satisfies the requirements of section 401(k)(2)(D) without regard to section 401(k)(2)(D)(ii).

(3) *Examples.* The following examples illustrate the vesting requirements of this paragraph (d). For purposes of the examples, each plan includes a cash or deferred arrangement; is maintained on a calendar-year basis; provides that, for purposes of determining whether an employee has satisfied the requirements

of paragraph (b)(1)(i) of this section and for purposes of determining the nonforfeitable right of a long-term, part-time employee (or former long-term, part-time employee) to employer contributions under the plan (other than elective contributions), all 12-month periods are determined by reference to the employment commencement date of an employee; and provides that, for purposes of determining the nonforfeitable right of an employee to any nonelective contribution made on behalf of the employee, the plan uses a 6-year graded vesting schedule.

(i) *Example 1.* (A) Employer X maintains Plan G. Employees of Employer X are employed at either Plant Y or Plant Z. Plan G requires that an employee be employed at Plant Y as a condition to participate in the arrangement. This condition is not a proxy for age or service under paragraph (c)(3)(ii) of this section. Employee N is an employee of Employer X who is employed at Plant Z, and who has an employment commencement date of June 1, 2021. During the 12-month periods beginning on June 1, 2021, June 1, 2022, June 1, 2023, June 1, 2024, June 1, 2025, and June 1, 2026, Employee N is credited with 600 hours of service for each period. On June 2, 2027, Employee N is transferred to Plant Y, becomes eligible to participate in the arrangement in Plan G, and thereafter commences participation in the arrangement as a long-term, part-time employee.

(B) Unless Plan G is permitted to disregard years of vesting service for Employee N under section 411(a), paragraph (d)(1)(i) of this section requires Plan G to credit Employee N with 6 years of vesting service for the 12-month periods beginning on June 1, 2021, June 1, 2022, June 1, 2023, June 1, 2024, June 1, 2025, and June 1, 2026, because Employee N is credited with at least 500 hours of service during each of those periods. Accordingly, Employee N has a 100-percent nonforfeitable right to any nonelective contribution under Plan G that is made on behalf of Employee N.

(ii) *Example 2.* (A) Employer A maintains Plan H. Employee O commences participation in the arrangement in Plan H as a long-term, part-time employee on June 1, 2024. During the 12-month period beginning on June 1, 2024, Employee O is credited with 1,200 hours of service. During each of the 12-month periods beginning on June 1, 2025, and June 1, 2026, Employee O is credited with 600 hours of service for the period.

(B) Based on these facts, Employee O remains a long-term, part-time employee for the plan year beginning January 1, 2025. Pursuant to paragraph (d)(2)(ii) of this section, Employee O becomes a former long-term, part-time employee beginning with the next plan year. However, this paragraph (d) continues to apply to Employee O (although paragraphs (e) and (f) of this section no longer apply to Employee O beginning with the 2026 plan year). Employee O will not cease to be a former long-term, part-time employee merely because Employee O completes one or more 12-month periods during each of which the employee is credited with at least 500 (but less than 1,000) hours of service. Thus, Employee O is credited with a year of vesting service for each of the 12-month periods in which Employee O is credited with at least 500 hours of service (including the 12-month periods beginning on June 1, 2025, and June 1, 2026).

(iii) *Example 3.* (A) Employer B maintains Plan J. Employees of Employer B are employed at either Plant C or Plant D. Plan J requires, as a condition to participate in the arrangement, that an employee be employed at Plant C. This condition is not a proxy for age or service under paragraph (c)(3)(ii) of this section. Employee P is an NHCE who is employed at Plant C, and who has an employment commencement date of June 1, 2021. On June 1, 2024, Employee P commences participation in the arrangement in Plan J as a long-term, part-time employee. During the 12-month periods beginning on June 1, 2024, and June 1, 2025, Employee P continues to be credited with at least 500 (but less than 1,000) hours of service for each period. However, on March 1, 2025, Employee P is transferred to Plant D and becomes ineligible to participate in the arrangement. On March 1, 2026, Employee P is transferred back to Plant C and again becomes eligible to participate in the arrangement. Employee P remains employed at Plant C through the 2026 plan year.

(B) Based on these facts, Employee P remains a long-term, part-time employee for the 2025 plan year (although Employee P may not make a cash or deferred election under the arrangement as of March 1, 2025). Pursuant to paragraph (d)(2)(iii) of this section, Employee P remains a long-term, part-time employee for the 2026 plan year (although Employee P is not eligible to make a cash or deferred election under the arrangement again until March 1, 2026). As a result, Employee P never becomes a former long-term, part-time employee, and this paragraph (d) continues to apply to Employee P.

(e) *Nonelective and matching contributions*—(1) *General rule.* Notwithstanding section 401(a)(4), neither nonelective nor matching contributions are required to be made on behalf of long-term, part-time employees, even if those contributions are made on behalf of other eligible employees.

(2) *Coordination with employer elections*—(i) *Safe harbor contributions.* A plan that is intended to satisfy the ADP safe harbor provisions of section 401(k)(12) or (13) will not fail to satisfy those provisions merely because the employer does not make a nonelective or matching contribution on behalf of an eligible NHCE who is a long-term, part-time employee (or makes a nonelective or matching contribution that does not satisfy the safe harbor contribution requirements of § 1.401(k)–3 on behalf of the eligible NHCE), provided that long-term, part-time employees are excluded for purposes of determining whether the plan satisfies the ADP safe harbor provisions of section 401(k)(12) or (13) pursuant to the election under paragraph (f)(1) of this section. Similarly, a plan that is intended to satisfy the ACP safe harbor provisions of section 401(m)(11) or (12) will not fail to satisfy those provisions merely because the employer does not make a nonelective or matching contribution on behalf of an eligible NHCE who is a long-term, part-time employee (or makes a nonelective or matching contribution that does not satisfy the safe harbor contribution requirements of § 1.401(m)–3 on behalf of the eligible NHCE), provided that long-term, part-time employees are excluded for purposes of determining whether the plan satisfies the ACP safe harbor provisions of section 401(m)(11) or (12) pursuant to the election under paragraph (f)(1) of this section.

(ii) *Top-heavy minimum benefits.* A plan that is a top-heavy plan for the plan year will not fail to satisfy the minimum benefit requirements of section 416(c) merely because the employer contribution (if any) made for the plan year on behalf of a non-key employee who is a long-term, part-time employee does not satisfy those requirements, provided that long-term, part-time employees are excluded for purposes of determining whether the plan satisfies the minimum benefit requirements of section 416(c) for the plan year pursuant to an election under paragraph (f)(2) of this section.

(iii) *SIMPLE 401(k) contributions.* An employer may not elect under paragraph (f) of this section to exclude long-term, part-time employees from the application of the SIMPLE 401(k) provisions of section 401(k)(11) and (m)(10). Accordingly, a plan intended to satisfy the SIMPLE 401(k) provisions of section 401(k)(11) or (m)(10) must satisfy the matching or nonelective contribution requirements of § 1.401(k)–4(e) with respect to long-term, part-time employees.

(3) *Examples.* The following examples illustrate the employer contribution rules of this paragraph (e). For purposes of the examples, each plan includes a cash or deferred arrangement and is maintained on a calendar-year basis.

(i) *Example 1.* (A) Employer E maintains Plan K, which is intended to satisfy the ADP safe harbor provisions of section 401(k)(12). Plan K provides that Employer E elects to exclude all long-term, part-time employees for purposes of determining whether Plan K satisfies the statutory requirements listed in paragraph (f)(1)(i) of this section, and the employer election satisfies the requirements of paragraph (f)(1)(ii) of this section. Plan K requires Employer E to make a QNEC on behalf of each eligible NHCE who is not a long-term, part-time employee equal to 3 percent of the NHCE's safe harbor compensation, and the NHCEs who receive this contribution include any former long-term, part-time employees who are eligible NHCEs. Plan K provides that Employer E is required to make a nonelective contribution on behalf of each long-term, part-time employee equal to 2 percent of the long-term, part-time employee's compensation for the plan year.

(B) Based on these facts, long-term, part-time employees are excluded for purposes of determining whether Plan K satisfies the statutory requirements listed in paragraph (f)(1)(i) of this section (to the extent the provision would otherwise apply to Plan K), including the ADP safe harbor provisions of section 401(k)(12). Accordingly, Plan K does not fail to satisfy the safe harbor nonelective contribution requirement of § 1.401(k)–3(b) merely because a safe harbor nonelective contribution is not made on behalf of each eligible NHCE who is a long-term, part-time employee. In addition, because long-term, part-time employees are also excluded for purposes of determining whether Plan K satisfies the nondiscrimination requirements of section 401(a)(4), any nonelective contribution made on behalf of a long-term, part-time employee is disregarded for purposes of determining whether nonelective contributions satisfy the nondiscrimination requirements of section 401(a)(4).

(ii) *Example 2.* (A) Employer F maintains Plan L, which is intended to satisfy the SIMPLE 401(k) provisions of section 401(k)(11) and (m)(10). Plan L provides that Employer F may elect to exclude all long-term, part-time employees for purposes of determining whether Plan L satisfies the statutory requirements listed in paragraph (f)(1)(i) of this section. Employer F elects to exclude all long-term, part-time employees for the plan year in accordance with the requirements of paragraph (f)(1) of this section. Plan L requires Employer F to make a matching contribution on behalf of each eligible employee, excluding long-term, part-time employees (but including any former long-term, part-time employees who are eligible employees), equal to 100 percent of the elective contributions of the employee for the plan year, up to 3 percent of the SIMPLE compensation of the employee for the entire plan year. Plan L does not provide for any employer contributions (other than elective contributions) to be made on behalf of long-term, part-time employees.

(B) Plan L fails to satisfy the SIMPLE 401(k) provisions of section 401(k)(11) and (m)(10) for the plan year because Plan L does not require Employer F to make the matching contribution on behalf of each eligible employee on whose behalf elective contributions were made for the plan year.

(f) *Employer elections*—(1) *Nondiscrimination and coverage*—(i) *General rule.* Subject to paragraph (f)(1)(ii) of this section, an employer may elect to exclude long-term, part-time employees for purposes of determining whether the plan satisfies the following provisions:

(A) The nondiscrimination requirements of section 401(a)(4);

(B) The ADP test of section 401(k)(3);

(C) The ADP safe harbor provisions of section 401(k)(12) and (13);

(D) The ACP test of section 401(m)(2);

(E) The ACP safe harbor provisions of section 401(m)(11) and (12); and

(F) The minimum coverage requirements of section 410(b).

(ii) *Additional requirements.* An employer election satisfies the requirements of this paragraph (f)(1)(ii) if—

(A) The election applies for purposes of every provision under paragraph (f)(1)(i) of this section (to the extent the provision would otherwise apply to the plan);

(B) The election applies with respect to all long-term, part-time employees who are eligible to participate in the arrangement;

(C) With respect to a plan that is intended to satisfy the ADP safe harbor provisions of section 401(k)(12) or (13), the election is set forth in the plan and satisfies the plan year requirements of § 1.401(k)–3(e); and

(D) With respect to a plan that is intended to satisfy the ACP safe harbor provisions of section 401(m)(11) or (12), the election is set forth in the plan and satisfies the plan year requirements of § 1.401(m)–3(f).

(2) *Top-heavy*—(i) *General rule.* Subject to paragraph (f)(2)(ii) of this section, an employer may elect to exclude long-term, part-time employees for purposes of determining whether the plan satisfies the vesting and benefit requirements of section 416(b) and (c). This election does not apply for purposes of determining whether the plan is a top-heavy plan as defined in section 416(g). However, in the case of an employer that makes an election described in paragraph (f)(1) of this section (which has the effect of excluding long-term, part-time employees for purposes of determining whether the plan satisfies the ADP and ACP safe harbor provisions), the plan will not fail to be excluded from the definition of a top-heavy plan under section 416(g)(4)(H) merely because the employer does not make nonelective or matching contributions on behalf of long-term, part-time employees (or makes nonelective or matching contributions that do not satisfy the requirements for safe harbor contributions).

(ii) *Additional requirements.* An employer election satisfies the requirements of this paragraph (f)(2)(ii) if—

(A) The election applies with respect to all long-term, part-time employees who are eligible to participate in the arrangement; and

(B) The terms of the plan provide that long-term, part-time employees are excluded from the application of the vesting and benefit requirements of section 416(b) and (c).

(3) *Examples.* The following examples illustrate the employer election provisions of this paragraph (f). For purposes of the examples, each plan is maintained on a calendar-year basis and includes a cash or deferred arrangement, which is intended to satisfy the ADP test of section 401(k)(3).

(i) *Example 1.* (A) Employer G maintains Plan M. Plan M provides that Employer G may elect to exclude all long-term, part-time employees for purposes of determining whether Plan M satisfies every provision under paragraph (f)(1)(i) of this section (to the extent the provision would otherwise apply to Plan M). Employer G elects to exclude all long-term, part-time employees for the plan year in accordance with the requirements of paragraph (f)(1) of this section. Plan M requires Employer G to make a nonelective contribution on behalf of each eligible employee equal to 2 percent of the compensation of the employee for the plan year.

(B) Based on these facts, long-term, part-time employees are excluded for purposes of determining whether Plan M satisfies every provision under paragraph (f)(1)(i) of this section for the plan year (to the extent the provision would otherwise apply to Plan M), including the nondiscrimination requirements of section 401(a)(4). Accordingly, any nonelective contribution made on behalf of a long-term, part-time employee for the plan year is disregarded for purposes of determining whether nonelective contributions made for the plan year satisfy the nondiscrimination requirements of section 401(a)(4).

(ii) *Example 2.* (A) Employer H maintains Plan N. Plan N provides that all long-term, part-time employees are excluded from the application of the vesting and benefit requirements of section 416(b) and (c). Plan N requires Employer H to make a nonelective contribution on behalf of each eligible employee who is credited with at least 1,000 hours of service during the plan year equal to 3 percent of the compensation of the employee for the plan year. Plan N provides that each employee has a 100-percent nonforfeitable right to any nonelective contribution Employer H makes on behalf of the employee. Plan N is a top-heavy plan with respect to the plan year.

(B) Based on these facts, long-term, part-time employees are excluded from the application of the vesting and benefit requirements of section 416(b) and (c) for the plan year. Accordingly, although Plan N is a top-heavy plan with respect to the plan year, Plan N is not required to satisfy the top-heavy benefit provisions of section 416(c) for the plan year with respect to any non-key employee who is a long-term, part-time employee.

(g) *Applicability date.* This section applies to plan years that begin on or after January 1, 2024.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–25987 Filed 11–24–23; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 09–197, and 16–271; RM–11868; Report No. 3203; FR ID 183017]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's proceeding Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support, ETC Annual Reports and Certifications, Telecommunications Carriers Eligible to Receive Universal Service Support, Connect America Fund—Alaska Plan, and Expanding Broadband Service Through the ACAM Program.

DATES: Oppositions to the Petitions must be filed on or before December 12, 2023. Replies to oppositions must be filed on or before December 22, 2023.

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

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Stephen Wang of the Wireline Competition Bureau, Telecommunications Access Policy Division, at (202) 418–7400 or *Stephen.Wang@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3203, released October 31, 2023. The full text of the Petitions can be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support (WC Docket Nos. 10–90, 14–58, 09–197, and 16–271; RM–11868).

Number of Petitions Filed: 5.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–25858 Filed 11–24–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2023–0023; FF09E21000 FXES1111090FEDR 245]

RIN 1018–BH13

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Sacramento Mountains Checkerspot Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and announcement of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the public comment period on our August 10, 2023, proposed rule to designate critical habitat for the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*), a butterfly from New Mexico, under the Endangered Species Act of 1973, as amended (Act). We are taking this action to conduct a public hearing and to allow all interested parties additional time to comment on the proposal to designate critical habitat for the Sacramento Mountains checkerspot butterfly. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES:

Comment submission: The comment period on the proposed rule that published August 10, 2023 (88 FR 54263), is reopened. We will accept comments received or postmarked on or before December 27, 2023. Please note that comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date to ensure consideration.

Public hearing: On December 12, 2023, we will hold a public hearing on the proposed critical habitat designation for the Sacramento Mountains checkerspot butterfly from 5 to 8 p.m., Mountain time, using the Zoom online platform (for more information, see Public Hearing, below).

ADDRESSES:

Availability of documents: You may obtain copies of the August 10, 2023, proposed rule and associated documents on the internet at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2023–0023.

Written comments: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2023–0023, which is the docket number for the proposed rule. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2023–0023, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Shawn Sartorius, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, NM 87113; telephone 505–346–2525. 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. Please see Docket No. FWS–R2–ES–2023–0023 on *https://www.regulations.gov* for a document that summarizes the August 10, 2023, proposed rule.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2023, we published a proposed rule (88 FR 54263) to designate critical habitat for the Sacramento Mountains checkerspot butterfly under the Act. The proposed rule opened a 60-day public comment period, ending October 10, 2023. During the open comment period, we received a request for a public hearing. Therefore, we are reopening the comment period and announcing a public hearing to allow the public an additional opportunity to provide comments on the proposed rule.

For a description of previous Federal actions concerning critical habitat for the Sacramento Mountains checkerspot butterfly and information on the types of comments that would be helpful to us in promulgating this rulemaking action, please refer to the August 10, 2023, proposed rule (88 FR 54263).

Public Hearing

We are holding a public hearing to accept comments on the proposed rule to designate critical habitat for the Sacramento Mountains checkerspot butterfly on the date and at the time listed in **DATES**. We are holding the public hearing via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. All participants must register in order to listen and view the hearing via Zoom, listen to the hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone.

For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit *https://www.fws.gov/office/new-mexico-ecological-services.* Registrants will receive the Zoom link and the telephone number for the public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (*https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started-with-Zoom*) prior to the public hearing.

The public hearing will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding the August 10, 2023, proposed rule to designate critical habitat for the Sacramento Mountains checkerspot butterfly (88 FR 54263). The purpose of the public hearing is to provide a forum for accepting formal verbal testimony, which will then become part of the record for the proposed rule. In the event there is a large attendance, the time allotted for verbal testimony may be limited. Therefore, anyone wishing to provide verbal testimony at the public hearing is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal or U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to provide verbal testimony at the public hearing must register before the hearing.

For information on how to register, visit *https://www.fws.gov/office/new-mexico-ecological-services.* The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

Reasonable Accommodation

The Service is committed to providing access to the public hearing for all participants. Closed captioning will be available during the public hearing. Further, a full audio and video recording and transcript of the public hearing will be posted online at *https://www.fws.gov/office/new-mexico-ecological-services* after the hearing. Participants will also have access to live audio during the public hearing via their telephone or computer speakers. Persons with disabilities requiring reasonable accommodations to participate in the hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the date of the hearing to help ensure availability. An accessible version of the Service's public hearing presentation will also be posted online at *https://www.fws.gov/office/new-mexico-ecological-services* prior to the hearing (see **DATES**, above). See *https://www.fws.gov/office/new-mexico-ecological-services* for more information about reasonable accommodation.

Public Comments

If you submit information via *https://www.regulations.gov,* your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the New Mexico Ecological Services Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–25597 Filed 11–24–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[RTID 0648–XD471]

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 24 to the Pacific Coast Salmon Fishery Management Plan

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

ACTION: Announcement of availability of proposed fishery management plan amendment; request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) has submitted Amendment 24 to the Pacific Coast Salmon Fishery Management Plan (Salmon FMP) to the Secretary of Commerce for review. The intent of Amendment 24 is to clarify the technical process for reviewing updates to the models used to determine the Chinook salmon abundance threshold that may trigger additional management measures to limit the impact of ocean salmon fisheries on Southern Resident killer whales (SRKW). The whales are listed under the Endangered Species Act (ESA) and Chinook salmon, some of which are listed as threatened under the ESA, are their preferred prey. This action is administrative in nature and does not change the formula for calculating the threshold or the fishery management responses currently described in the Salmon FMP.

DATES: Comments on Amendment 24 must be received by January 26, 2024.

ADDRESSES: You may submit comments on Amendment 24, identified by NOAA–NMFS–2023–0105, by the following method:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0105 in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments must be submitted by the above method to ensure that the comments are received, documented, and considered by NMFS by the applicable deadlines. 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. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The draft Salmon FMP, as amended through Amendment 24, with notations showing how Amendment 24 would change the Salmon FMP, if approved, is available on the NMFS website at *https://www.fisheries.noaa.gov/action/fisheries-west-coast-states-west-coast-salmon-fisheries-amendment-24-pacific-coast-salmon.*

FOR FURTHER INFORMATION CONTACT: Shannon Penna at 562–980–4239, *Shannon.Penna@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the exclusive economic zone (3–200 nautical miles; 5.6–370.4 kilometers) off Washington, Oregon, and California are managed under the Pacific Coast Salmon Fishery Management Plan (Salmon FMP). The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that each regional fishery management council submit any fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary) (MSA section 304(a)). The MSA also requires that NMFS, upon receiving a proposed FMP or plan amendment, immediately publish a notice that the FMP or plan amendment is available for public review and comment. Publication occurs on or before the fifth day after the day on which a Council transmits to the Secretary a FMP or plan amendment. This document announces that proposed Amendment 24 to the Salmon FMP is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, partially approve, or disapprove Amendment 24 to the Salmon FMP.

In November 2020, the Pacific Fishery Management Council (Council) adopted management measures for Southern Resident killer whales (SRKW) under Amendment 21 (86 FR 51017, September 14, 2021) to the Salmon FMP. The Salmon FMP was amended by adding Section 6.6.8 which describes provisions to limit the impacts of the Council-managed ocean salmon fisheries on SRKW by limiting the extent to which they reduce Chinook salmon prey availability for SRKW. Amendment 21 established a Chinook salmon abundance threshold (threshold) for U.S. waters north of Cape Falcon, Oregon and if preseason projections of abundance in a given year are less than the threshold, then a list of management actions will be implemented through the management measures for ocean salmon fisheries that year.

In April 2022, the Salmon Technical Team and Scientific and Statistical Committee conducted a technical review of updates to the models that inform the threshold. During this review, it became apparent that the language in Section 6.6.8 describing the process, roles and responsibilities for reviewing model updates and using the updated models to update the threshold, and the appropriate depth of review was unclear. In November 2022, the Council adopted a revised threshold value to account for the model updates. At the same time, the Council tasked NMFS and Council staff to evaluate the description in the Salmon FMP of the process for the technical review and suggest clarifying language to improve the process. Based on this evaluation, in November 2023, the Council adopted the recommended changes for the Salmon FMP.

If approved, Amendment 24 to the Salmon FMP would clarify the process for review of updates to the models, and the recalculation of the threshold value based on updated model information, by revising Section 6.6.8 of the Salmon FMP. The revised text would not change the approach used to calculate the threshold.

Amendment 24 also includes some minor housekeeping edits, such as updates to references and correction of a species name.

All comments received by the end of the comment period (see **DATES** and **ADDRESSES** above) will be considered in the Secretary's decision to approve, disapprove, or partially approve Amendment 24. To be considered in this decision, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: November 20, 2023.

Kelly Denit,

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

[FR Doc. 2023–25997 Filed 11–24–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 226

Monday, November 27, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Assembly of the Administrative Conference of the United States will meet during a one-day hybrid plenary session to consider four proposed recommendations and to conduct other business. Written comments may be submitted in advance, and the meeting will be accessible to the public.

DATES: The meeting will take place on Thursday, December 14, 2023, from 9 a.m.–5 p.m. The meeting may adjourn early if all business is finished.

ADDRESSES: For those attending in person, the meeting will be held at The George Washington University Law School in the Jacob Burns Moot Court Room, 2000 H Street NW, Washington, DC 20052. There will be a virtual attendance option. Information on how the public can access the meeting will be available on the agency's website prior to the meeting at *https://www.acus.gov/event/80th-plenary-session*.

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel (Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; telephone 202–480–2080; email *smcgibbon@acus.gov*.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States makes recommendations to federal agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of administrative procedures (5 U.S.C. 594). The membership of the Conference, when meeting in plenary session, constitutes the Assembly of the Conference (5 U.S.C. 595).

Agenda: Four proposed recommendations will be considered by the Assembly. In addition, there will be updates on past, current, and pending Conference initiatives, as well as other business. Summaries of the recommendations appear below:

Best Practices for Adjudication Not Involving an Evidentiary Hearing. This proposed recommendation examines the wide range of procedures that agencies use when adjudicating cases in programs in which there is no legally required opportunity for an evidentiary hearing. It offers a set of broadly applicable best practices that account for the diversity of matters that agencies decide through truly informal adjudication and promote fairness, accuracy, and efficiency.

Identifying and Reducing Burdens in Administrative Processes. This proposed recommendation examines best practices, such as public engagement, that agencies can use to identify unnecessary burdens that members of the public face when they engage with administrative programs or participate in administrative processes. It also recommends strategies agencies can use to reduce unnecessary burdens, such as simplifying processes, digitizing services, and collaborating with other agencies and nongovernmental organizations.

Improving Timeliness in Agency Adjudication. This proposed recommendation examines strategies—including procedural, technological, personnel, and other reforms—that agencies have used or might use to address backlogs or delays in administrative adjudication. It identifies best practices to help agencies devise plans to promote timeliness in administrative adjudication, in accord with principles of fairness, accuracy, and efficiency.

User Fees. This proposed recommendation identifies best practices for agencies and Congress to consider in designing and implementing user fees in administrative programs. It addresses how Congress and agencies might determine when user fees are appropriate; how agencies might determine fair and reasonable user fees for specific programs, including whether there are reasons for waivers, exemptions, or reduced rates; when and how agencies should engage with the public in determining or modifying user fees; and how agencies should review their user fee programs.

Additional information about the proposals and the agenda, as well as any changes or updates to the same, can be found at the 80th Plenary Session page on the Conference's website prior to the start of the meeting at: *https://www.acus.gov/event/80th-plenary-session*.

Public Participation: The Conference welcomes the virtual attendance of the public at the meeting. Members of the public wishing to view the meeting are asked to RSVP online at the 80th Plenary Session web page shown above no later than two days before the meeting to ensure adequate bandwidth and accessibility. A link to a livestream of the meeting will be posted the morning of the meeting on the 80th Plenary Session web page. A video recording of the meeting will be available on the Conference's website shortly after the conclusion of the event at *https://youtube.com/channel/UC1Gu44Jq1U7XsGdC9Tfl_zA*.

Written Comments: Persons who wish to comment on any of the proposed recommendations may do so by submitting a written statement either online by clicking ''Submit a comment'' on the 80th Plenary Session web page shown above or by mail addressed to: December 2023 Plenary Session Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036. Written submissions must be received no later than 10:00 a.m. (EDT), Friday, December 8, 2023, to ensure consideration by the Assembly.

(Authority: 5 U.S.C. 595)

Dated: November 21, 2023.

Shawne McGibbon,

General Counsel.

[FR Doc. 2023–26070 Filed 11–24–23; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–23–0059]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision to the approved forms and information collection for marketing orders covering various vegetables and specialty crops.

DATES: Comments on this notice are due by January 26, 2024 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or online at *https://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting the comments will be made available to the public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone: (202) 720–8085; Fax: (202) 720–8938; or Email: *matthew.pavone@usda.gov.*

Small businesses may request information on this notice by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone (202) 720–8085; Fax: (202) 720–8938; or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Vegetable and Specialty Crops.

OMB Number: 0581–0178.

Expiration Date of Approval: March 31, 2024.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. This notice covers the following marketing order citations: 7 CFR parts 932 (California olives), 945 (Idaho/Oregon potatoes), 978 (Colorado potatoes), 955 (Vidalia onions), 956 (Walla Walla onions), 958 (Idaho/Oregon onions), 959 (South Texas onions), 966 (Florida tomatoes), 981 (California almonds), 982 (Oregon/Washington hazelnuts), 984 (California walnuts), 985 (Northwest spearmint oil), 987 (California dates), 989 (California raisins), 993 (California dried prunes), and 999 (Specialty Crop Import Regulations).

Marketing Order 946 (Washington potatoes) has been terminated since the last three-year renewal period of this information collection package. Currently, handling requirements for Marketing Order 993 (California dried prunes) are suspended at the industry's request, meaning its information collection requirements are not active. In addition, the import regulation for California dried prunes, as contained in 7 CFR part 999.200—Regulation governing the importation of prunes—is indefinitely suspended, effective February 17, 2009 (74 FR 2806).

Marketing order requirements help ensure adequate supplies of high-quality product and adequate returns to producers. Marketing orders are authorized under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674). The Secretary of Agriculture oversees the marketing order operations and issues regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing orders. Under the Act, marketing orders may authorize: Production and marketing research, including paid advertising; volume regulation; reserves, including pools and producer allotments; container requirements; and quality control. Assessments are levied on handlers regulated under the marketing orders. Section 8e of the Act requires imports of 14 commodities to meet certain quality standards. Included among these commodities are some covered in this forms package: olives, potatoes, onion, tomatoes, walnuts, dates, dried prunes, and raisins.

USDA requires several forms to be filed to enable the administration of each marketing order. These include forms covering the selection process for industry members to serve on a marketing order's committee or board and ballots used in referenda to amend or continue marketing orders.

Under Federal marketing orders, producers and handlers are nominated by their peers to serve as representatives on a committee or board which administers each program. Nominees must provide information on their qualifications to serve on the committee or board. Qualified nominees are then appointed by the Secretary. Amendments to marketing orders made through Formal rulemaking must be approved in referenda conducted by USDA and the Secretary. For the purposes of this action, ballots are considered information collections and are subject to the Paperwork Reduction Act. If a marketing order is amended, handlers are asked to sign an agreement indicating their willingness to abide by the provisions of the amended marketing order.

Some forms are required to be filed with the committee or board. The marketing orders authorize the respective committee or board, the agencies responsible for local administration of the marketing orders, to require handlers and producers to submit certain information. Much of the information is compiled in aggregate and provided to the respective industries to assist in marketing decisions. The committees and boards developed forms as a means for persons to file required information relating to supplies, shipments, and dispositions of their respective commodities, and other information needed to effectively carry out the purpose of the Act and their respective orders, and these forms are utilized accordingly.

The forms covered under this information collection require respondents to provide the minimum information necessary to effectively carry out the requirements of the marketing orders, and use of these forms is necessary to fulfill the intent of the Act as expressed in the marketing orders.

The information collected is used only by authorized employees of the committees and authorized representatives of the USDA, including AMS Specialty Crops Program's regional and headquarters' staff. Authorized committee or board employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.32 hours per response.

Respondents: Producers, handlers, processors, dehydrators, cooperatives, manufacturers, importers, and public members.

Estimated Number of Respondents: 14,190.

Estimated Number of Responses: 61,906.

Estimated Number of Responses per Respondent: 4.36.

Estimated Total Annual Burden on Respondents: 19,617 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information 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 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 should reference OMB No. 0581–0178 Vegetable and Specialty Crops be sent to the USDA in care of the Docket Clerk at the address above. All comments received will be available for public inspection during regular business hours at the same address.

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.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–26087 Filed 11–24–23; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–23–AGENCY–0018]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites comments on the OneRD Loan Guarantee Program information collection package and announces the Rural Utilities Service intention to request a revision for to a currently approved information collection from the Office of management and Budget (OMB).

DATES: Comments on this notice must be received by January 26, 2024 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Contact Adyam Negasi, Innovation Center, Regulations Management Division, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250; Tel: 202–221–9298; Email: *Adyam.Negasi@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's regulation (5 CFR part 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 the Agency 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 burden including the validity of the methodology and assumption 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms and 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. RUS–23–AGENCY–0018. 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. To submit a comment, select the ''Comment'' button, complete the required information, and select the ''Submit Comment'' button at the bottom. 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.

Title: OneRD Guaranteed Loan Program.

OMB Number: 0572–0155.

Expiration Date of Approval: 04/30/2024.

Type of Request: Revision of a currently approved information collection.

Abstract: Rural Development has a consolidated guaranteed loan regulation that covers four guaranteed loan programs in one regulation (Community Facilities, Water and Waste Disposal, Business and Industry, and Rural Energy for America Program). Rural Development, a mission area of the U.S. Department of Agriculture (USDA), is comprised of three agencies (Rural Utilities Service (RUS), Rural Housing Service (RHS), and Rural Business-Cooperative Service (RBCS)), that together administer loans through the OneRD Guaranteed Loan Program (or Program) pursuant to 7 CFR part 5001. Loans are used for water and waste disposal systems, essential community infrastructure such as healthcare, libraries and fire stations, and the development and improvement of businesses and industries in rural communities. The Program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.84 hours per response.

Respondents: Public Bodies; Non-Profits; Special Districts; Tribal Organizations.

Estimated Number of Respondents: 725.

Estimated Number of Responses per Respondent: 19.09.

Estimated Total Annual Burden on Respondents: 53110.75.

Copies of this information collection can be obtained from Adyam Negasi, Rural Development Innovation Center, Regulations Management Division, at 202–221–9298. 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Andrew Berke,

Administrator, USDA, Rural Utilities Service.

[FR Doc. 2023–26016 Filed 11–24–23; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting of a Federal advisory committee.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a virtual meeting, accessible to the public online, on Thursday, December 14, 2023. The meeting is open to the public with registration instructions provided below. This notice sets forth the schedule and proposed topics for the meeting.

DATES: The meeting is scheduled for Thursday, December 14, 2023 from 11 a.m. to 12:30 p.m. Eastern Standard Time (EST). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EST on Friday, December 1, 2023.

ADDRESSES: The meeting will be held virtually. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be submitted via email to Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration, at *Megan.Hyndman@trade.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration (Phone: 202–823–1839; email: *Megan.Hyndman@trade.gov*). Registered participants joining virtually will be emailed the login information for the meeting, which will be accessible as a livestream via WebEx Webinar.

SUPPLEMENTARY INFORMATION: The ETTAC is mandated by section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was most recently re-chartered through August 16, 2024.

On Thursday, December 14, 2023 from 11 a.m. to 12:30 p.m. EST, the ETTAC will hold the fifth meeting of its current charter term. During the meeting, committee members will deliberate on approval of several proposed recommendations.

The meeting will be open to the public and time will be permitted for public comment before the close of the meeting. Members of the public seeking to attend the meeting are required to register by Friday, December 1, 2023, at 5 p.m. EST, via the contact information provided above. This meeting will be accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at *Megan.Hyndman@trade.gov* or (202) 823–1839 by the registration deadline. Requests received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Friday, December 1, 2023, at 5 p.m. EST to ensure transmission to the members before the meeting. Draft minutes will be available within 30 days of this meeting.

Dated: November 20, 2023.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2023–26069 Filed 11–24–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–053, C–570–054]

Antidumping and Countervailing Duty Orders on Certain Aluminum Foil From the People's Republic of China: Final Affirmative Determinations of Circumvention With Respect to the Republic of Korea and the Kingdom of Thailand

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of certain aluminum foil (aluminum foil) that were exported from the Republic of Korea (Korea) and from the Kingdom of Thailand (Thailand), using inputs (*i.e.,* aluminum foil- and sheet-gauge products) manufactured in the People's Republic of China (China), as specified below, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum foil from China.

DATES: Applicable November 27, 2023.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney and Mark Flessner, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475 and (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 2018, Commerce published in the **Federal Register** AD and CVD orders on U.S. imports of aluminum foil from China.[1] On July 18, 2022, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(b), Commerce self-initiated country-wide circumvention inquiries to determine whether imports of aluminum foil, completed in Korea and Thailand (collectively, the third countries), using inputs (*i.e.,* aluminum foil- and sheet-gauge products) manufactured in China, are circumventing the *Orders* and, accordingly, should be covered by the scope of the *Orders.*[2] On March 22,

[1] *See Certain Aluminum Foil from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 83 FR 17362 (April 19, 2018) (*AD Order*); *see also Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 17360 (April 19, 2018) (*CVD Order*) (collectively, *Orders*).

[2] *See Certain Aluminum Foil from the People's Republic of China: Initiation of Circumvention

2023, Commerce published in the **Federal Register** its *Preliminary Determinations* that imports of certain aluminum foil that were exported from Korea and Thailand using inputs (*i.e.,* aluminum foil and sheet gauge products) are circumventing the *Orders.*[3] On March 28, 2023, Commerce published a correction to the *Preliminary Determinations* which listed corrected AD and CVD cash deposit rates associated with the *Preliminary Determinations.*[4]

On July 12 and September 26, 2023, Commerce extended the deadline for the final determinations of these circumvention inquiries to November 17, 2023.[5] For a summary of events that occurred since the *Preliminary Determinations,* as well as a full discussion of the issues raised by parties for consideration in these final determinations, *see* the Issues and Decision Memoranda.[6]

The Issues and Decision Memoranda are public documents and are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). A list of issues discussed in the Issues and Decision Memoranda are included as Appendix I to this notice. ACCESS is available to registered users at *https://access.trade.gov.* In addition, complete versions of the Issues and Decision Memoranda can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by the *Orders* is certain aluminum foil. For a full description of the scope of the *Orders, see* the Issues and Decision Memoranda.

Merchandise Subject to the Circumvention Inquiry

These circumvention inquiries cover aluminum foil, assembled or completed in Korea and Thailand using Chinese-origin aluminum foil and/or sheet, that is subsequently exported from Korea and Thailand to the United States (inquiry merchandise).

Methodology

Commerce conducted these circumvention inquiries in accordance with section 781(b) of the Act and 19 CFR 351.226. *See Preliminary Determinations* Korea PDM and Thailand PDM for a full description of the methodology.[7] We have continued to apply this methodology, without exception, and incorporate by reference this description of the methodology, for our final determinations.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in these inquiries are addressed in the Issues and Decision Memoranda. Based on our analysis of the comments received from interested parties, we made no changes to the *Preliminary Determinations,* except for revisions to the certification language (*see* Appendix II), which we have modified in response to comments to allow parties to also use the certifications when their third-country shipments of certain aluminum foil reflect prevailing aluminum cash deposit rates.

Final Circumvention Determinations

We determine that aluminum foil, assembled or completed in Korea and Thailand by the entities identified in Appendix II to this notice, using Chinese-origin aluminum foil and/or sheet, that is subsequently exported from Korea or Thailand to the United States, is circumventing the *Orders.* For a detailed explanation of our determinations with respect to the entities identified in Appendix II, *see* the Preliminary Decision Memoranda and the ''Use of Adverse Facts Available'' section of this notice, below.[8]

We also determine that U.S imports of inquiry merchandise exported from Korea and Thailand are circumventing the *Orders* on a country-wide basis. As a result, in accordance with section 781(b) of the Act, we determine that this merchandise is covered by the *Orders.*

See the ''Suspension of Liquidation and Cash Deposit Requirements'' section below for details regarding suspension of liquidation and cash deposit requirements. *See* the ''Certification'' and ''Certification Requirements'' sections below for details regarding the use of certifications.

Use of Adverse Facts Available

Within the context of the Thailand inquiry, Commerce continues to find that necessary information is not available on the record with respect to Sankyu Thai Co., Ltd. (Sankyu) within the meaning of section 776(a)(1) of the Act, and that Sankyu withheld requested information, failed to provide requested information by the deadline or in the form or manner requested, and significantly impeded these inquiries pursuant to sections 776(a)(1), (A), (B), and (C) of the Act. Moreover, Commerce continues to find that Sankyu failed to cooperate by not acting to the best of its ability to provide requested information pursuant to section 776(b)(1) of the Act. Consequently, we have continued to use adverse inferences with respect to Sankyu in selecting from among the facts otherwise available on the record, pursuant to sections 776(a) and (b) of the Act, for the reasons discussed in the *Preliminary Determinations.*[9]

Based on the adverse facts available used, we determine that Sankyu exported inquiry merchandise and that U.S. entries of that merchandise are circumventing the *Orders.* Additionally, we are precluding Sankyu from participating in the certification programs that we are establishing for exports of aluminum foil from Thailand. U.S. entries of inquiry merchandise made on or after July 18, 2022, that are ineligible for certification based on the failure of Sankyu to cooperate, or for other reasons, shall remain subject to suspension of liquidation until final assessment instructions on those entries are issued, whether by automatic liquidation instructions, or by instructions pursuant to the final results of an administrative review. Interested parties that wish to have their

Inquiries on the Antidumping Duty and Countervailing Duty Orders, 87 FR 42702 (July 18, 2022) (*Initiation Notice*).

[3] *Antidumping and Countervailing Duty Determinations on Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention with Respect to the Republic of Korea and the Kingdom of Thailand,* 88 FR 17177 (March 22, 2023) (*Preliminary Determinations*), and accompanying Korea Preliminary Decision Memorandum (Korea PDM) and Thailand Preliminary Decision Memorandum (Thailand PDM) (collectively, Preliminary Decision Memoranda).

[4] *See Antidumping and Countervailing Duty Orders on Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to the Republic of Korea and the Kingdom of Thailand; Correction,* 88 FR 18297 (March 28, 2023) (*Preliminary Determinations Correction*).

[5] *See* Memoranda, ''Extension of Final Determinations in Circumvention Inquiries,'' dated July 12, 2023; and ''Extension of Final Determinations in Circumvention Inquiries,'' dated September 26, 2023.

[6] *See* Memoranda, ''Issues and Decision Memorandum for the Final Affirmative Circumvention Determination of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China with Respect to the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice; and ''Issues and Decision Memorandum for the Circumvention Determination of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China with Respect to the Kingdom of Thailand,'' dated concurrently with, and hereby adopted by, this notice (collectively, Issues and Decision Memoranda).

[7] *See Preliminary Determinations* Korea PDM at 6–23 and Thailand PDM at 8–23.

[8] *See Preliminary Determinations* Korea PDM at 2–3 and Thailand PDM at 2–3 and 15.

[9] *See Preliminary Determinations,* 88 FR 17178.

suspended entries, if any, reviewed, and their ineligibility for the certification program reevaluated, should request an administrative review of the relevant suspended entries during the anniversary month of these *Orders.*[10]

Suspension of Liquidation and Cash Deposit Requirements

Based on the affirmative country-wide determination of circumvention for Korea and Thailand, in accordance with 19 CFR 351.226(l)(3), Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation and require a cash deposit of estimated duties on unliquidated entries of entries of aluminum foil, assembled or completed in Korea and Thailand using Chinese-origin aluminum foil and/or sheet, for consumption on or after July 18, 2022, the date of publication of the initiation of these circumvention inquiries in the **Federal Register**.

For exporters of aluminum foil that have a company-specific cash deposit rate under the *AD Order* and/or *CVD Order,* the cash deposit rate will be the company-specific AD and/or CVD cash deposit rate established for that company in the most recently completed segment of the aluminum foil proceedings. For exporters of aluminum foil that do not have a company-specific cash deposit rate under the *AD Order* and/or *CVD Order,* the cash deposit rate will be the company-specific cash deposit rate established under the *AD Order* and/or *CVD Order* for the company that exported the aluminum foil and/or sheet to the producer/exporter in Korea or Thailand that was incorporated in the imported aluminum foil. If neither the exporter of the aluminum foil from Korea or Thailand, nor the Chinese exporter of the aluminum foil and/or sheet, has a company-specific cash deposit rate, the AD cash deposit rate will be the China-wide rate (*i.e.,* 95.15 percent), and the CVD cash deposit rate will be the all-others rate (*i.e.,* 13.28 percent).[11] Commerce has established the following third-country case numbers in the Automated Commercial Environment (ACE) for such entries: Korea—A–580–053/C–580–054; Thailand—A–549–053/C–549–054. The suspension of liquidation will remain in effect until further notice.

Certified Entries

Entries for which the importer and exporter have met the certification requirements described below and in Appendix III to this notice will not be subject to suspension of liquidation, or the cash deposit requirements described above. Failure to comply with the applicable certification requirements may result in the merchandise being subject to antidumping and countervailing duties.

Certifications

To administer the country-wide affirmative determinations of circumvention for Korea and Thailand, Commerce established importer and exporter certifications which will permit importers and exporters to establish that specific entries of aluminum foil from Korea or Thailand are not subject to suspension of liquidation or the collection of cash deposits pursuant to these affirmative determinations of circumvention because the merchandise meets the requirements described in the certification (*see* Appendix III to this notice). Because Sankyu was non-cooperative, it is not eligible to use the certification described above.[12]

Importers and exporters that claim that the entry of aluminum foil is not subject to suspension of liquidation or the collection of cash deposits based on the inputs used to manufacture such merchandise must complete the applicable certification and meet the certification and documentation requirements described below, as well as the requirements identified in the applicable certification.

Certification Requirements for Korea and Thailand

Importers are required to complete and maintain the applicable importer certification, and maintain a copy of the applicable exporter certification, and retain all supporting documentation for both certifications. With the exception of the entries described below, the importer certification must be completed, signed, and dated by the time the entry summary is filed for the relevant entry. The importer, or the importer's agent, must submit both the importer's certification and the exporter's certification to CBP as part of the entry process by uploading them into the document imaging system (DIS) in ACE. Where the importer uses a broker to facilitate the entry process, the importer should obtain the entry summary number from the broker. Agents of the importer, such as a broker, however, are not permitted to certify on behalf of the importer.

Exporters are required to complete and maintain the applicable exporter certification and provide the importer with a copy of that certification and all supporting documentation (*e.g.,* invoice, purchase order, production records, *etc.*). With the exception of the entries described below, the exporter certification must be completed, signed, and dated by the time of shipment of the relevant entries. The exporter certification should be completed by the party selling the aluminum foil that was manufactured in Korea or Thailand to the United States.

Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. Importers and exporters are required to maintain the certifications and supporting documentation until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

For unliquidated entries (and entries for which liquidation has not become final) of aluminum foil that were declared as non-AD type entries (*e.g.,* type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period July 18, 2022 (the date of initiation of these circumvention inquiries), through the date of publication of the *Preliminary Determinations* in the **Federal Register**, for which none of the above certifications may be made, importers must file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD type entries to AD type entries (*e.g.,* type 01 to type 03). Importers should report those AD type entries using the third country case numbers identified in the ''Suspension of Liquidation and Cash Deposit Requirements'' section, above. The importer should post cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties, including antidumping and countervailing duties.

If it is determined that an importer and/or exporter has not met the certification and/or related documentation requirements for certain entries, Commerce intends to instruct CBP to suspend, pursuant to this

[10] *See* 19 CFR 351.213(b).

[11] *See Preliminary Determinations Correction,* 88 FR 18287.

[12] *See* the ''Use of Adverse Facts Available'' section, *supra; see also, e.g., Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 63 FR 18364, 18366 (April 15, 1998), unchanged in *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672, 54675–76 (October 13, 1998).

country-wide affirmative determination of circumvention and the *Orders,*[13] all unliquidated entries for which these requirements were not met and require the importer to post applicable cash deposits equal to the rates noted above.

Opportunity To Request an Administrative Review

Each year during the anniversary month of the publication of an AD or CVD order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Act, may request, in accordance with 19 CFR 351.213, that Commerce conduct an administrative review of that AD or CVD order, finding, or suspended investigation. An interested party who would like Commerce to conduct an administrative review should wait until Commerce announces via the **Federal Register** the next window during the anniversary month of the publication of the *Orders* to submit such requests. The anniversary month for these *Orders* is April.

Administrative Protective Order

This notice will serve as the only reminder to all parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(2).

Dated: November 17, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memoranda

Korea

I. Summary
II. Background
III. Scope of the *Orders*
IV. Merchandise Subject to the Circumvention Inquiry
V. Period of Circumvention Inquiry
VI. Changes from the *Preliminary Determination*
VII. Discussion of the Issues
Comment 1: Whether these Inquiries Are Appropriate
Comment 2: Application of the Factors in Section 781(a)(2)(A)–(E) of the Act
Comment 3: Whether the Value of the Merchandise Produced in China Is a Significant Portion of the Total Value of the Merchandise Exported to the United States
Comment 4: Definitions of Sheet and Strip
Comment 5: Whether Different Market Situations in Korea and Thailand compel Different Circumvention Analyses
Comment 6: Patterns of trade
Comment 7: Certification/Proposed Exclusions
Comment 8: Extension of Time for Certifications
VIII. Recommendation

Thailand

I. Summary
II. Background
III. Scope of the *Orders*
IV. Merchandise Subject to the Circumvention Inquiry
V. Period of Circumvention Inquiry
VI. Changes from the *Preliminary Determination*
VII. Discussion of the Issues
Comment 1: Whether these Inquiries Are Appropriate
Comment 2: Application of the Factors in Section 781(a)(2)(A)–(E) of the Act
Comment 3: Whether the Value of the Merchandise Produced in China Is a Significant Portion of the Total Value of the Merchandise Exported to the United States
Comment 4: Definitions of Sheet and Strip
Comment 5: Certification/Proposed Exclusions
Comment 6: Separate Rates
Comment 7: Extension of Time for Certifications
VIII. Recommendation

Appendix II

Companies Found To Be Circumventing the Orders

Korea

1. Dong-IL Aluminium Co., Ltd.
2. Lotte Aluminium Co., Ltd.
3. Dongwon Systems Corp.
4. ILJIN ALTECH Co., Ltd.
5. Korea Aluminium Co., Ltd.
6. Sam-A Aluminium Co., Ltd.

Thailand

1. Dingheng New Materials Co., Ltd.
2. Ding Li New Materials Co., Ltd.
3. Sankyu Thai Co., Ltd. (based on adverse facts available)

Appendix III

Certification Regarding Chinese Components

Importer Certification

I hereby certify that:

A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY}.

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the aluminum foil completed in {COUNTRY} that entered under the entry summary number(s), identified below, and are covered by this certification. ''Direct personal knowledge'' refers to the facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the exporter's and/or seller's identity and location.

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The aluminum foil covered by this certification was imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

D. The aluminum foil covered by this certification was shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

E. I have personal knowledge of the facts regarding the production of the imported products covered by this certification. ''Personal knowledge'' includes facts obtained from another party, (*e.g.,* correspondence received by the importer (or exporter) from the producer regarding the source of the inputs used to produce the imported products).

F. The importer certifies that the aluminum foil produced in {COUNTRY} that is covered by this certification was not manufactured using aluminum foil and/or sheet produced in the People's Republic of China (China), regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

G. The aluminum foil covered by this certification is not covered by the antidumping duty or countervailing duty orders on certain aluminum foil from China.

H. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
Entry Summary Line Item #:
Foreign Seller:
Foreign Seller's Address:
Foreign Seller's Invoice #:
Foreign Seller's Invoice Line Item #:
Producer:
Producer's Address:

I. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

[13] *See Orders.*

J. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to information regarding the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

K. I understand that {NAME OF IMPORTING COMPANY} is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon the request of either agency.

L. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

M. I understand that failure to maintain the required certifications and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are entries of merchandise that is covered by the scope of the antidumping and countervailing duty orders on aluminum foil from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

N. I understand that agents of the importer, such as brokers, are not permitted to make this certification.

O. This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

P. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}
{DATE}

Exporter Certification

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF EXPORTING COMPANY}, located at {ADDRESS OF EXPORTING COMPANY}.

B. I have direct personal knowledge of the facts regarding the production and exportation of the aluminum foil for which sales are identified below. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.

C. The aluminum foil covered by this certification was shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

D. The seller certifies that the aluminum foil produced in {COUNTRY} that is covered by this certification was not manufactured using aluminum foil and/or sheet produced in the People's Republic of China (China), regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

E. The aluminum foil covered by this certification is not covered by the antidumping duty or countervailing duty orders on certain aluminum foil from China.

F. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:

Foreign Seller's Invoice to U.S. Customer Line Item #:

Producer Name:

Producer's Address:

Producer's Invoice # to the Foreign Seller: (*if the foreign seller and the producer are the same party, report* ''*NA*'' *here*)

G. I understand that {EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, customer specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

H. I understand that {EXPORTING COMPANY}is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon the request of either agency.

I. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

J. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are sales of merchandise that is covered by the scope of the antidumping and countervailing duty orders on aluminum foil from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping and countervailing duty cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

K. I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

L. This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the shipment date is on or before the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}
{DATE}

[FR Doc. 2023–26030 Filed 11–24–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–870]

Certain New Pneumatic Off-the-Road Tires From India: Notice of Correction to the Final Results, and Amended Final Results of Countervailing Duty Administrative Review; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: On October 3, 2023, the U.S. Department of Commerce (Commerce)

published in the **Federal Register** the final results of the administrative review of the countervailing duty (CVD) order on certain new pneumatic off-the-road tires from India, covering the period of review (POR) January 1, 2021, through December 31, 2021. Commerce is amending the final results to correct ministerial errors in the calculations for ATC Tires Private Limited (ATC), Balkrishna Tires Ltd. (BKT), and companies not selected for individual examination.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 3, 2023, in FR Doc 2023–21837, on page 68102, in the first column, correct the Final Results of Review to read:

Final Results of Review

We determine that the following total net countervailable subsidy rates exist for the period January 1, 2021, through December 31, 2021:

Producer/exporter	Subsidy rate (percent ad valorem)
ATC Tires Private Limited [1].	2.17.
Balkrishna Industries Ltd.	0.32 (de minimis).
Companies Not Selected for Individual Examination [2].	2.17.

Dated: November 17, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Companies Not Selected for Individual Examination

Apollo Tyres Ltd.
Asian Tire Factory Ltd.
Cavendish Industries Ltd.
CEAT Ltd.
Celite Tyre Corporation
Emerald Resilient Tyre Manufacturer
HRI Tires India
Innovative Tyres & Tubes Limited
JK Tyres and Industries Ltd.
K.R.M. Tyres
M/S. Caroline Furnishers Pvt Ltd.
MRF Limited
MRL Tyres Limited (Malhotra Rubbers Ltd.)
OTR Laminated Tyres (I) Pvt. Ltd.
Rubberman Enterprises Pvt. Ltd.
Sheetla Polymers
Speedways Rubber Company
Sun Tyres & Wheel Systems
Sundaram Industries Private Limited
Superking Manufacturers (Tyre) Pvt., Ltd.
TVS Srichakra Limited

[1] This rate applies to ATC, ATC Tires AP Private Ltd., and Yokohama India Private Limited.

[2] *See* Appendix.

[FR Doc. 2023–26032 Filed 11–24–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Trade Winds Europe/Eurasia Trade Mission and Business Development Forum to Istanbul, Türkiye May 9–17, 2024. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions*. For this mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Jeffrey Odum, Trade Events Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone (202) 482–6397 or email *Jeffrey.Odum@trade.gov*.

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department of Commerce may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content by value.

A trade association/organization applicant must certify to the above for every company it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination markets. The following criteria will be evaluated in selecting participants:

• Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;

• The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and

• Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of company size and location may also be considered during the review process.

Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The applicant will be notified of these exclusions. The Department of Commerce will evaluate applications and inform applicants of selection decisions on a rolling basis until the maximum number of participants has been selected.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a ''small business'' under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support—table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (*https://www.sba.gov/size-standards*) can help you determine the qualifications that apply to your company.

Mission List: (additional information about trade missions can be found at *https://www.trade.gov/trade-missions*).

Trade Winds Europe/Eurasia Trade Mission and Business Development Forum to Istanbul, Türkiye—May 9–17, 2024

Summary

The United States Department of Commerce, International Trade Administration (ITA), U.S. and Foreign Commercial Service (USFCS) is organizing a Trade Winds Europe/EurasiaTrade Mission that will include the Trade Winds Europe/Eurasia Business Forum in Istanbul, Türkiye, Monday, May 13–Wednesday, May 15.

All trade mission members will participate in the Trade Winds Europe/Eurasia Business Forum (Monday, May 13–Wednesday, March 15 in Istanbul, which will also be open to U.S. companies not participating in the trade mission. Trade mission members may travel first to Italy or Romania on May 9 for spins-offs and/or travel on Thursday, May 16 to Denmark, Kazakhstan or Poland.

The Istanbul Trade Winds Forum will feature U.S. Commercial Diplomats from over 25 Europe and Eurasia markets.

Trade mission participants may participate in their choice of mission stops based on recommendations from the USFCS. Each trade mission stop will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint-venture partners, and networking events. Companies that would like to participate in more than three mission stops can do so by having additional representatives travel to the various stops.

This mission is open to U.S. companies from a cross section of industries with growth potential in Europe and Eurasia, including but not limited to: advanced manufacturing, aerospace & defense, design & construction, energy/energy security, environmental/clean technologies, information & communication technologies, and healthcare.

Website: Please visit our official mission website for more information: *https://events.trade.gov/TradeWindsEuropeEurasia*.

Proposed Timetable:

This timetable allows for clients to take part in business matchmaking across the diverse Europe/Eurasia marketplace by offering scheduled business-to-business meetings in Türkiye, Denmark, Italy, Kazakhstan, Poland and Romania. This structure ensures that each post has set days for meetings that allow the clients to explore at least three of their best prospects for business. The final schedule will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Thursday, May 9, 2024—Trade mission participants arrive in Italy or Romania
Friday, May 10, 2024—Business-to-Business matchmaking meetings and evening networking receptions
Saturday, May 11, 2024—Travel day
Sunday, May 12, 2024—Trade mission participants arrive in Istanbul
Monday, May 13, 2024—Istanbul:
- Trade Winds Europe/Eurasia Business Forum market briefings
- Self-scheduled consultations with U.S. government trade representatives
- Networking reception with Trade Winds Europe/Eurasia Business Forum participants

Tuesday, May 14, 2024—Istanbul:
- Trade Winds Europe/Eurasia Business Forum market briefings
- Self-scheduled consultations with U.S. government trade representatives
- Trade Winds main reception with U.S. and Turkish government and business attendees

Wednesday, May 15, 2024—Istanbul:
- Trade Winds Europe/Eurasia Business Forum market briefings
- Self-scheduled consultations with U.S. government trade representatives
- Business-to-Business matchmaking meetings

Thursday, May 16, 2024—Depart Istanbul and arrive in Denmark, Kazakhstan, or Poland
- No-host dinner or networking activity with mission delegates and U.S. Embassy officials

Friday, May 17, 2024—Business-to-Business mission matchmaking meetings and evening networking receptions

Participation Requirements

All parties interested in participating in the trade mission to Türkiye (including mission stops with business matchmaking in Türkiye, Denmark, Italy, Kazakhstan, Poland and/or Romania must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 45 and a maximum of 55 firms and/or trade associations will be selected to participate in the mission on a rolling basis. Mission stop participation will be limited as follows:

Türkiye: 30
Denmark: 15
Italy: 15
Kazakhstan: 5
Poland: 15
Romania: 15

Additional delegates may be accepted on available space. U.S. firms and/or trade associations already doing business in Türkiye, Denmark, Italy, Kazakhstan, Poland and Romania or seeing business in these markets for the first time may apply.

Fees and Expenses

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The fees are as follow:

The participation fee will be $2,200 for small or medium-sized enterprises (SME) and $4,200 for large firms, which includes the Business Forum in Istanbul and one mission stop. The fee for each additional mission stop is $1,200 and there will be a $500 fee for each additional firm representative (large firm or SME). There is no additional fee for additional representatives at the same stop. The fee for firms to only participate in the Business Forum in Istanbul from May 13–15, 2024 is $750 per attendee.

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Department of Commerce trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than March 31, 2024. The Department of Commerce will evaluate applications and inform applicants of selection decisions on a rolling basis until the maximum number of participants has been selected. Applications received after March 31, 2024, will be considered only if space and scheduling constraints permit.

Contacts

U.S. Contact Information

Jim Mayfield, Director, U.S. Commercial Service Irvine, CA; *Jim.Mayfield@trade.gov,* Tel: 949–246–1768

Judy Kornfeld, National Events Manager, U.S. Commercial Service; *Judy.Kornfeld@trade.gov,* Tel: 202–482–1239

Türkiye Contact Information

Yasue Pai, Principal Commercial Officer, U.S. Commercial Service Istanbul; *Yasue.Pai@trade.gov, Tel:* 90–501–706–3388

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2023–26062 Filed 11–24–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–154]

Certain Pea Protein From the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 27, 2023.

FOR FURTHER INFORMATION CONTACT: Katherine Smith at (202) 482–0557, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2023, the U.S. Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of certain pea protein (pea protein) from the People's Republic of China (China).[1] Currently, the preliminary determination is due no later than December 19, 2023.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1)(A)(b)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the

[1] *See Certain Pea Protein from the People's Republic of China: Initiation of Less-Than-Fair Value Investigation,* 88 FR 52124 (August 1, 2023).

investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On November 14, 2023, PURIS Proteins, LLC (the petitioner) submitted a timely request that Commerce postpone the preliminary determination in the LTFV investigation.[2] The petitioner states that it requests postponement due to concerns that Commerce will need more time to evaluate questionnaire responses submitted by the mandatory respondents and issue supplemental questionnaires.[3]

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.,* 190 days after the date on which this investigation was initiated). As a result, Commerce will issue its preliminary determination no later than February 7, 2023. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed.

Commerce is issuing and publishing this notice pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 17, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–26031 Filed 11–24–23; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See* Petitioner's Letter, ''Petitioner's Request for Postponement of the Preliminary Determination,'' dated November 14, 2023.

[3] *Id.* at 1.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD534]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Echo Offshore LLC (Echo) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico (GOM).

DATES: The LOA is effective from December 1, 2023 through December 31, 2024.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

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

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in U.S. waters of the GOM over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Echo plans to conduct a 2D high-resolution seismic survey in Lease Block 178 (Vermillion Area). Echo plans to use a single, 20-cubic inch airgun, in addition to three other high-resolution geophysical (HRG) acoustic sources. Please see Echo's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Echo in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398, January 19, 2021). In order to generate the appropriate take numbers for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

Exposure modeling results were generated using the single airgun proxy. Because those results assume use of a 90-in^3 airgun, the take numbers authorized through this LOA are considered conservative (*i.e.,* they likely overestimate take) due to differences in the sound source planned for use by Echo, as compared to those modeled for the rule. The survey is planned to occur for up to 2 days in Zone 2. The season is not known in advance. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438, January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	51	n/a
Sperm whale	0	2,207	n/a
Kogia spp	0	4,373	n/a
Beaked whales	0	3,768	n/a
Rough-toothed dolphin	[4] 0	4,853	n/a
Bottlenose dolphin	62	176,108	0.0
Clymene dolphin	0	11,895	n/a
Atlantic spotted dolphin	[5] 26	74,785	0.0
Pantropical spotted dolphin	0	102,361	n/a
Spinner dolphin	0	25,114	n/a
Striped dolphin	0	5,229	n/a
Fraser's dolphin	0	1,665	n/a
Risso's dolphin	0	3,764	n/a
Melon-headed whale	0	7,003	n/a
Pygmy killer whale	0	2,126	n/a
False killer whale	0	3,204	n/a
Killer whale	0	267	n/a
Short-finned pilot whale	0	1,981	n/a

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and the killer whale, the larger estimated SAR abundance estimate is used.
[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[4] Modeled take of one decreased to zero. For rough-toothed dolphin, use of the exposure modeling produces results that are smaller than the average GOM group size (*i.e.,* estimated exposure value of 1, relative to assumed average group size of 14) (Maze-Foley and Mullin, 2006). NMFS' typical practice is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, given the very short survey duration and small estimated exposure value NMFS has determined that it is unlikely the species would be encountered at all. As a result, in this case NMFS has not authorized take for this species.

[5] Modeled take of 13 increased to account for potential encounter with a group of average size (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of Echo's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Echo authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: November 21, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–26079 Filed 11–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD540]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Revolution Wind Offshore Wind Farm Project Offshore Rhode Island

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to Revolution Wind, LLC (Revolution Wind), a subsidiary wholly owned by Orsted Wind Power North America, LLC (Orsted), for the taking of marine mammals incidental to the construction of the Revolution Wind Offshore Wind Farm Project.

DATES: The LOA is effective from November 20, 2023 through November 19, 2028.

ADDRESSES: The LOA and supporting documentation are available online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

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

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated (when applicable), and public notice and an opportunity for public comment are provided.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking; ''other means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the monitoring and reporting of such takings. The MMPA defines ''take'' to mean harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13); 50 CFR 216.103). Level A harassment is defined as any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362(18); 50 CFR 216.3). Level B harassment is defined as any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362(18); 50 CFR 216.3). Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I authorize NMFS to propose and, if appropriate, promulgate regulations and issue an associated LOA(s). NMFS promulgated regulations on October 20, 2023 (88 FR 72562) for the taking of marine mammals incidental to the construction of the Revolution Wind Offshore Wind Farm Project offshore of Rhode Island. The LOA authorizes Revolution Wind and those persons it authorizes or funds to conduct activities on its behalf to take marine mammals incidental to specified activities during the construction of the Project and requires them to implement mitigation, monitoring, and reporting requirements.

Summary of Request

On October 20, 2023, NMFS promulgated a final rule (88 FR 72562) responding to a request from Revolution Wind for authorization to take marine mammals (16 species comprising 16 stocks) by Level B harassment (all 16 stocks) and by Level A harassment (10 stocks) incidental to construction activities occurring in Federal and State waters off of Rhode Island, specifically within and around the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS–A 0486 (Lease Area) and along 2 export cable routes to sea-to-shore transition points (collectively referred to as the ''Project Area''), over the course of 5 years (November 20, 2023 through November 19, 2028). The activities covered under the final rule include: the installation of 79 wind turbine generators (WTGs) and 2 offshore substations (OSSs) on monopile foundations by impact pile driving; the installation and subsequent removal of nearshore temporary cofferdams and goal posts by vibratory pile driving or two casing pipes using pneumatic hammering at the cable landfall sites at Quonset Point in North Kingstown, Rhode Island; high-resolution geophysical (HRG) marine site characterization surveys using active acoustic sources; the detonation of up to 13 unexploded ordnance or munitions and explosives of concern (UXO/MECs) of different charge weights; fishery and ecological monitoring surveys; the placement of scour protection; the installation of the export cable route from OSSs to shore-based converter stations and inter-array cables between turbines by trenching, laying, and burial activities; vessel transits within the specified geographical region to transport crew, supplies, and materials to support construction and operation.

Marine mammals exposed to elevated noise levels during impact driving or UXO/MEC detonations may be taken by Level A harassment, and marine mammals exposed to elevated noise levels during impact and vibratory pile driving, site characterization surveys, or UXO/MEC detonations may be taken by Level B harassment. No Level A harassment of North Atlantic right whales, blue whales, sperm whales, Atlantic spotted dolphins, long-finned pilot whales, or Risso's dolphins is anticipated or authorized. No mortality or serious injury of any marine mammal is anticipated or authorized.

Authorization

In accordance with the final rule (88 FR 72562, October 20, 2023, see 50 CFR 217.276), we have issued a LOA to Revolution Wind authorizing the take, by harassment, of marine mammals incidental to specified construction activities within the specified geographical region. No mortality or serious injury of any marine mammal species is anticipated or authorized. The incidental takes authorized herein are the same as those analyzed and authorized in the final rule (88 FR 72562, October 20, 2023). Takes of marine mammals will be minimized through the following planned mitigation and monitoring measures, as applicable for each specified activity: (1) implementation of seasonal/time of day work restrictions; (2) use of multiple NMFS-approved Protected Species Observers (PSOs) to visually observe for marine mammals (with any detection within specifically designated zones triggering a delay or shutdown, as applicable); (3) use of NMFS-approved passive acoustic monitoring (PAM) operators to acoustically detect marine mammals, with a focus on detecting baleen whales (with any detection within designated zones triggering a delay or shutdown, as applicable); (4) implementation of clearance and shutdown zones; (5) use of soft-start prior to the start of impact pile driving; (6) use of noise attenuation technology during impact pile driving and UXO/MEC detonations; (7) use of situational awareness monitoring for marine mammal presence; (8) use of sound field verification monitoring; (9) use of soft-start impact pile driving and ramp-up acoustic sources during HRG surveys; (10) implementation of vessel separation zones between marine mammals and project vessels; (11) use of PAM within the vessel transit corridor for Project vessels to travel over 10 knots (11.5 miles per hour); and (12) implementation of Vessel Strike Avoidance measures to reduce the risk of a vessel collision with a marine mammals. Additionally, NMFS may modify the LOA's mitigation, monitoring, or reporting measures, based on new information, when appropriate (see 50 CFR 217.277(c)). Revolution Wind is also required to submit reports, as specified in the final rule.

Based on the findings and information discussed in the preamble of the final rule, the take authorized in the LOA will have a negligible impact on marine mammal stocks, will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses, and the mitigation measures provide a means of affecting the least practicable adverse impact on the affected stocks and their habitat.

Dated: November 21, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–26077 Filed 11–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Ocean Research Advisory Panel (ORAP)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Ocean Research Advisory Panel (ORAP). The members will discuss issues outlined in the section on matters to be considered.

DATES: The meeting is scheduled for December 13, 2023 from 9 a.m. to 4:30 p.m. Eastern Standard Time (EST) and December 14, 2023 from 9 a.m. to 12:30 p.m. EST. These times and the agenda topics described below are subject to change. For the latest agenda please refer to the ORAP website: *https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings.*

ADDRESSES: The December 13–14, 2023 meeting will be at the AGU Conference Center, 2000 Florida Ave NW, Washington, DC 20009. The link for the webinar registration will be posted, when available, on the ORAP website: *https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings.*

FOR FURTHER INFORMATION CONTACT: Viviane Silva, ORAP Designated Federal Officer (DFO), SSMC3, Room 11320, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 240–624–0656; Email: *DFO.orap@noaa.gov;* or visit the ORAP website at *https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings.*

SUPPLEMENTARY INFORMATION: The Ocean Research Advisory Panel (ORAP) advises the Ocean Policy Committee (OPC) and provides independent recommendations to the Federal Government on matters of ocean policy.

Congress directed the establishment of the ORAP in section 1055(c) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283), 10 U.S.C. 8933.

ORAP's responsibilities are (1) to advise the OPC on policies and procedures to implement the National Oceanographic Partnership Program; (2) to advise the OPC on matters relating to national oceanographic science, engineering, facilities, or resource requirements; (3) to advise the OPC on improving diversity, equity, and inclusion in the ocean sciences and related fields; (4) to advise the OPC on national ocean research priorities; and (5) any additional responsibilities that the OPC considers appropriate.

Status: The December 13, 2023 meeting will be open to public participation with a 15-minute public comment period at 3:15 p.m. EST. The ORAP expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three minutes. Written comments for the December 13–14, 2023 meeting should be received by

December 1, 2023 by the ORAP DFO (*DFO.orap@noaa.gov*) to provide sufficient time for ORAP review. Written comments received by the ORAP DFO after this date will be distributed to the ORAP, but may not be reviewed prior to the meeting date.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to the ORAP DFO no later than 12 p.m. EST on December 1, 2023.

Matters To Be Considered: The December 13–14, 2023 meeting, will explore the Ocean Policy Committee (OPC) Action Plan and identify areas for ORAP focus. Additionally, as the first meeting of ORAP advising OPC, it will allow ORAP to organize internally to conduct work. The expected outcomes are a shared understanding between ORAP and OPC on interests, capacities, opportunities, and expectations regarding ORAP efforts, and identification of initial topics for ORAP to address.

Meeting materials, including work products, will be made available on the ORAP website: *https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings.*

Dated: November 14, 2023.

David Holst,

Director Chief Financial Officer/CAO, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–26076 Filed 11–24–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD458]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Pacific Gas & Electric Sediment Remediation Project, San Francisco Bay

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Pacific Gas & Electric Company (PG&E) for authorization to take marine mammals incidental to construction associated with a sediment remediation project in San Francisco Bay, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than December 27, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.jacobus@noaa.gov.* Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed below.

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

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review. Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On May 4, 2023, NMFS received a request from PG&E for an IHA to take marine mammals incidental to a Sediment Remediation Project in Remedial Response Areas A and B, Piers 39 to 43½, San Francisco Bay. Following NMFS' review of the application, PG&E submitted additional information on July 25, 2023 and September 26, 2023 and subsequently submitted a revised application on November 16, 2023, which was deemed adequate and complete. PG&E's request is for take of seven species (eight stocks) of marine mammals by Level B harassment only. Neither PG&E nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

This proposed IHA would cover 1 year of a larger project for which PG&E intends to request take authorization for subsequent facets of the project if necessary. The larger 5–7 year project involves construction to remediate contaminated sediment.

Description of Proposed Activity

Overview

PG&E is proposing to remediate sediments impacted with polycyclic aromatic hydrocarbons (PAHs) in San Francisco Bay around the area offshore of Pier 43½ to the east of Pier 45 and offshore area of Pier 43. As part of the proposed project, PG&E is proposing to use primarily vibratory pile driving to install steel piles for a turbidity curtain and temporary relocation of the Red and White Fleet (RWF) and wood or composite piles for slope stabilization. Impact pile driving would only be used as needed to seat these piles. In addition, PG&E plans to use impact pile driving to install composite plastic piles as part of a hydroacoustic data collection. Vibratory and impact pile driving would introduce underwater sounds that may result in take, by Level B harassment, of marine mammals. This proposed IHA would authorize take for Year 1 of the project, which is scheduled to begin in spring of 2024.

PG&E's proposed activity includes impact and vibratory pile driving and vibratory pile removal, which may result in the incidental take of marine mammals, by harassment only. No Level A harassment is anticipated to occur, and none is proposed for authorization.

Dates and Duration

The proposed IHA would be effective from May 1, 2024 to April 30, 2025. Up to 50 days of pile driving are expected, which includes a 10% buffer for possible delays (See table 1). Work is expected to occur 6 days a week over an 11 hour workday. Pile driving would be completed only during the daylight hours. The majority of pile driving will be through vibratory methods. Any impact pile driving is restricted to occur from June 1 to November 30 to protect sensitive life stages of listed fish species in the area.

Specific Geographic Region

The Project Area is situated in the San Francisco Bay, about 3.7 miles (mi) (6 km) from the entrance. The Project Area encompasses Pier 39, both the Pier 39 East and West Basins, defined by existing breakwaters, and the intertidal and subtidal areas between Pier 39 and 45 along the margin of San Francisco Bay. The Project Area is divided into five remedial response areas. This IHA is for work being done in Remedial Response Areas A and B. Remedial Response Area A is Pier 43½ offshore area and western limit of the remedial response areas to the east of Pier 45, and Remedial Response Area B is Pier 43 offshore area which includes two subareas (B1 and B2) (See Figure 1). All of the pile driving during the timeframe of this IHA will be in Remedial Response Area A except for the installation of eight turbidity curtain piles in Remedial Response Area B.

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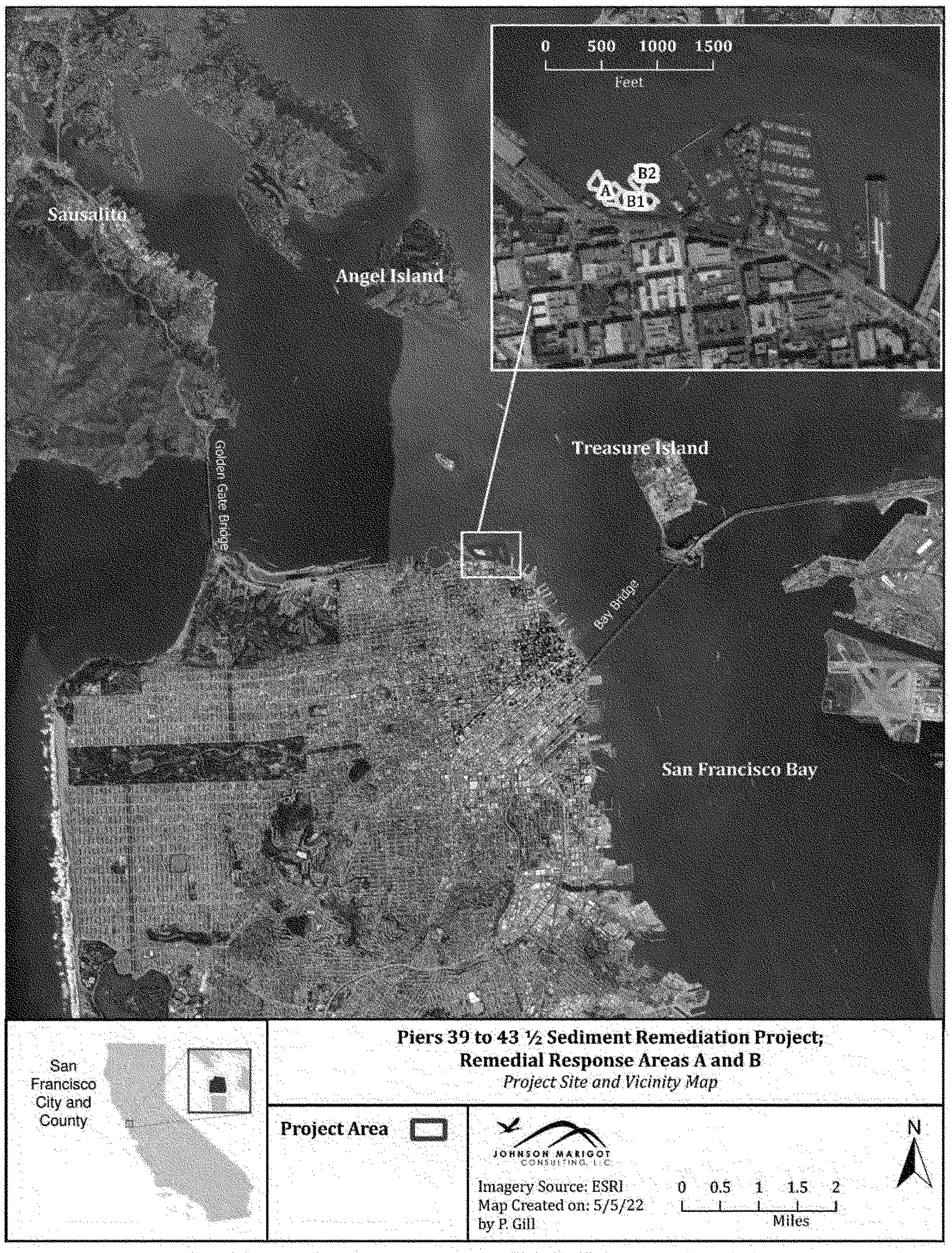

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Figure 1—Project Location

Detailed Description of the Specified Activity

PG&E proposes to remediate sediments impacted with PAHs in order to protect human health and the environment. As noted above, this proposed IHA would authorize take associated with Year 1 of the Project only. This Project is expected to occur over a period of 5–7 years, and the phases will occur from west to east in the Project Area.

PG&E expects that Year 1 of the Project will include installation of hydroacoustic data collection piles; installation of piles to attach a turbidity curtain; dredging of impacted sediment; installation of sediment pins to promote slope stability; capping of impacted sediment to be left in place; placement of armoring as needed; and relocation of the RWF, which will require the installation and removal of piles.

PG&E expects, and NMFS concurs, that only pile driving activities will result in harassment of marine mammals. Underwater noises generated by dredging and capping is similar and within range of other background noise in San Francisco Bay and not anticipated to result in take of marine mammals.

Activities that are expected to result in take are described below and in table 2:

• Hydroacoustic Data Collection—In order to collect hydroacoustic data, up to 10 18-inch composite plastic piles may be driven with an impact hammer during the approved anadromous fish work window between June 1 and November 30. The piles will be removed using vibratory methods.

• Turbidity Curtain—During active dredging and capping operations, a turbidity curtain would be deployed across the full depth of the water column to minimize the potential for material loss outside the remedial response area. The turbidity curtain would be attached to 20 temporary piles. These piles would consist of either H-piles or steel shell piles less than or equal to 24 inches (61 cm) in diameter and would be installed using vibratory pile driving. These piles would be removed using vibratory methods.

• RWF Temporary Relocation—Relocation of the RWF would require removal of piles and overwater structures at the current location. Facilities would be reconstructed to the east side of Pier 45, which would require placement of eight 36-inch diameter guide piles and eight 24-inch diameter fender piles. All piles will be installed primarily using vibratory methods. If an impact hammer is required to seat piles, it would be restricted to only piles less than or equal to 24 inches (61 cm) in diameter, and attenuation (*e.g.,* bubble curtain) would be used. Work would be restricted to June 1 to November 30 for impact pile driving.

• Slope stabilization—Approximately 120, 14 to 16-inch diameter tapered wood or composite sediment pins would be permanently installed using primarily vibratory methods with impact installation as needed to seat the piles.

TABLE 1—SCHEDULE OF IN-WATER CONSTRUCTION

Type of pile	Total number of pile installation/removal	Number of piles installed/ removed per day	Days of pile driving or removal
Turbidity Curtain (Steel H-Piles or Steel Shell Pile ≤24 inches).	40 (20 installed, 20 removed)	4	10
RWF Temporary Relocation (Steel Shell Pile ≤24 inches and 36 in Steel Shell Piles).	32 (16 installed, 16 removed)	4	8
Sediment Pin Installation (14 to 16-inch timber or plastic).	120 (installation only)	7	* 17
Hydroacoustic Data Collection Piles (18-inch composite).	20 (10 installed, 10 removed)	2	10
Total	180		45
Total (+10% buffer)		* 50	

* Rounded to maximum number of full days.

TABLE 2—PILE INSTALLATION INFORMATION

Pile type	Method	Number piles	Max piles/day	Duration per pile (minutes)	Strikes per pile
Hydroacoustic Data Collection					
18-inch composite/plastic	Impact Installation	10	10	N/A	400
18-inch composite/plastic	Vibratory removal	10	10	5	N/A
Turbidity Curtain [1]					
Steel H-Pile	Vibratory installation and removal.	20 installed and removed	4	10	N/A
Steel Shell Pile ≤24 inches	Vibratory installation and removal.	20 installed and removed	4	10	N/A
RWF Temporary Relocation Piles					
Steel Shell Pile ≤24 inches	Vibratory installation and removal.	16 (8 installed, 8 removed)	4	10	N/A
Steel Shell Pile ≤24 inches	Impact installation if needed	8	4	N/A	400
Steel Shell Pile 36 inches	Vibratory installation and removal.	16 (8 installed, 8 removed)	4	20	N/A
Sediment Pins [2]					
14 to 16-inch Timber	Vibratory installation	120	20	20	N/A
14 to 16-inch Composite/Plastic.	Vibratory installation	120	10	20	N/A
14 to 16-inch Timber or 14 to 16-inch Composite/Plastic.	Impact install if needed	120	10	N/A	400

[1] Turbidity curtain piles will either be H piles or steel shell piles less than or equal to 24 inches in diameter.
[2] The sediment pins will either be timber or composite/plastic.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs. All values presented in table 3 are the most recent available at the time of publication and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 3—MARINE MAMMAL SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	Coastal California	-,-,N	453 (0.06, 346, 2011)	2.7	≥2.0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	San Francisco-Russian River	-,-,N	7,777 (0.62, 4811, 2017)	73	≥0.4
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	United States	-,-,N	257,606 (N/A, 233,515, 2014).	14,011	≥321
Northern Fur Seal	*Callorhinus ursinus*	California	-,-,N	14,050 (0.03, 7,524, 2013).	451	1.8
Northern Fur Seal	*Callorhinus ursinus*	Eastern North Pacific	-, D, Y	626,618 (0.2, 530,376, 2021).	11,403	373
Steller Sea Lion	*Eumetopias jubatus*	Eastern North Pacific	-,-,N	43,201 (N/A, 43,201, 2017).	2,592	112
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	California	-,-,N	30,968 (N/A, 27,348, 2014).	1,641	43
Northern Elephant Seal	*Mirounga angustirostris*	California Breeding	-,-,N	187,386 (N/A, 85,369, 2013).	5,122	13.7

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

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

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

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

As indicated above, all seven species (with eight managed stocks) in table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Gray whales and humpback whales rarely enter the Bay but may occasionally pass offshore of the Project Area. However, if either of these species are to approach the Level B zone construction will be shutdown. Therefore, no take is expected of these species, and these species will not be discussed further.

Harbor Seal

Pacific harbor seals are distributed from Baja California north to the Aleutian Islands of Alaska. Harbor seals do not make extensive pelagic migrations, but may travel hundreds of kilometers to find food or suitable breeding areas (Herder, 1986; Harvey and Goley, 2011; Carretta *et al.,* 2023).

Harbor seals are the most common marine mammal species observed in the Bay and occur year-round. Within the Bay they primarily use haulouts on exposed rocky ledges and on sloughs in the southern Bay. Harbor seals are central-place foragers (Orians and Pearson 1979) and tend to exhibit strong site fidelity within season and across years, generally forage close to haulout sites, and repeatedly visit specific foraging areas (Grigg *et al.,* 2012; Suryan and Harvey, 1998; Thompson *et al.,* 1998). Harbor seals in the Bay forage mainly within 7 mi (11.3 kilometers (km)) of their primary haulout site (Grigg *et al.* 2012), and often within just 1–3 mi (1–5 km; Torok 1994). Harbor seals tend to forage at night and return to the haulout during the day with the peak in the afternoon between 1 p.m. and 4 p.m. (London *et al,* 2001; Stewart and Yochem, 1994; Yochem *et al,* 1987).

The closest harbor seal haulout to the Project Area is Yerba Buena Island (YBI), approximately 4 km to the east of the Project Area. Although the YBI haulout is not expected to be within the area of ensonification, it is likely that foraging seals from this location would be present in the water during construction.

Northern Elephant Seal

Northern elephant seals range from southern California north to the Bering Sea, and west to the Okhotsk Sea and Honshu Island, Japan in the west (Carretta *et al.,* 2023). They are common on California coastal mainland and island sites, where they pup, breed, rest, and molt. Northern elephant seals haul out to give birth and breed from December through March. Near the Bay, elephant seals breed, molt, and use the Año Nuevo Island haulout site, the Farallon Islands, and Point Reyes National Seashore. Northern elephant seals do not have any established haulout sites in the Bay. Generally, only juvenile elephant seals enter the Bay seasonally and do not remain long if they are healthy. Their diet is composed of small schooling fish such as walleye Pollock, herring, hake, anchovy, and squid. Diet and population trends vary with environmental conditions, such as El Niño (Carretta *et al.,* 2023).

California Sea Lion

California sea lions are found from Vancouver Island, British Columbia, to the southern tip of Baja California. Sea lions breed on the offshore islands of southern and central California from May through July (Heath and Perrin, 2008). During the non-breeding season, adult and subadult males and juveniles migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson, *et al.* 1993). Females and some juveniles tend to remain closer to rookeries (Atonelis *et al.,* 1990; Melin *et al.,* 2008).

California sea lions have occupied K-Dock at Pier 39 in the Bay, adjacent to Area D of the Project Area, since 1987. No pupping has been observed here or at any other site in the Bay. Pier 39 is the only regularly used haulout site in the Project vicinity, but sea lions occasionally use human-made structures such as bridge piers, jetties, or navigation buoys (Riedman, 1990) as a haulout location.

California sea lions feed seasonally on schooling fish and cephalopods, including salmon, herring, sardines, anchovy, mackerel, whiting, rockfish and squid (Lowry *et al.,* 1990, 1991, 2022; Weise 2000; Carretta *et al.,* 2023) and can be seen foraging throughout the Bay. In central California sea lion populations, short term seasonal variations in diet are related to prey movement and life history patterns while long-term annual changes correlate to large-scale ocean climate shifts and foraging competition with commercial fisheries (Weise and Harvey, 2008; McClatchie *et al.* 2016). Conservation concerns for California sea lions include prey species availability due to climate change, vessel strikes, non-commercial fishery human caused mortality, hookworms, and competition for forage with commercial fisheries (Carretta *et al.,* 2018; Carretta *et al.* 2023).

Northern Fur Seal

Two northern fur seal stocks may occur near the Bay: the California and Eastern North Pacific stocks. The California stock breeds and pups on the offshore islands of California, and forages off the California coast. The Eastern Pacific stock breeds and pups on islands in the North Pacific Ocean and Bering Sea, but females and juveniles move south to California waters to forage in the fall and winter months (Gelatt and Gentry, 2018). Both the California and Eastern North Pacific stocks forage in the offshore waters of California, but usually only sick or emaciated juvenile fur seals seasonally enter the Bay in the fall and winter. Fur seals occasionally strand on YBI and Treasure Island, approximately 3.2 km from the Project Area.

Steller Sea Lion

Steller sea lions range along the North Pacific Rim from northern Japan to California. The eastern stock of Steller sea lions has historically bred on rookeries located in Southeast Alaska, British Columbia, Oregon, and California. Within the last several years a new rookery has become established on the outer Washington coast (Muto *et al.,* 2020). The Steller sea lion is not common in the Bay, but occasionally Steller sea lions can be seen hauled out on Pier 39. Most recently, an adult male Steller sea lion was seen on the K-dock haulout in May 2023 (Segura, 2023).

Bottlenose Dolphin

Bottlenose dolphins are distributed world-wide in tropical and warm-temperate waters. The California coastal stock of common bottlenose dolphin is found within 0.6 mi (1 km) of shore (Defran and Weller, 1999) and occurs from northern Baja California, Mexico to Bodega Bay, CA. Their range has extended north over the last several decades with El Niño events and increased ocean temperatures (Hansen and Defran, 1990) and spans as far north as Sonoma County (Keener *et al.,* 2023). As the range of bottlenose dolphins extended north, dolphins began entering the Bay in 2010 (Szczepaniak, 2013). Bottlenose dolphins have been regularly observed in the western Central and South Bay, and between one and five dolphins are thought to be year-round residents of the Bay (Pacific Gas & Electric, 2023). An offshore common bottlenose dolphin stock exists, but genetic studies show that no mixing occurs between the two stocks (Lowther-Thieleking *et al.,* 2015). Bottlenose dolphins are opportunistic foragers, and time of day, tidal state, and oceanographic habitat influence where they pursue prey (Hanson and Defran, 1993).

Harbor Porpoise

In the Pacific, harbor porpoise are found in coastal and inland waters from Point Conception, California to Alaska and across to Kamchatka and Japan (Gaskin, 1984). Harbor porpoise appear to have more restricted movements along the western coast of the continental U.S. than along the eastern coast. The non-migratory San Francisco-Russian River stock ranges from Pescadero to Point Arena, California, utilizes relatively shallow nearshore waters (<100 meters), and feeds on small schooling fishes such as northern anchovy and Pacific herring which enter the Bay (Carretta *et al.,* 2023; Stern *et al.,* 2017). Harbor porpoises tend to occur in small groups and are considered to be relatively cryptic animals.

Harbor porpoises are seen frequently outside the Bay and re-entered the Bay beginning in 2008 (Stern *et al.,* 2017). They are now commonly seen year-round within the Bay in groups of two to five individuals, primarily on the west and northwest side of the Central Bay near the Golden Gate Bridge, near Marin County, and near the City of San Francisco (Duffy, 2015; Keener *et al.,* 2012; Stern *et al.,* 2017) in the vicinity of the Project Area. Harbor porpoises are generally shallow, short-duration divers and must forage nearly continuously to meet their high metabolic needs (Wisniewska *et al.* 2016). Harbor porpoise movements into the Bay are likely influenced by prey availability (Duffy 2015; Stern *et al.,* 2017).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS
[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activities can occur from impact pile driving and vibratory pile driving and removal. The effects of underwater noise from PG&E's proposed activities have the potential to result in Level B harassment of marine mammals in the project area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (American National Standards Institute (ANSI), 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact and vibratory pile driving and removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; NMFS, 2018). Non-impulsive sounds (*e.g.,* machinery operations such as drilling or dredging, vibratory pile driving, underwater chainsaws, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997).

Two types of hammers would be used on this project, impact and vibratory. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is considered impulsive. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce non-impulsive, continuous sounds. Vibratory hammering generally produces sound pressure levels (SPLs) 10 to 20 dB lower than impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of PG&E's proposed activities on marine mammals could be generated from both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment and personnel; however, we expect that any animals that approach the project site close enough to be harassed due to the presence of equipment or personnel would be within the Level B harassment zones from pile driving and would already be subject to harassment from the in-water activities. Therefore, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors are generated by heavy equipment operation during pile driving activities (*i.e.,* impact and vibratory pile driving and removal).

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving equipment is the primary means by which marine mammals may be harassed from PG&E's specified activities. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). Generally, exposure to pile driving and removal and other construction noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses, such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions, such as communication and predator and prey detection. The effects of pile driving and demolition noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)

NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, because there are limited empirical data measuring PTS in marine mammals (*e.g.,* Kastak *et al.,* 2008), largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)

TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*), and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019b, 2020a, 2020b). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.,* 2010; Kastelein *et al.,* 2014; Kastelein *et al.,* 2015; Mooney *et al.,* 2009). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources.

The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2,760 strikes/hour) in captivity, mean TTS increased from 0 dB after 15 minute exposure to 5 dB after 360 minute exposure; recovery occurred within 60 minutes (Kastelein *et al.,* 2016). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. Nonetheless, what we considered is the best available science. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007, 2019), Finneran and Jenkins (2012), Finneran (2015), and table 5 in NMFS (2018).

Activities for this project include impact and vibratory pile driving, and vibratory pile removal. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment

Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located. Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007, 2021; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) as well as Nowacek *et al.* (2007); Ellison *et al.* (2012), and Gomez *et al.* (2016) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007; Melcón *et al.,* 2012). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (*e.g.,* Sivle *et al.,* 2016; Wensveen *et al.,* 2017). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal (Goldbogen *et al.,* 2013).

Stress Responses

An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Selye, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of these projects based on observations of marine mammals during previous, similar projects in the area.

Masking

Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2010; Holt *et al.,* 2009). The Bay is heavily used by commercial, recreational, and military vessels, and background sound levels in the area are already elevated. Due to the transient nature of marine mammals to move and avoid disturbance, masking is not likely to have long-term impacts on marine mammal species within the proposed project area.

Airborne Acoustic Effects

Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been ''taken'' because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

PG&E's proposed construction activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). During impact and vibratory pile driving or removal, elevated levels of underwater noise would ensonify the project area where both fishes and mammals occur, and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are expected to be of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile driving is localized to about a 25 feet (ft) (7.6-m) radius around the pile (Everitt *et al.,* 1980). Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Local currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the proposed action is relatively small compared to the total available habitat in the Bay. The proposed project area is highly influenced by anthropogenic activities and provides limited foraging habitat for marine mammals. Furthermore, pile driving and removal at the proposed project site would not obstruct long-term movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by prey of the disturbed area would still leave significantly large areas of potential foraging habitat in the nearby vicinity.

In-Water Construction Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton, other marine mammals). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey. Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Many studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). In response to pile driving, Pacific sardines and northern anchovies may exhibit an immediate startle response to individual strikes, but return to ''normal'' pre-strike behavior following the conclusion of pile driving with no evidence of injury as a result (appendix C in NAVFAC SW, 2014). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Popper *et al.,* 2005).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fishes from pile driving and removal and construction activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary. Further, it is anticipated that preparation activities for pile driving or removal (*i.e.,* positioning of the hammer, clipper or wire saw) and upon initial startup of devices would cause fish to move away from the affected area outside areas where injuries may occur. Therefore, relatively small portions of the proposed project area would be affected for short periods of time, and the potential for effects on fish to occur would be temporary and limited to the duration of sound-generating activities.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed actions are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large potential areas fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

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

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns and/or TTS for individual marine mammals resulting from exposure to vibratory and impact pile driving. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown) discussed in detail below in the Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

PG&E's proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). PG&E's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* pile driving and removal).

The project includes vibratory pile installation and removal and impact pile driving. Source levels for these activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and activity are presented in table 6. Source levels for vibratory installation and removal of piles of the same diameter are conservatively assumed to be the same.

The majority of source levels were selected from a single source, as shown in table 6 below. For the vibratory installation of 36-inch steel shell piles and vibratory installation of timber piles, NMFS determined it appropriate to use an average of source levels. NMFS reviewed all available monitoring reports of vibratory driving of 36-inch steel piles in San Francisco Bay (Gast &Associated Environmental Consultants, 2021, 2023; Illingworth & Rodkin, 2018, 2020). Averaging of sound levels was performed by first converting from dB to linear units of pressure (Pascals [Pa]), averaging, and converting back to dB. The mean RMS level at 10m for San Francisco Bay was approximately 168 dB re 1 Pa RMS. Therefore, NMFS has selected this average value as the most appropriate value for vibratory driving of 36-inch steel pipe piles during the proposed project. With regard to vibratory installation of timber piles, there are limited data available, and none from San Francisco Bay. Therefore, NMFS evaluated all available timber pile data (three projects from Puget Sound, WA, and one project from Norfolk, VA) (Greenbusch Group, 2018; Illingworth and Rodkin, 2017; Laughlin, 2011; U.S. Navy, 2016) and calculated the mean and maximum RMS values for each project and for all projects together. The overall mean RMS value was approximately 158 dB re 1 Pa RMS. NMFS therefore selected this as an appropriate proxy value for vibratory driving of timber piles during the proposed project.

TABLE 6—SOUND SOURCE LEVELS FOR PILE DRIVING ACTIVITIES [1]

Pile type	Method	Peak sound pressure (dB re 1 μPa)	RMS (dB re 1 μPa)	SEL (dB re 1 μPa2 sec)	Source
Hydroacoustic Data Collection					
18-inch composite/plastic	Impact Install	185	160	150	Caltrans, 2020; extrapolated from 13-inch composite.
18 inch composite/plastic	Vibratory Removal	N/A	152	N/A	WSDOT, 2012; 13-inch composite used as proxy.
Turbidity Curtain					
Steel H-Pile	Vibratory Install and Removal.	N/A	143	N/A	Caltrans, 2020.
Steel Shell Pile ≤24 inches	Vibratory Install and Removal.	N/A	153	N/A	Caltrans, 2020; 24-inch pipe pile used as proxy.
RWF Relocation					
24 inch steel shell	Vibratory Installation and Removal.	N/A	153	N/A	Caltrans, 2020.
24 inch steel shell	Impact Installation [2]	208	193	178	Illingworth & Rodkin, Inc. 2014.
36 inch steel shell	Vibratory Installation and Removal.	N/A	168	N/A	Gast & Associated Environmental Consultants, 2021, 2023; Illingworth and Rodkin, 2018, 2020. See explanation above.
Slope Stabilization					
14–16 inch Timber	Vibratory	N/A	158	N/A	Greenbusch Group, 2018; Illingworth and Rodkin, 2017; Laughlin, 2011; U.S. Navy 2016. See explanation above.
14–16 inch Timber	Impact	184	157	145	Caltrans, 2020.
14–16 in Composite	Vibratory	N/A	152	N/A	WSDOT, 2012. 13-inch composite used as proxy.
14–16 inch Composite	Impact	177	153	145	Caltrans, 2020.

[1] All values are at 10 m from the source.

[2] PG&E would use a bubble curtain attenuation system for impact pile driving of the RWF 24-inch steel shell piles, and we conservatively assumes a 5 dB reduction in source level from those presented here due to use of the attenuation system.

Level B Harassment Zones—Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition topography. The general formula for underwater TL is:

$TL = B * Log10 (R_1/R_2)$,

Where:

TL = transmission loss in dB;
B = transmission loss coefficient;
R_1 = the distance of the modeled SPL from the driven pile; and
R_2 = the distance from the driven pile of the initial measurement.

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, known as practical spreading. As is common practice in coastal waters, here we assume practical spreading (4.5 dB reduction in sound level for each doubling of distance) for all impact and vibratory installation and removal of piles with the exception of vibratory installation and removal of the 36-inch steel pipe piles in the RWF Relocation. Illingworth & Rodkin conducted hydro-acoustic monitoring for the 2017 WETA Downtown San Francisco Ferry Terminal Expansion Project and calculated a TL coefficient of 18.7 for vibratory installation of 36-inch steel shell piles (Illingworth & Rodkin, 2018). Given the proximity to the project area, PG&E determined that 18.7 was an appropriate transmission coefficient to use for the vibratory installation of the 36-inch steel shell pile, and NMFS concurs.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Source levels are provided above in table 6. Inputs used in the optional User Spreadsheet tool are provided below in table 7. Resulting estimated Level A and B harassment isopleths are provided in table 8.

TABLE 7—USER SPREADSHEET INPUTS

[Source levels provided in Table 6]

Pile type	Method	Duration	Piles/day
Hydroacoustic Data Collection			
18-inch composite/plastic	Impact Install	400 strikes/pile	10
18 inch composite/plastic	Vibratory Removal	20 minutes	10
Turbidity Curtain			
Steel H-Pile	Vibratory	10 minutes	4
Steel Shell Pile ≤24 inches	Vibratory	10 minutes	4
RWF Relocation			
24 inch steel shell	Vibratory	10 minutes	4
24 inch steel shell	Impact	400 strikes/pile	4
36 inch steel shell	Vibratory	20 minutes	4
Sediment Pin Installation			
Timber	Vibratory	20 minutes	20
Timber	Impact	400 strikes/pile	20
14–16 inch Composite	Vibratory	20 minutes	10
14–16 inch Composite	Impact	400 strikes/pile	10

TABLE 8—LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FROM VIBRATORY AND IMPACT PILE DRIVING

Pile type & method	Level A/PTS isopleth (m)					Level B isopleth (m)	Level B area of ensonification (km²)
	Hearing groups						
	Cetaceans			Pinnipeds			
	LF	MF	HF	Phocids	Otariids		
Hydroacoustic Data Collection Piles							
18-inch composite (Impact)	16	<1	19	9	<1	10	<0.01
18-inch Composite (Vibratory)	4	<1	6	3	<1	1,360	3.58
Turbidity Curtain							
Steel H-Pile (Vibratory)	<1	0	<1	<1	<1	341	0.29

TABLE 8—LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FROM VIBRATORY AND IMPACT PILE DRIVING—Continued

Pile type & method	Level A/PTS isopleth (m)					Level B isopleth (m)	Level B area of ensonification (km²)
	Hearing groups						
	Cetaceans			Pinnipeds			
	LF	MF	HF	Phocids	Otariids		
Steel Shell Pile ≤ 24 inches (Vibratory)	2	<1	4	2	<1	1,585	4.61
RWF Temporary Relocation Piles							
24-inch Steel Shell Pile (Vibratory)	2	<1	4	2	<1	1,585	4.54
24-inch Steel Shell Pile (Impact, Attenuated)*	294	11	351	158	12	736	1.06
36-inch Steel Shell Pile (Vibratory)	20	3	28	14	2	3,688	23.46
Sediment Pins							
14 to 16-inch Timber Pile (Vibratory)	16	2	23	10	1	3,415	19.17
14 to 16-inch Timber Pile (Impact)	12	<1	14	6	<1	6	<0.01
14 to 16-inch Composite Pile (Vibratory)	4	<1	6	3	<1	1,360	3.2
14 to 16-Inch Composite Pile (Impact)	7	<1	9	4	<1	3.4	<0.01

* 5 dB reduction in sound due to use of bubble curtain assumed.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Because reliable marine mammal density information is not available for the San Francisco Bay, several datasets were used to attain estimates of the abundance of marine mammals in the Bay. Datasets used included 5 years of sighting and stranding data from The Marine Mammal Center (TMMC) (NMFS, 2021a); 5 years of sighting and stranding data from the California Academy of Sciences (CAS) (NMFS, 2021b); citizen-reported live sightings from *iNaturalist.org;* 5 days of sighting data during sediment investigation in 2020 during the initial phase of the project (Haase, 2021); and counts from haulouts. Data from all sources, when available, were considered. Depending on the distribution of sightings and granularity of data, different sources have been used to estimate the number of individuals of each species with the potential to occur in vicinity of the project. The largest ensonified area is during vibratory installation of 36-inch steel shell piles, which results in a 3,688 m isopleth and 23.46 km² area of ensonification.

Harbor Seal

Harbor seals in the Bay forage mainly within 7.0 mi (11.3 km) of their primary haulout site (Grigg *et al.* 2012), and often within just 1–3 miles (1–5 km) (Torok, 1994). The only harbor seal haulout within 7 miles (11.3 km) of the project site is YBI, which is 3.1 mi (5 km) to the east of the Project Area. Noise from the project is not expected to reach the haulout, however, harbor seals that use this haulout are likely to forage within ensonified areas from the project. Harbor seal take estimates were based on observations conducted by Marine Mammal Observers (MMOs) over a 5 day period in 2020, during sediment investigation in the initial phase of the project, within remedial response areas A, B, and C (See Haase, 2021). A maximum of 20 harbor seals were observed per day. PG&E therefore estimates 20 harbor seals per day within the project area per day. NMFS concurs with this assumption.

Northern Elephant Seal

TMMC recorded 903 elephant seals in the Bay from 2016 to 2021 (NMFS, 2021a). The CAS reported an additional 6 for a total of 909 over 5 years in the Bay from 2016 to 2021 (NMFS, 2021b), yielding an average of 0.5 elephant seals per day. To ensure sufficient authorization of take of northern elephant seals, PG&E assumed 0.5 elephant seals will occur in the area per day (*i.e.,* one elephant seal every 2 days). NMFS concurs with this assumption.

California Sea Lion

The Pier 39 K-Dock haulout is the only regularly used California Sea Lion haulout in the vicinity of the Project Area, adjacent to Area C. The Sea Lion Center at Pier 39 regularly counted the sea lions at K-Dock from 1991 through 2018. From 2016 through 2018, the yearly average ranged from 89 to 229 animals per day. The average per day over all 3 years was 191 sea lions (Pacific Gas & Electric, 2023). Although there are times of the year when the K-dock is unoccupied or there are few individuals present, it is difficult to predict abundance based on time of year. In order to ensure sufficient authorization of sea lions, PG&E is assuming a local abundance estimate of 191 sea lions per day within the estimated harassment area, and NMFS concurs.

Northern Fur Seal

TMMC recorded 44 northern fur seals in the Bay from 2016 to 2021 (NMFS, 2021a). CAS recorded an additional 3 for a total of 47 over 5 years (NMFS, 2021b), yielding 0.03 per day, or approximately 10 per year. In the fall and winter, northern fur seals occasionally strand on YBI and Treasure Island (Pacific Gas & Electric, 2023), approximately 2.0 mi (3.2 km) from the project area. Using PG&E's assumption of approximately 0.03 fur seals per day over the course of 50 days of pile driving plus known fur seal strandings near the project area, NMFS has determined it appropriate to assume five fur seals in the project area during the project time period.

Steller Sea Lion

Steller sea lions are rare in San Francisco Bay. TMMC recorded four Steller sea lions in the Bay from 2016 to 2021 (NMFS, 2021a), while CAS reported no Steller sea lions during this time (NMFS, 2021b). In 2020 and 2021, *INaturalist.org* recorded four Steller sea lions in the Bay. On rare occasions, Steller sea lions are seen on the Pier 39 K-dock haulout. An adult male was spotted there in May 2023 (Segura, 2023) and in previous years a single male Steller sea lion had been observed using the Pier 39 K-dock haulout intermittently during July and August and occasionally September (Pacific Gas & Electric, 2023). Given these known occasional occurrences of the Steller sea lion at Pier 39, PG&E feels it is appropriate to assume five Steller sea lions in the project area during the time period of the project, and NMFS concurs.

Bottlenose Dolphins

Historically, observations of bottlenose dolphins have occurred west of Treasure Island and were concentrated in the Project vicinity along the nearshore area of San Francisco south to Redwood City. Since 2016, one individual has been regularly seen near the former Alameda Air Station and five animals were regularly seen in the summer and fall of 2018 in the same location (Pacific Gas & Electric, 2023). A recent study reports that dolphins have been sighted in the vicinity of the Golden Gate Bridge, around Yerba Buena and Angel Islands, and in the central Bay (Keener *et al.,* 2023). PG&E is assuming that one group of bottlenose dolphins will enter into the project isopleth per month of pile driving, and NMFS concurs. A group size is estimated to be five animals based on sightings of bottlenose dolphins in the Bay (Pacific Gas & Electric, 2023).

Harbor Porpoise

Harbor porpoises are primarily seen near the Golden Gate Bridge, Marin County, and the city of San Francisco on the northwest side of the Bay (Keener *et al.,* 2012; Stern *et al.,* 2017), in the vicinity of the project area. Limited data exists on the abundance of harbor porpoises in the Bay, and therefore data from MMOs in 2020 was used (see Haase 2021). An individual harbor porpoise was seen in the project zone on 2 of the 5 days, and a group of two individuals was reported on a separate day of the 5 day observation period (Haase, 2021). To ensure sufficient authorization of take of harbor porpoise, it is estimated that two harbor porpoises will occur within the estimated harassment area per day.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Take estimate calculations vary by species. To calculate take by Level B harassment for harbor seals, California sea lions, northern elephant seals, and harbor porpoises, NMFS multiplied the daily occurrence estimates described in the *Marine Mammal Occurrence* section by the number of project days (table 9).

For northern fur seals, PG&E is assuming a total of five animals in the area of the project during the duration of the project, based on sightings in the Bay and known strandings on YBI (see *Marine Mammal Occurrence* above), and is therefore requesting, and NMFS is proposing to authorize, take of five northern fur seals by Level B harassment (table 9).

Although Steller sea lions are rare in San Francisco Bay, based on sighting data and known occurrence of Steller sea lions on the Pier 39 K-dock haulout (PG&E, 2023; Segura, 2023), PG&E is conservatively requesting five takes by Level B harassment of Steller sea lions during the time period of the project, and NMFS concurs (table 9).

For bottlenose dolphins, PG&E estimates that one group of five bottlenose dolphins may be taken by Level B harassment per month of pile driving. Based on 5 months of pile driving, NMFS proposes to authorize 25 takes by Level B harassment of bottlenose dolphins.

TABLE9—ESTIMATED TAKE BY LEVEL B HARASSMENT PROPOSED FOR AUTHORIZATION AND ESTIMATED TAKE AS A PERCENTAGE OF THE POPULATION

Species	Stock	Expected occurrence	Estimated Level B take	Stock abundance *	Percent of stock
Pacific Harbor Seal	California	20 seals per day	1000	30,968	3.2
Northern Elephant Seal	California Breeding	0.5 seals per day	25	187,386	0.01
California Sea Lion	United States	191 sea lions per day	9,550	257,606	3.7
Northern Fur Seal	California; Eastern North Pacific.	5 seals over project duration.	5	14,050; 626,618	0.04; 0.001
Steller sea lion	Eastern United States	5 sea lions over project duration.	5	43,201	0.01
Bottlenose dolphin	Coastal California	5 dolphins per month of project.	25	453	5.5
Harbor Porpoise	San Francisco-Russian River.	2 porpoises per day	100	7,777	1.3

* NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.*

Proposed Mitigation

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

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

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

implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

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

PG&E must follow mitigation measures as specified below.

PG&E must ensure that construction supervisors and crews, the monitoring team, and relevant PG&E staff are trained prior to the start of all pile driving activities, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

Shutdown Zones

PG&E must establish shutdown zones and Level B monitoring zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine animal (or in anticipation of an animal entering the defined area). Shutdown zones are based on the largest Level A harassment zone for each pile size/type and driving method, and behavioral monitoring zones are meant to encompass Level B harassment zones for each pile size/type and driving method, as shown in table 8. A minimum shutdown zone of 10 m would be required for all in-water construction activities to avoid physical interaction with marine mammals, and the radii of the shutdown zones are rounded to the next largest 10 m interval in comparison to the Level zone for each activity type. Marine mammal monitoring will be conducted during all pile driving activities to ensure that marine mammals do not enter Level A shutdown zones, that marine mammal presence in the isopleth does not exceed authorized take, and to prevent take of the humpback and gray whale. Proposed shutdown zones for each activity type are shown in table 10.

Prior to pile driving, shutdown zones and monitoring zones will be established based on zones represented in table 10. Observers will survey the shutdown zones for at least 30 minutes before pile driving activities start. If marine mammals are found within the shutdown zone, pile driving will be delayed until the animal has moved out of the shutdown zone, either verified by an observer or by waiting until 15 minutes has elapsed without a sighting. If a marine mammal approaches or enters the shutdown zone during pile driving, the activity will be halted. Pile driving may resume after the animal has moved out of and is moving away from the shutdown zone or after at least 15 minutes has passed since the last observation of the animal.

All marine mammals would be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities would continue and PSOs would document the animal's presence within the estimated harassment zone.

If a species for which authorization has not been granted (*i.e.,* gray whale or humpback whale), or a species which has been granted but the authorized takes are met, is observed approaching or within the Level B monitoring zone, pile driving activities will be shutdown immediately. Activities will not resume until the animal has been confirmed to have left the area or 15 minutes has elapsed with no sighting of the animal.

TABLE 10—SHUTDOWN ZONES AND LEVEL B MONITORING ZONES BY ACTIVITY

Pile type and method	Shutdown zone for all species (m)	Monitoring zone (m)
Hydroacoustic Data Collection Piles:		
18-inch Composite/Plastic (impact)	20	10
18-Inch Composite/Plastic (vibratory removal)	10	1,360
Turbidity Curtain:		
Steel H-Pile (Vibratory Install and Removal)	10	341
24-inch steel shell pile (Vibratory install and removal)	10	1,585
RWF Relocation Piles:		
24-inch steel shell pile (Vibratory install and removal)	10	1,585
24-inch steel shell pile (impact-attenuated)	360	736
36-inch steel shell pile (vibratory)	30	3,688
Sediment Pins:		
14–16 inch timber (Vibratory)	30	3,415
14–16 inch timber (impact)	20	10
14–16 inch composite (impact)	10	10
14–16 inch composite (vibratory install)	20	1,360

Protected Species Observers

The placement of PSOs during all pile driving activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

PSOs would monitor the full shutdown zones and as much of the Level B harassment zones as possible. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre- and Post-Activity Monitoring

Monitoring must take place from 30 minutes prior to initiation of pile driving activities (*i.e.,* pre-clearance monitoring) through 30 minutes post-completion of pile driving. Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for a 30-minute period. If a marine mammal is observed within the shutdown zones, pile driving activity would be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft-Start Procedures

Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Bubble Curtain

A bubble curtain must be employed during all impact pile installation of steel piles less than 24 inches in diameter to interrupt the acoustic pressure and reduce impact on marine mammals. Impact pile driving will not be allowed for 36-inch steel shell piles. The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column. The lowest bubble ring must be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring must ensure 100 percent substrate contact. No parts of the ring or other objects may prevent full substrate contact. Air flow to the bubblers must be balanced around the circumference of the pile.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

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

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

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,

• Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the conditions in this section and the IHA. Marine mammal monitoring during pile driving activities would be conducted by PSO's meeting NMFS' standards and in a manner consistent with the following:

• PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;

• At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

• Other PSOs may substitute education (degree in biological science or related field) or training for experience.

• Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would be required to have prior experience working as a marine mammal observer during construction.

• PSOs will submit PSO resumes for approval by NMFS 30 days prior to the onset of pile driving.

• PSOs must be approved by NMFS prior to beginning any activity subject to the IHA.

PSOs should have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

PG&E would have between one and three PSOs on site at all times during pile driving activities. One PSO would be designated as the Lead PSO and would receive updates from other PSOs. The Lead PSO would be stationed at the active pile driving rig or at the best vantage point practicable to monitor the shutdown zones and implement shutdown and delay procedures. The other PSOs would be stationed at the best vantage points practicable to observe the monitoring zones. Exact locations would be determined in the field based on the pile driving site, field conditions, and in coordination with contractors, but may include docks, barges, and tower structures. PSOs would be equipped with high quality binoculars or spotting scopes for monitoring and radios and cell phones for maintaining contact with other observers and work crew. Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in-water construction activities. PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Data Collection

PSOs would use approved data forms to record the following information:

- Dates and times (beginning and end) of all marine mammal monitoring.
- PSO locations during marine mammal monitoring.
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory).
- Weather parameters and water conditions.
- The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting.
- Distance and bearings of each marine mammal observed to the pile being driven or removed.
- Description of marine mammal behavior patterns, including direction of travel.
- Age and sex class, if possible, of all marine mammals observed.
- Detailed information about implementation of any mitigation triggered (such as shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal if any.

Reporting

PG&E must submit a draft marine mammal monitoring report to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to the requested issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final. The marine mammal report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets and/or raw sighting data. Specifically, the report would include:

- Dates and times (beginning and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period including: (a) the number and types of piles driven and the method; and (b) total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving).
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- For each observation of a marine mammal the following must be recorded: (a) Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; (b) time of sighting; (c) identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; (d) distance and location of each observed marine mammal relative to pile being driven or removed for each sighting; (e) estimated number of animals (min/max/best estimate); (f) estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); (g) animal's closest point of approach and estimated time spent within the harassment zone; (h) description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, PG&E would report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast regional stranding network (866–767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, PG&E would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. PG&E would not resume their activities until notified by NMFS. The report would include the following:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in table 3, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Level A harassment is extremely unlikely given the small size of the Level A harassment isopleths and the required mitigation measures designed to minimize the possibility of injury to marine mammals. No serious injury or mortality is anticipated given the nature of the activity.

Pile driving activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level B harassment from underwater sounds generated from impact and vibratory pile driving activities. Potential takes could occur if individuals move into the ensonified zones when these activities are underway.

The takes by Level B harassment would be due to potential behavioral disturbances. The potential for harassment is minimized through construction methods and the implementation of planned mitigation strategies (see Proposed Mitigation section).

Behavioral responses of marine mammals to pile driving at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities per day and that pile driving and removal would occur over approximately 50 days during a span of 5 months, any harassment would be temporary. There are no other areas or times of known biological importance for any of the affected species.

Take would occur within a limited, confined area of each stock's range. Further, the amount of take authorized is extremely small when compared to stock abundance.

No marine mammal stocks for which incidental take authorization are listed as threatened or endangered under the ESA. Only one stock, the Eastern North Pacific Stock of the northern fur seal, is listed as depleted under the MMPA. However, we do not expect the proposed authorizations in this action to affect the stock. No injury or mortality is proposed for authorization, take by Level B harassment is limited (five takes over the duration of the project), and the proposed action should have no effect on the reproduction of this species. In addition, the five authorized takes for the northern fur seal include both the depleted Eastern North Pacific Stock and the California stock, which is not depleted.

The relatively low marine mammal occurrences in the area, shutdown zones, and planned monitoring make injury takes of marine mammals unlikely. The shutdown zones would be thoroughly monitored before the pile driving activities begin, and activities would be postponed if a marine mammal is sighted within the shutdown zone. There is a high likelihood that marine mammals would be detected by trained observers under environmental conditions described for the project. Limiting construction activities to daylight hours would also increase detectability of marine mammals in the area. Therefore, the mitigation and monitoring measures are expected to eliminate the potential for injury and Level A harassment as well as reduce the amount and intensity of Level B behavioral harassment. Furthermore, the pile driving activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

The project is not expected to have significant adverse effects on marine mammal habitat. There are no known Biologically Important Areas (BIAs) or ESA-designated critical habitat within the project area, and the activities would not permanently modify existing marine mammal habitat.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury, mortality, or Level A harassment is anticipated or proposed for authorization.
- The specified activities and associated ensonified areas are very small relative to the overall habitat ranges of all species;
- The project area does not overlap known BIAs or ESA-designated critical habitat;
- The lack of anticipated significant or long-term effects or marine mammal habitat; and
- The presumed efficacy of the mitigation measures in reducing the effects of the specified activity.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS has authorized is below one-third of the estimated stock abundances for stocks (See table 9). These are all likely conservative estimates because they assume all takes are of different individual animals which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Pacific Gas & Electric for conducting pile driving activities in San Francisco Bay from April 1, 2024 to March 31, 2025, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction project. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: November 20, 2023.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–26012 Filed 11–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

DATES: Applicable November 13, 2023.

FOR FURTHER INFORMATION CONTACT: Barbara Smith, Civilian Senior Leader Management Office, 111 Army Pentagon, Washington, DC 20310–0111, email: *Barbara.M.Smith.civ@army.mil* or phone: (703) 693–1126.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The Department of the Army Performance Review Board will be composed of a subset of the following individuals:

1. Ms. Elizabeth J Ahlersmeyer O'Kane, Senior Security Advisor, Office of the Deputy Chief of Staff, G–2
2. Dr. Christine T Altendorf, Director of Military Programs, Military Programs, U.S. Army Corps of Engineers
3. Mr. Stephen D Austin, Assistant Chief of the Army Reserve, Office of the Chief of the Army Reserve
4. Mr. Mark F Averill, Administrative Assistant to the Secretary of the Army, Office of the Administrative Assistant to the Secretary of the Army
5. Mr. Young J Bang, Principal Deputy Assistant Secretary of the Army (Acquisitions, Logistics and Technology), Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology)
6. LTG Maria B Barrett, Commanding General, U.S. Army Cyber Command
7. Mr. Stephen G Barth, Deputy Chief of Staff, G–8, U.S. Army Training and Doctrine Command
8. Mr. Peter Bechtel, Deputy G–3/5/7, Deputy Chief of Staff, G–3/5/7
9. BG Christine A Beeler, Commanding General, U.S. Army Contracting Command, U.S. Army Materiel Command
10. Ms. Pamela I Blechinger, Director, The Research and Analysis Center, The Research and Analysis Center, U.S. Army Futures Command
11. Ms. Yvette K W Bourcicot, Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)
12. Mr. John M Bradsher, Director, Operations and Integration, Office of the Deputy Chief of Staff, G–2

13. MG Michele H Bredenkamp, Commanding General, U.S. Army Intelligence and Security Command
14. GEN Gary M Brito, Commanding General, U.S. Army Training and Doctrine Command
15. MG Timothy D Brown, Special Assistant to the Deputy Chief of Staff, G–2, Office of the Deputy Chief of Staff, G–2
16. MG Edmond Miles Brown, Chief of Staff, U.S. Army Futures Command
17. Ms. Kimberly Diane Buehler, Director, Small Business Programs, Army Office of Small Business Programs
18. HON Douglas R Bush, Assistant Secretary of the Army (Acquisition, Logistics and Technology), Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology)
19. Mr. Michael K Cadieux, Director, Ground Vehicle Systems Center, U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
20. LTG Paul T Calvert, Deputy Commanding General/Chief of Staff, U.S. Army Forces Command
21. GEN Christopher G Cavoli, Commander, United States European Command and Supreme Allied Commander, Europe, U.S. European Command
22. MG Kimberly M Colloton, Deputy Commanding General for Military and International Operations, U.S. Army Corps of Engineers
23. HON Michael L Connor, Assistant Secretary of the Army (Civil Works), Office of the Assistant Secretary of the Army (Civil Works)
24. Mr. Robert T Cook, Principal Deputy Assistant Secretary of the Army (Financial Management and Comptroller), Office of the Assistant Secretary of the Army (Financial Management and Comptroller)
25. Mr. Donald M Cook, Assistant Deputy Chief of Staff for Resource Management/Executive Director for Business, U.S. Army Materiel Command
26. Ms. Denise Council-Ross, Principal Deputy General Counsel
27. LTG Jody Daniels, Chief Army Reserves
28. Mr. Richard P De Fatta, Deputy to the Commander, SMDC/ARSTRAT, U.S. Army Space and Missile Defense Command
29. Mr. Paul Farnan, Principal Deputy Assistant Secretary of the Army (Installations, Energy and Environment), Office of the Assistant Secretary of the Army (Installations, Energy and Environment)
30. Mr. Mario A Diaz, Deputy Under Secretary of the Army, Office of the Deputy Under Secretary of the Army
31. Ms. Karen L Durham-Aguilera, Executive Director of the Army National Cemeteries Program, Army National Military Cemeteries
32. Dr. Elizabeth C Fleming, Regional Business Director (Mississippi Valley Division), Mississippi Valley Division, U.S. Army Corps of Engineers
33. Dr. Todd A Fore, Deputy Assistant Secretary of the Army (Civilian Personnel), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)
34. Mr. Michael D Formica, Executive Deputy to the Commander, U.S. Army Training and Doctrine Command
35. Ms. Christina L Freese, Deputy Chief of Staff for Resource Management, U.S. Army Materiel Command
36. Dr. Karl E Friedl, Senior Research Scientist (Performance Physiology), U.S. Army Medical Research and Development Command, U.S. Army Futures Command
37. LTG Maria R Gervais, Deputy Commanding General/Chief of Staff, U.S. Army Training and Doctrine Command
38. Mr. Larry Gottardi, Director, Civilian Senior Leader Management Office
39. MG William H Graham, Deputy Chief of Engineers and Deputy Commanding General, U.S. Army Corps of Engineers
40. Mr. Ross R Guckert, Program Executive Officer—Enterprise Information Systems, Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology)
41. MG Anthony R Hale, Assistant to the Director of the Army Staff, Office of the Director of the Army Staff
42. Dr. Barton H Halpern, Director, Extramural Research, Army Research Office, U.S. Army Futures Command
43. GEN Charles R Hamilton, Commanding General, U.S. Army Materiel Command
44. Mr. David A Horner, Director, Information Technology Laboratory, Engineer Research and Development Center, U.S. Army Corps of Engineers
45. LTG Heidi Hoyle, Acting Deputy Chief of Staff, G–4, Office of the Deputy Chief of Staff, G–4
46. HON Rachel Jacobson, Assistant Secretary of the Army (Installations, Energy and Environment), Office of the Assistant Secretary of the Army (Installations, Energy and Environment)
47. Ms. Laura N Jankovich, Director of Management/Vice Director of the Army Staff, Office of the Chief of Staff of the Army
48. Dr. Donna M Joyce, Senior Research Scientist (Protective Technologies), Aviation and Missile Center, U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
49. Mr. David T Kim, Director of Support, Force Modernization, U.S. Army Intelligence and Security Command
50. Mr. Daniel M Klippstein, Assistant Deputy Chief of Staff, G–9, Office of the Deputy Chief of Staff, G–9
51. Mr. Michael O Lacey, Deputy General Counsel (Operations and Personnel), Office of the General Counsel
52. Mr. Mark R Lewis, Special Assistant to the Under Secretary of the Army, Office of the Under Secretary of the Army
53. Mr. Stephen B Loftus, Deputy Assistant Secretary of the Army (Cost and Economics), Office of the Assistant Secretary of the Army (Financial Management and Comptroller)
54. Mr. Michael T Mahoney, Deputy Assistant Secretary of the Army (Army Review Boards), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)
55. LTG Robert L Marion, Military Deputy/Director, Army Acquisition Corps, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology)
56. Dr. David Markowitz, Deputy Chief Information Officer/Chief Data Officer and Analytics Officer, Office of the Chief Information Officer
57. LTG Donna W Martin, The Inspector General, Office of The Inspector General
58. Mr. Patrick H Mason, Deputy Assistant Secretary of the Army (Defense Exports and Cooperation), Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology)
59. LTG Patrick E Matlock, Deputy Chief of Staff, G–3/5/7, Office of the Deputy Chief of Staff, G–3/5/7
60. Mr. David W May, Senior Cyber Intelligence Advisor, Cyber Center of Excellence, U.S. Army Training and Doctrine Command
61. Dr. Alexander T Miller, Senior Science and Technology Advisor, Office of the Deputy Chief of Staff, G–2
62. Mr. Bruce B Miller, The Auditor General, U.S. Army Audit Agency
63. Mr. William J Miller, Deputy to the Commanding General, U.S. Army Special Operations Command

64. Ms. Hong V Miller, Chief Human Capital Officer, U.S. Army Futures Command
65. Ms. Liz S Miranda, Deputy to the Commanding General, CECOM, U.S. Army Communications—Electronics Command, U.S. Army Materiel Command
66. Dr. Eric Moore, Deputy to the Commanding General, U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
67. Mr. William Nelson, Executive Deputy to the Commanding General, U.S. Army Futures Command
68. Mr. Donald Nitti, Deputy to the Commander, U.S. Army Aviation and Missile Command, U.S. Army Materiel Command
69. Mr. Levator Norsworthy, Jr., Deputy General Counsel (Acquisition)/Senior Deputy General Counsel, Office of the General Counsel
70. Ms. Karen Pane, Director of Human Resources, U.S. Army Corps of Engineers
71. LTG Erik Peterson, Deputy Chief of Staff, G–8, Office of the Deputy Chief of Staff, G–8
72. LTG Walter E. Piatt, Director of the Army Staff, Office of the Chief of Staff of the Army
73. Mr. Jamie Pinkham, Principal Deputy Assistant Secretary of the Army (Civil Works), Office of the Assistant Secretary of the Army (Civil Works)
74. GEN Andrew P Poppas, Commanding General, U.S. Army Forces Command
75. LTG Laura Potter, Deputy Chief of Staff, G–2, Office of the Deputy Chief of Staff, G–2
76. Ms. Diane Randon, Assistant Deputy Chief of Staff, G–2, Office of the Deputy Chief of Staff, G–2
77. HON Carrie F Ricci, General Counsel, Office of the General Counsel
78. Mr. J. Randall Robinson, Executive Deputy to the Commanding General, U.S. Army Installations Management Command
79. Ms. Dawn Rosarius, Principal Assistant for Acquisition, U.S. Army Medical Research and Development Command, U.S. Army Futures Command
80. Dr. Robert Sadowski, Senior Research Scientist (Robotics), U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
81. HON Agnes G Schaefer, Assistant Secretary of the Army (Manpower and Reserve Affairs), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)
82. HON Caral E Spangler, Assistant Secretary of the Army (Financial Management and Comptroller), Office of the Assistant Secretary of the Army (Financial Management and Comptroller)
83. LTG Scott A Spellmon, Chief of Engineers, U.S. Army Corps of Engineers
84. LTG Douglas Stitt, Deputy Chief of Staff, G–1, Office of the Deputy Chief of Staff, G–1
85. Mr. Robin Swan, Director, Office of Enterprise Management
86. Mr. Douglas Tamilio, Director, CCDC Soldier Center, U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
87. LTG Kevin Vereen, Deputy Chief of Staff, G–9, Office of the Deputy Chief of Staff, G–9
88. Ms. Terry Watson, Director, Technology and Business Architecture Integration, Office of the Deputy Chief of Staff, G–1
89. Mr. Roy Wallace, Assistant Deputy Chief of Staff, G–1, Office of the Deputy Chief of Staff, G–1
90. Mr. Joseph Welch, Director, CCDC C5ISR Center, U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
91. Ms. Marion Whicker, Executive Deputy to the Commanding General, U.S. Army Materiel Command
92. Ms. Kathryn Yurkanin, Principal Deputy Chief of Legislative Liaison, Office of the Chief, Legislative Liaison

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–26047 Filed 11–24–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF EDUCATION

Annual Notice of Interest Rates for Variable-Rate Federal Student Loans Made Under the William D. Ford Federal Direct Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Chief Operating Officer for Federal Student Aid announces the interest rates for Federal Direct Stafford/Ford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford/Ford Loans (Direct Unsubsidized Loans), and Federal Direct PLUS Loans (Direct PLUS Loan), Assistance Listing Number 84.268, with first disbursement dates before July 1, 2006, and for Federal Direct Consolidation Loans (Direct Consolidation Loans) for which the application was received before February 1, 1999. The rates announced in this notice are in effect for the period July 1, 2023, through June 30, 2024.

FOR FURTHER INFORMATION CONTACT: Travis Sturlaugson, U.S. Department of Education, 830 First Street NE, Washington, DC 20202. Telephone: 202–377–4174 or by email: *travis.sturlaugson@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: Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans, and Direct Consolidation Loans (collectively referred to as ''Direct Loans'') may have either fixed or variable interest rates, depending on when the loan was first disbursed or, in the case of a Direct Consolidation Loan, when the application for the loan was received. Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed before July 1, 2006, and Direct Consolidation Loans for which the application was received before February 1, 1999, have variable interest rates. For these loans, a new rate is determined annually and is in effect during the period from July 1 of one year through June 30 of the following year.

Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2006, and Direct Consolidation Loans for which the application was received on or after February 1, 1999, have fixed interest rates that apply for the life of the loan.

This notice announces the interest rates for variable-rate Direct Loans that will apply during the period from July 1, 2023, through June 30, 2024. Interest rate information for fixed-rate Direct Loans is announced in a separate notice published in the **Federal Register**.

Interest rates for variable-rate Direct Loans are determined in accordance with formulas specified in section 455(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1087e(b)). The formulas vary depending on loan type and when the loan was first disbursed or, for certain Direct Consolidation Loans, when the application for the loan was received. The HEA specifies a maximum interest rate for these loan types. If the interest rate formula results in a rate that exceeds the statutory maximum rate, the rate is the statutory maximum rate.

Variable-Rate Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans

For Direct Subsidized Loans and Direct Unsubsidized Loans with first disbursement dates before July 1, 2006, and for Direct PLUS Loans with first disbursement dates on or after July 1, 1998, and before July 1, 2006, the interest rate is equal to the lesser of—

(1) The bond equivalent rate of 91-day Treasury bills auctioned at the final auction held before the June 1 immediately preceding the 12-month period to which the interest rate applies, plus a statutory add-on percentage; or

(2) 8.25 percent (for Direct Subsidized Loans and Direct Unsubsidized Loans) or 9.00 percent (for Direct PLUS Loans).

For Direct Subsidized Loans and Direct Unsubsidized Loans with first disbursement dates on or after July 1, 1995, and before July 1, 2006, the statutory add-on percentage varies depending on whether the loan is in an in-school, grace, or deferment status, or in any other status. For all other loans, the statutory add-on percentage is the same during any status.

The bond equivalent rate of 91-day Treasury bills auctioned on May 30, 2023, is 5.462 percent, rounded to 5.46 percent.

For Direct PLUS Loans with first disbursement dates before July 1, 1998, the interest rate is equal to the lesser of—

(1) The weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before the June 26 preceding the 12-month period to which the interest rate applies, plus a statutory add-on percentage; or

(2) 9.00 percent.

The weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26, 2023, is 5.26 percent.

Variable-Rate Direct Consolidation Loans

A Direct Consolidation Loan may have up to three components, depending on the types of loans that were repaid by the consolidation loan and when the application for the consolidation loan was received. The three components are called Direct Subsidized Consolidation Loans, Direct Unsubsidized Consolidation Loans, and (only for Direct Consolidation Loans made based on applications received before July 1, 2006) Direct PLUS Consolidation Loans. In most cases the interest rates for variable-rate Direct Subsidized Consolidation Loans, Direct Unsubsidized Consolidation Loans, and Direct PLUS Consolidation Loans are determined in accordance with the same formulas that apply to Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans, respectively.

Interest Rate Charts

Charts 1 and 2 show the interest rate formulas used to determine the interest rates for all variable-rate Direct Loans and the rates that are in effect during the 12-month period from July 1, 2023, through June 30, 2024.

Chart 1 shows the interest rates for loans with rates based on the 91-day Treasury bill rate. Chart 2 shows the interest rates for loans with rates based on the weekly average of the one-year constant maturity Treasury yield.

CHART 1—DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, DIRECT SUBSIDIZED CONSOLIDATION LOANS, DIRECT UNSUBSIDIZED CONSOLIDATION LOANS, DIRECT PLUS LOANS, AND DIRECT PLUS CONSOLIDATION LOANS

[Interest rates based on 91-day treasury bill]

Loan type	Cohort	91-day T-bill rate 05/30/23 (%)	Add-on (%)		Maximum rate (%)	Interest rate 07/01/23 through 06/30/24 (%)	
Subsidized, Unsubsidized.	First disbursed on/after 07/01/98 and before 07/01/06.	5.46	1.70 (in-school, grace, deferment).	2.30 (any other status).	8.25	7.16 (in-school, grace, deferment).	7.76 (any other status).
Subsidized Consolidation, Unsubsidized Consolidation.	First disbursed on/after 07/01/98 and before 10/01/98; or Application received before 10/01/98 and first disbursed on/after 10/01/98.						
PLUS	First disbursed on/after 07/01/98 and before 07/01/06.	5.46	3.10		9.00	8.56.	
PLUS Consolidation	First disbursed on/after 07/01/1998 and before 10/01/1998; or Application received before 10/01/98 and first disbursed on/after 10/01/98.						
Subsidized, Unsubsidized, Subsidized Consolidation, Unsubsidized Consolidation.	First disbursed on/after 07/01/95 and before 07/01/98.	5.46	2.50 (in-school, grace, deferment).	3.10 (any other status).	8.25	7.96 (in-school, grace, deferment).	8.25 (any other status).

CHART 1—DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, DIRECT SUBSIDIZED CONSOLIDATION LOANS, DIRECT UNSUBSIDIZED CONSOLIDATION LOANS, DIRECT PLUS LOANS, AND DIRECT PLUS CONSOLIDATION LOANS—Continued

[Interest rates based on 91-day treasury bill]

Loan type					
Subsidized, Unsubsidized, Subsidized Consolidation, Unsubsidized Consolidation.	First disbursed before 07/01/95.	5.46	3.10	8.25	8.25.
Subsidized Consolidation, Unsubsidized Consolidation, PLUS Consolidation.	Application received on/after 10/01/98 and before 02/01/99.	5.46	2.30	8.25	7.76

CHART 2—DIRECT PLUS LOANS AND DIRECT PLUS CONSOLIDATION LOANS

[Interest rates based on weekly average of one-year constant maturity treasury yield]

Loan type	Cohort	Weekly average of 1-year constant maturity treasury yield for last calendar week ending on or before 06/26/23 (%)	Add-on (%)	Maximum rate (%)	Interest rate 07/01/23 through 06/30/24 (%)
PLUS, PLUS Consolidation	First disbursed before 07/01/98	5.26	3.10	9.00	8.36

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 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.

Program Authority: 20 U.S.C. 1087 *et seq.*

Richard Cordray,

Chief Operating Officer Federal Student Aid.

[FR Doc. 2023–26053 Filed 11–24–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Research and Development Center Program

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2024 for the Education Research and Development Center Program, Assistance Listing Number (ALN) 84.305C. This notice relates to the approved information collection under OMB control number 4040–0001.

DATES: The dates when applications are available and the deadlines for transmittal of applications invited under this notice are indicated in the chart at the end of this notice and in the Request for Applications (RFA) that is posted at the following website: *https://ies.ed.gov/funding.*

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 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: The contact person associated with a particular research competition is listed in the chart at the end of this notice, as well as in the relevant RFA and application package.

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: In awarding the grants, the Institute of Education Sciences (IES) intends to provide national leadership in expanding knowledge and understanding of (1) education outcomes for all learners from early childhood education through postsecondary and adult education, and

(2) employment and wage outcomes when relevant (such as for those engaged in career and technical, postsecondary, or adult education). IES research grant programs are designed to provide interested individuals and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education opportunities for all learners. These interested individuals include parents, educators, learners, researchers, and policymakers. In carrying out its grant programs, IES provides support for programs of research in areas of demonstrated national need.

Competition in This Notice: The IES National Center for Education Research (NCER) is announcing one competition: the education research and development center program.

The Education Research and Development Center Program (ALN 84.305C). Under this competition, NCER will consider only applications that address one of the following topics:

- Improving Rural Education.
- Using Generative Artificial Intelligence to Augment Teaching and Learning in Classrooms.
- K–12 Teacher Recruitment and Retention Policy.
- Improving Outcomes in Elementary Science Education.

IES intends to fund four centers, each focused on one of the topics, subject to receiving applications of sufficient quality. The Education Research and Development Center for Improving Outcomes in Elementary Science Education will be supported in part with funding provided by the National Science Foundation's STEM Education Directorate.

Exemption from Proposed Rulemaking: Under section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, IES is not subject to section 437(d) of the General Education Provisions Act, 20 U.S.C. 1232(d), and is therefore not required to offer interested parties the opportunity to comment on matters relating to grants.

Program Authority: 20 U.S.C. 9501 *et seq.,* 42 U.S.C. 1861 *et seq.*

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 77, 81, 82, 84, 86, 97, 98, and 99. In addition, the regulations in 34 CFR part 75 are applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)–(c), 75.219, 75.220, 75.221, 75.222, 75.230, and 75.250(a). (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) 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.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to these competitions.

II. Award Information

Types of Awards: Cooperative agreements.

Fiscal Information: Although Congress has not yet enacted an appropriation for FY 2024, IES is inviting applications for this competition now so that applicants can have adequate time to prepare their applications. The actual level of funding, if any, depends on final congressional action. Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition. IES may announce additional competitions later in FY 2024.

Estimated Range of Awards: See chart at the end of this notice. The size of the awards will depend on the scope of the projects proposed.

Estimated Number of Awards: We intend to fund not more than one grant under each of the four topics. However, the number of awards made under this competition will depend on the quality of the applications received for each topic in the competition and the availability of funds; and, in the special case that the peer review process results in a tie between two or more grant applications, making it impossible to adhere to that limit without funding only some of the equally ranked applications, IES may make a larger number of awards to include all applications of the same rank.

Maximum Award: The maximum award amount for each topic area in this competition is set out in the RFA. Three of the four centers will have maximum awards of $10,000,000. The fourth center, co-funded with the National Science Foundation (NSF), will have a maximum award of $15,000,000. Applications must include budgets no higher than the relevant maximum award. IES will not make an award exceeding the maximum award amount.

Note: The Department is not bound by any estimates in this notice.

Project Period: The project period for each Education Research and Development Center is 5 years. This information is also included in the chart at the end of this notice.

III. Eligibility Information

1. *Eligible Applicants:* Applicants that have the ability and capacity to conduct rigorous research are eligible to apply. Eligible applicants include, but are not limited to, nonprofit and for-profit organizations and public and private agencies and institutions of higher education, such as colleges and universities.

2. a. *Cost Sharing or Matching:* These programs do 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.*

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: nonprofit and for-profit organizations and public and private agencies and institutions of higher education. The grantee may award subgrants to entities it has identified in an approved 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 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Other Information:* Information regarding program and application requirements for the competition is in the IES Application Submission Guide (currently available) and in the NCER

RFA (to be posted) on the IES website at: *https://ies.ed.gov/funding/.* The date on which the application package for this competition will be available is indicated in the chart at the end of this notice.

3. *Content and Form of Application Submission:* Requirements concerning the content of an application are contained in the RFA for this competition. The forms that must be submitted are in the application package for the specific competition.

4. *Submission Dates and Times:* The deadline date for transmittal of applications for this competition is indicated in the chart at the end of this notice and in the RFA for the competition.

We do not consider an application that does not comply with the deadline requirements.

5. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

V. Application Review Information

1. *Selection Criteria:* For all its grant competitions, IES uses selection criteria based on a peer review process that has been approved by the National Board for Education Sciences. The Peer Review Procedures for Grant Applications can be found on the IES website at *https://ies.ed.gov/director/sro/application_review.asp.*

For the 84.305C competition, peer reviewers will be asked to evaluate the significance of the focused program of research, the quality of the research plan for the focused program of research, the quality of the plans for leadership, capacity building and outreach activities, the quality of the management and institutional resources, and the qualifications and experience of the personnel. These criteria will be described in greater detail in the RFA.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, IES 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, compliance with the IES policy regarding public access to research, and compliance with grant conditions. IES 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, IES 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).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, IES 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 Grant Award Notification (GAN), or we may send you an email containing a link to access an electronic version of your GAN. We may also notify you informally.

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. *Grant Administration:* Applicants should budget for an annual meeting of up to three days for project directors to be held in Washington, DC.

4. *Reporting:* (a) If you apply for a grant under the competition announced in this notice, 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 IES. 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 IES under 34 CFR 75.118. IES 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.*

5. *Performance Measures:* To evaluate the overall success of its education research grant programs, IES annually assesses the percentage of projects that result in peer-reviewed publications and the number of IES-supported interventions with evidence of efficacy in improving learner education outcomes. Student academic outcomes include learning and achievement in academic content areas, such as reading, writing, math, and science, as well as outcomes that reflect students' successful progression through the education system, such as course and grade completion; high school graduation; and postsecondary enrollment, progress, and completion. Social and behavioral competencies include social and emotional skills, attitudes, and behaviors that are important to academic and post-academic success. Employment and earnings outcomes include hours of employment, job stability, and wages and benefits, and may be measured in addition to student academic outcomes.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, IES considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; whether a grantee is in compliance with the IES policy regarding public access to research; and if IES has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, IES also considers whether the grantee is operating in compliance with the assurances in its approved application, 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).

VII. Other Information

Accessible Format: On request to the relevant program contact person listed in the chart at the end of this notice, as well as in the relevant RFA and application package, individuals with disabilities can obtain this document and a copy of the RFA 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.

Mark Schneider,

Director, Institute of Education Sciences.

ALN and name	Application package available	Deadline for transmittal of applications	Estimated range of awards *	Project period	For further information contact
National Center for Education Research (NCER)					
84.305C. Education Research and Development Center Program.	On or before December 7, 2023.	March 7, 2024 ...	Up to 5 years.		
▪ Improving Rural Education	....	....	$1 to $2 million	....	Emily Doolittle, *Emily.Doolittle@ed.gov*, 202–987–0795.
▪ K–12 Teacher Recruitment and Retention Policy.	....	....	$1 to $2 million	....	Wai-Ying Chow, *Wai-Ying.Chow@ed.gov*, 202–245–8198.
▪ Improving Outcomes in Elementary Science Education.	....	....	$2 to $3 million	....	Jennifer Schellinger, *Jennifer.Schellinger@ed.gov*, 202–987–0765.
▪ Using Generative Artificial Intelligence to Augment Teaching and Learning in Classrooms.	....	....	$1 to $2 million	....	Christina Chhin, *Christina.Chhin@ed.gov*, 202–245–7736.

* These estimates are annual amounts.

Note: The Department is not bound by any estimates in this notice.

Note: If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

[FR Doc. 2023–26008 Filed 11–24–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Annual Notice of Interest Rates for Fixed-Rate Federal Student Loans Made Under the William D. Ford Federal Direct Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Chief Operating Officer for Federal Student Aid announces the interest rates for Federal Direct Stafford/Ford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford/Ford Loans (Direct Unsubsidized Loans), and Federal Direct PLUS Loans (Direct PLUS Loans) made under the William D. Ford Federal Direct Loan (Direct Loan) Program, Assistance Listing Number 84.268, with first disbursement dates on or after July 1, 2023, and before July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Travis Sturlaugson, U.S. Department of Education, 830 First Street NE, Washington, DC 20202. Telephone: 202–377–4174 or by email: *travis.sturlaugson@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: Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans, and Direct Consolidation Loans (collectively referred to as ''Direct Loans'') may have either fixed or variable interest rates, depending on when the loan was first disbursed or, in the case of a Direct Consolidation Loan, when the application for the loan was received. Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2006, and Direct Consolidation Loans for which the application was received on or after February 1, 1999, have fixed interest rates that apply for the life of the loan. Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed before July 1, 2006, and Direct Consolidation Loans for which the application was received before February 1, 1999, have variable interest rates that are determined annually and are in effect during the period from July 1 of one year through June 30 of the following year.

This notice announces the fixed interest rates for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans with first disbursement dates on or after July 1, 2023, and before July 1, 2024, and provides interest rate information for other fixed-rate Direct Loans. Interest rate information for variable-rate Direct Loans is announced in a separate **Federal Register** notice.

Fixed-Rate Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans First Disbursed on or After July 1, 2013

Section 455(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1087e(b)), includes formulas for determining the interest rates for all Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2013. The interest rate for these loans is a fixed rate that is determined annually for all loans first disbursed during any 12-month period beginning on July 1 and ending on June 30. The rate is equal to the high yield of the 10-year Treasury notes auctioned at the final auction held before June 1 of that 12-month period, plus a statutory add-on percentage that varies depending on the loan type and, for Direct Unsubsidized Loans, whether the loan was made to an undergraduate or graduate student. The calculated interest rate may not exceed a maximum rate specified in the HEA. If the interest rate formula results in a rate that exceeds the statutory maximum rate, the rate is the statutory maximum rate. Loans first disbursed during different 12-month periods that begin on July 1 and end on June 30 may have different interest rates, but the rate determined for any loan is a fixed interest rate for the life of the loan.

On May 10, 2023, the United States Treasury Department held a 10-year Treasury note auction that resulted in a high yield of 3.448 percent.

Chart 1 shows the fixed interest rates for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2023, and before July 1, 2024.

CHART 1—DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, AND DIRECT PLUS LOANS FIRST DISBURSED ON OR AFTER 07/01/2023 AND BEFORE 07/01/2024

Loan type	Borrower type	10-year treasury note high yield 05/10/2023 (%)	Add-on (%)	Maximum rate (%)	Fixed interest rate (%)
Direct Subsidized Loans Direct Unsubsidized Loans.	Undergraduate students	3.448	2.05	8.25	5.50
Direct Unsubsidized Loans [1].	Graduate and professional students	3.448	3.60	9.50	7.05
Direct PLUS Loans	Parents of dependent undergraduate students Graduate and professional students	3.448	4.60	10.50	8.05

For reference, Chart 2 compares the fixed interest rates for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed during the period July 1, 2023, through June 30, 2024, with the fixed interest rates for loans first disbursed during each previous 12-month period from July 1, 2013, through June 30, 2023.

CHART 2—DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, AND DIRECT PLUS LOANS FIRST DISBURSED ON OR AFTER 07/01/2013 AND BEFORE 07/01/2024

First disbursed		Fixed interest rates (%)			**Federal Register** notice
On/after	Before	Direct Subsidized Loans, Direct Unsubsidized Loans, (undergraduate students)	Direct Unsubsidized Loans, (graduate or professional students)	Direct PLUS Loans	
07/01/2023	07/01/2024	5.50	7.05	8.05	N/A.
07/01/2022	07/01/2023	4.99	6.54	7.54	87 FR 50326 (August 16, 2022).

[1] Graduate and professional students are not eligible to receive Direct Subsidized Loans.

CHART 2—DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, AND DIRECT PLUS LOANS FIRST DISBURSED ON OR AFTER 07/01/2013 AND BEFORE 07/01/2024—Continued

First disbursed		Fixed interest rates (%)			Federal Register notice
On/after	Before	Direct Subsidized Loans, Direct Unsubsidized Loans, (undergraduate students)	Direct Unsubsidized Loans, (graduate or professional students)	Direct PLUS Loans	
07/01/2021	07/01/2022	3.73	5.28	6.28	86 FR 44003 (August 11, 2021).
07/01/2020	07/01/2021	2.75	4.30	5.30	85 FR 48229 (August 10, 2020).
07/01/2019	07/01/2020	4.53	6.08	7.08	85 FR 2417 (January 15, 2020).
07/01/2018	07/01/2019	5.05	6.60	7.60	83 FR 53864 (October 25, 2018).
07/01/2017	07/01/2018	4.45	6.00	7.00	82 FR 29062 (June 27, 2017).
07/01/2016	07/01/2017	3.76	5.31	6.31	81 FR 38159 (June 13, 2016).
07/01/2015	07/01/2016	4.29	5.84	6.84	80 FR 42488 (July 17, 2015).
07/01/2014	07/01/2015	4.66	6.21	7.21	79 FR 37301 (July 1, 2014).
07/01/2013	07/01/2014	3.86	5.41	6.41	78 FR 59011 (September 25, 2013).

Fixed-Rate Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans First Disbursed on or After July 1, 2006, and Before July 2, 2013

Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2006, and before July 1, 2013, have fixed interest rates that are specified in section 455(b) of the HEA (20 U.S.C. 1087e(b)). Chart 3 shows the interest rates for these loans.

CHART 3—DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, AND DIRECT PLUS LOANS FIRST DISBURSED ON OR AFTER 07/01/2006 AND BEFORE 07/01/2013

Loan type	Borrower type	First disbursed on/after	First disbursed before	Interest rate (%)
Subsidized	Undergraduate students	07/01/2011	07/01/2013	3.40
Subsidized	Undergraduate students	07/01/2010	07/01/2011	4.50
Subsidized	Undergraduate students	07/01/2009	07/01/2010	5.60
Subsidized	Undergraduate students	07/01/2008	07/01/2009	6.00
Subsidized	Undergraduate students	07/01/2006	07/01/2008	6.80
Subsidized	Graduate or professional students	07/01/2006	[2] 07/01/2012	6.80
Unsubsidized	Undergraduate and graduate or professional students	07/01/2006	07/01/2013	6.80
PLUS	Graduate or professional students and parents of dependent undergraduate students.	07/01/2006	07/01/2013	7.90

Fixed-Rate Direct Consolidation Loans

Section 455(b) of the HEA specifies that all Direct Consolidation Loans for which the application was received on or after February 1, 1999, have a fixed interest rate that is equal to the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent. For Direct Consolidation Loans for which the application was received on or after February 1, 1999, and before July 1, 2013, the interest rate may not exceed 8.25 percent. However, under section 455(b) of the HEA, the 8.25 percent interest rate cap does not apply to Direct Consolidation Loans made based on applications received on or after July 1, 2013. Chart 4 shows the interest rates for fixed-rate Direct Consolidation Loans.

CHART 4—DIRECT CONSOLIDATION LOANS MADE BASED ON APPLICATIONS RECEIVED ON OR AFTER 02/01/1999

Application received	Interest rate (%)	Maximum interest rate (%)
On/after 07/01/2013	Weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent.	None
On/after 02/01/1999 and before 07/01/2013.	(same as above)	8.25%

[2] Effective for loan periods beginning on or after July 1, 2012, graduate and professional students are no longer eligible to receive Direct Subsidized Loans.

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 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.

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Program Authority: 20 U.S.C. 1087, *et seq.*

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2023–26052 Filed 11–24–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0120]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Direct Loan, FFEL, Perkins and TEACH Grant Total and Permanent Disability Discharge Application and Related Forms

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 27, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Go to *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: 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: Direct Loan, FFEL, Perkins and TEACH Grant Total and Permanent Disability Discharge Application and Related Forms.

OMB Control Number: 1845–0065.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 61,629.

Total Estimated Number of Annual Burden Hours: 30,814.

Abstract: The Department of Education (Department) is requesting a renewal as revision of the information collection, 1845–0065, Total and Permanent Disability (TPD) Discharge Application and Related Forms. The regulations governing TPD discharges of federal student loans and TEACH Grant service obligations are contained in 34 CFR 685.213 for the Direct Loan Program, 34 CFR 682.402(c) for the FFEL Program, 34 CFR 674.61(b) for the Perkins Loan Program, and 34 CFR 686.42(b) for the TEACH Grant Program. A final rule published on November 1, 2022 (87 FR 65904) made changes to the TPD discharge regulations, including an expansion of the types of Social Security Administration (SSA) disability determinations that qualify a borrower or TEACH Grant recipient for TPD discharge; elimination of the requirement for borrowers who receive TPD discharges based on SSA determinations or a physician's certification to provide documentation of their annual earnings from employment during the 3-year post-discharge monitoring period; and expansion of the categories of medical professionals who may certify an individual's TPD discharge application which necessitate the updating of this information collection. We have also revised the form based on public comment and internal review for ease of use and clarity. We have moved definitions to the front to allow users to know if their loans can be included on this form. We have moved forward where the completed form is to be sent and how to get assistance in completing the form. Further explanation of changes are in the attached comment response table.

Dated: November 20, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–26021 Filed 11–24–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Annual Notice of Interest Rates for Variable-Rate Federal Student Loans Made Under the Federal Family Education Loan Program Prior to July 1, 2010

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Chief Operating Officer for Federal Student Aid announces the interest rates for loans made under the Federal Family Education Loan (FFEL) Program, Assistance Listing Number 84.032, that have variable interest rates. The rates announced in this notice are in effect for the period July 1, 2023, through June 30, 2024.

FOR FURTHER INFORMATION CONTACT: Travis Sturlaugson, U.S. Department of Education, 830 First Street NE, Washington, DC 20202. Telephone:

202–377–4174. Email: *travis.sturlaugson@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: Section 427A of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1077a), provides formulas for determining the interest rates charged to borrowers on loans made under the FFEL Program, including Federal Subsidized and Unsubsidized Stafford Loans (Stafford Loans), Federal PLUS Loans (PLUS Loans), Federal Consolidation Loans (Consolidation Loans), and Federal Supplemental Loans for Students (SLS Loans). No new loans have been made under the FFEL Program since June 30, 2010.

The FFEL Program includes loans with variable interest rates that change each year and loans with fixed interest rates that remain the same for the life of the loan. For loans with a variable interest rate, the specific interest rate formula that applies to a particular loan depends on the date of the first disbursement of the loan or, in the case of a Consolidation Loan, the date the application for the loan was received. If a loan has a variable interest rate, a new rate is determined annually and is in effect during the period from July 1 of one year through June 30 of the following year.

This notice announces the interest rates for variable-rate FFEL Program loans that will be in effect during the period from July 1, 2023, through June 30, 2024. Interest rates for fixed-rate FFEL Program loans may be found in a **Federal Register** notice published on September 15, 2015 (80 FR 55342).

For the majority of variable-rate FFEL Program loans, the annual interest rate is equal to the lesser of—

(1) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 of each year, plus a statutory add-on percentage; or

(2) A statutorily established maximum interest rate.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 30, 2023, is 5.462 percent, rounded to 5.46 percent.

For PLUS Loans first disbursed before July 1, 1998, and for all SLS Loans, the annual interest rate is equal to the lesser of—

(1) The weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 of each year, plus a statutory add-on percentage; or

(2) A statutorily established maximum interest rate.

The weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26, 2023, is 5.26 percent.

For Consolidation Loans that have a variable interest rate, the annual interest rate for the portion of a Consolidation Loan that repaid loans other than loans made under the Health Education Assistance Loans (HEAL) Program is equal to—

(1) The bond equivalent rate of the 91-day Treasury bill auctioned at the final auction held before June 1 of each year, plus a statutory add-on percentage; or

(2) A statutorily established maximum interest rate.

If a Consolidation Loan (whether a variable-rate loan or a fixed-rate loan) repaid loans made under the HEAL Program, the interest rate on the portion of the Consolidation Loan that repaid HEAL loans is a variable rate that is equal to the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending June 30, plus a statutory add-on percentage. For the portion of a Consolidation Loan that repaid HEAL loans, there is no maximum interest rate.

The average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending on June 30, 2023, is 5.27 percent.

The statutory add-on percentages and maximum interest rates vary depending on loan type and when the loan was first disbursed. In addition, the add-on percentage for certain Stafford Loans is different depending on whether the loan is in an in-school, grace, or deferment status, or in any other status. If the interest rate calculated in accordance with the applicable formula exceeds the statutory maximum interest rate, the statutory maximum rate applies.

Charts 1 through 4 show the interest rate formulas that are used to determine the interest rates for all variable-rate FFEL Program loans and the interest rates that are in effect during the 12-month period from July 1, 2023, through June 30, 2024. Unless otherwise indicated, the cohorts shown in each chart include all borrowers, regardless of prior borrowing.

Chart 1 shows the interest rates for loans with rates based on the 91-day Treasury bill, with the exception of ''converted'' variable-rate Federal Stafford Loans and certain Federal Consolidation Loans.

Chart 2 shows the interest rates for loans with rates based on the weekly average of the one-year constant maturity Treasury yield.

Chart 3 shows the interest rates for ''converted'' variable-rate Federal Stafford Loans. These are loans that originally had varying fixed interest rates.

Finally, Chart 4 shows the interest rates for variable-rate Federal Consolidation Loans, and for the portion of any Federal Consolidation Loan that repaid loans made under the HEAL Program.

CHART 1—SUBSIDIZED FEDERAL STAFFORD LOANS, UNSUBSIDIZED FEDERAL STAFFORD LOANS, AND FEDERAL PLUS LOANS

[Interest rate based on 91-day Treasury bill]

Loan type	Cohort	91-Day T-bill rate 05/30/23 (%)	Add-on (%)		Maximum rate (%)	Interest rate 07/01/23 through 06/30/24 (%)	
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on/after 07/01/98 and before 07/01/06.	5.46	1.70 (in-school, grace, deferment).	2.30 (any other status).	8.25	7.16 (in-school, grace, deferment).	7.76 (any other status).
PLUS	First disbursed on/after 07/01/98 and before 07/01/06.	5.46	3.10		9.00	8.56	

CHART 1—SUBSIDIZED FEDERAL STAFFORD LOANS, UNSUBSIDIZED FEDERAL STAFFORD LOANS, AND FEDERAL PLUS LOANS—Continued

[Interest rate based on 91-day Treasury bill]

Loan type	Cohort	91-Day T-bill rate 05/30/23 (%)	Add-on (%)		Maximum rate (%)	Interest rate 07/01/23 through 06/30/24 (%)	
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on/after 07/01/95 and before 07/01/98.	5.46	2.50 (in-school, grace, deferment).	3.10 (any other status).	8.25	7.96 (in-school, grace, deferment).	8.25 (any other status).
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on/after 07/01/94 and before 07/01/95, for a period of enrollment that included or began on or after 07/01/94.	5.46	3.10		8.25	8.25	
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on/after 10/01/92 and before 07/01/94; and First disbursed on/after 07/01/94, for a period of enrollment ending before 07/01/94 (new borrowers).	5.46	3.10		9.00	8.56	

CHART 2—FEDERAL PLUS LOANS AND SLS LOANS

[Interest rate based on weekly average of one-year constant maturity Treasury yield]

Loan type	Cohort	Weekly average of 1-year constant maturity Treasury yield for last calendar week ending on or before 06/26/23 (%)	Add-on (%)	Maximum rate (%)	Interest rate 07/01/23 through 06/30/24 (%)
PLUS	First disbursed on/after 07/01/94 and before 07/01/98.	5.26	3.10	9.00	8.36
PLUS	First disbursed on/after 10/01/92 and before 07/01/94.	5.26	3.10	10.00	8.36
SLS	First disbursed on/after 10/01/92, for a period of enrollment beginning before 07/01/94.	5.26	3.10	11.00	8.36
PLUS, SLS	First disbursed before 10/01/92	5.26	3.25	12.00	8.51

CHART 3—"CONVERTED" VARIABLE-RATE SUBSIDIZED AND UNSUBSIDIZED FEDERAL STAFFORD LOANS

[Interest rate based on 91-day Treasury bill]

Loan type	Cohort	Original fixed interest rate (later converted to variable rate) (%)	91-Day T-bill rate 05/30/23 (%)	Add-on (%)	Maximum rate (%)	Interest rate 07/01/23 through 06/30/24 (%)
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/23/92 and before 07/01/94 (prior borrowers).	8.00, increasing to 10.00.	5.46	3.10	10.00	8.56
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/23/92 and before 07/01/94 (prior borrowers).	9.00	5.46	3.10	9.00	8.56
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/23/92 and before 07/01/94 (prior borrowers).	8.00	5.46	3.10	8.00	8.00

CHART 3—"CONVERTED" VARIABLE-RATE SUBSIDIZED AND UNSUBSIDIZED FEDERAL STAFFORD LOANS—Continued

[Interest rate based on 91-day Treasury bill]

Loan type	Cohort	Original fixed interest rate (later converted to variable rate) (%)	91-Day T-bill rate 05/30/23 (%)	Add-on (%)	Maximum rate (%)	Interest rate 07/01/23 through 06/30/24 (%)
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/23/92 and before 07/01/94 (prior borrowers).	7.00	5.46	3.10	7.00	7.00
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/23/92 and before 10/01/92 (new borrowers).	8.00, increasing to 10.00.	5.46	3.25	10.00	8.71
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/01/88 and before 07/23/92.	8.00, increasing to 10.00.	5.46	3.25	10.00	8.71

CHART 4—FEDERAL CONSOLIDATION LOANS

Consolidation loan component	Cohort	91-Day T-bill rate 05/30/23 (%)	Average of the bond equivalent rates of the 91-day T-bills auctioned for the quarter ending 06/30/23 (%)	Add-on (%)	Maximum rate (%)	Interest rate 07/01/23 through 06/30/24 (%)
Portion of loan that repaid loans other than HEAL loans.	Application received on/after 11/13/97 and before 10/01/98.	5.46	N/A	3.10	8.25	8.25
Portion of the loan that repaid HEAL loans.	Application received on/after 11/13/97.	N/A	5.27	3.00	None	8.27

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 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.

Program Authority: 20 U.S.C. 1071 *et seq.*

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2023–26054 Filed 11–24–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0196]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; American Indian Tribally Controlled Colleges and Universities Program (1894–0001)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 27, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Go to *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Everardo Gil-Melgoza, 202–987–0431.

SUPPLEMENTARY INFORMATION: 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: American Indian Tribally Controlled Colleges and Universities Program (1894–0001).

OMB Control Number: 1840–0817.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 70.

Total Estimated Number of Annual Burden Hours: 840.

Abstract: The information is required of institutions of higher education that apply for grants under the Tribally Controlled Colleges and Universities Program authorized under Title III, Parts A and F, of the Higher Education Act of 1965, as amended. This information will be used in making funding recommendations.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: November 21, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–26029 Filed 11–24–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Progression to Net-Zero Emission Propulsion Technologies for the Rail Sector

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its Request for Information (RFI) number DE–FOA–0003186 regarding the state of technology on the progression to net-zero emission propulsion technologies for the rail industry. The purpose of this RFI is to aggregate knowledge from rail stakeholders to help direct actions regarding future propulsion technologies, infrastructure requirements, and coordination among key stakeholders to ensure that the rail sector is meeting or exceeding U.S. decarbonization milestones. DOE's Office of Energy Efficiency and Renewable Energy (EERE) is specifically interested in information on the rail industry's current alternative fuels trajectory, the driving forces behind it, and the key barriers to achieving this transition.

DATES: Responses to the RFI must be received by January 12th, 2024.

ADDRESSES: Interested parties are to submit comments electronically to *GreenRail@ee.doe.gov.* Include ''State of the Rail Industry'' in the subject line of the email. Only electronic responses will be accepted. The complete RFI document is located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Ben Simon at *GreenRail@ee.doe.gov or 240–562–1591.* Further instruction can be found in the RFI document posted on EERE Exchange.

SUPPLEMENTARY INFORMATION: The U.S. National Blueprint for Transportation Decarbonization set the goal to achieve net-zero carbon emissions in the transportation sector—including rail—by 2050. This transformation to net-zero emission technologies requires coordination among all aspects of the rail supply chain, including feedstock supply, alternative fuel production, locomotive engine manufacturers, safety implementation, customer demand, and government regulation. To develop a national strategy to decarbonize the rail sector, two critical questions must be addressed:

1—Which alternative rail propulsion technologies are most promising?

2—What is the timeline for the rail sector to transition to net-zero emission technologies?

The purpose of this RFI is to understand what is driving the rail sector towards adopting alternative propulsion technologies, which technologies seem most promising, and what are the key barriers to achieving the transition to net-zero emissions by 2050.

The RFI is available at: *https://eere-exchange.energy.gov/Default.aspx#FoaIdf0ca0a9f-6e0e-4175-b20a-1bdbb682d705.*

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority: This document of the Department of Energy was signed on November 20th, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 21, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–26056 Filed 11–24–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; System of Records

AGENCY: Office of the Chief Information Officer, Department of Energy.

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circulars A–108 and A–130, the Department of Energy (DOE or the Department) is publishing notice of a modification of the DOE systems of records notices for the DOE systems of records listed in the table. Pursuant to OMB M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information'' (January 3, 2017), this notice amends the DOE systems of records listed in the table by adding two new routine uses to ensure that the Department can assist another agency in responding to a confirmed or suspected breach, as appropriate.

DATES: This modified system of records notice will become applicable following the end of the public comment period on December 27, 2023.

ADDRESSES: Written comments should be sent to Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm 8H–085, Washington, DC 20585, or by facsimile at (202) 586–8151, or by email at *privacy@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm 8H–085, Washington, DC 20585, or by facsimile at (202) 586–8151, or by email at *privacy@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 3, 2017, OMB issued Memorandum M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' to the heads of all executive departments and agencies. OMB Memorandum M–17–12 rescinds and replaces OMB Memorandum M–07–16 and updates agency routine use requirements for responding to a breach. Specifically, OMB Memorandum M–17–12 requires all Senior Agency Officials for Privacy to ensure that their agency's system of records notices include a routine use for the disclosure of information necessary to respond to a breach of the agency's personally identifiable information. Additionally, OMB Memorandum M–17–12 requires agencies to add a routine use to ensure that agencies can disclose records in their systems of records that may reasonably be needed by another agency in responding to a breach. Therefore, pursuant to OMB Memorandum M–17–12, this notice (1) revises the breach response use for the DOE systems of records listed below; and (2) adds a new routine use to the DOE systems of records listed in the table, to ensure that the Department can assist another agency in responding to a confirmed or suspected breach, as appropriate.

SYSTEM NAME AND NUMBER:

First, the systems of records to be modified by including the two new routine uses described in this Notice are set forth in the table. As these two routine uses are additional new routine uses, please refer to the specific individual SORN for other routine uses unchanged by this notice. Second, please refer to the specific individual SORN for additional governing elements unchanged by this notice.

System No. and name	**Federal Register**, citation(s)
DOE–1 Grievance Records	74 FR 998*.
DOE–2 DOE-Personnel Supervisor Maintained Personnel Records	74 FR 999*.
DOE–4 Form EIA–457 Survey Reports, Residential Energy Consumption Survey (RECS)	74 FR 1002*.
DOE–5 Personnel Records of Former Contractor Employees	74 FR 1003*.
DOE–7 Whistleblower Investigation, Hearings, and Appeals Records	74 FR 1005*.
DOE–8 Intergovernmental Personnel Act (IPA) Agreements	74 FR 1006*.
DOE–9 Members of DOE Advisory Committees	74 FR 1007*.
DOE–10 Energy Employees Occupational Illness Compensation Program Act Files	74 FR 1008*.
DOE–11 Emergency Operations Notification Call List	74 FR 1011*.
DOE–12 Automated Materials Property System (AMPS)	74 FR 1012*.
DOE–13 Payroll and Leave Records	74 FR 1012*.
DOE–14 Report of Compensation	74 FR 1014*.
DOE–15 Intelligence-Related Access Authorization	74 FR 1016*.
DOE–16 Federal Employee Subsidy Program Records	74 FR 1018*.
DOE–17 DOE Alert System (Proposed New System—[DOE Number is being reissued]	74 FR 1019*.
DOE–18 Financial Accounting System	74 FR 1020*.
DOE–21 Asset Readiness Management System (ARMS)	74 FR 1022*.
DOE–23 Property Accountability System	74 FR 1023*.
DOE–24 Land Records System	74 FR 1024*.
DOE–25 U.S. DOE Commuter Locator and Parking Space Information System	74 FR 1025*.
DOE 26 Official Travel Records	74 FR 1026*.
DOE–27 Foreign Travel Management System (FTMS)	74 FR 1028*.
DOE–28 General Training Records	74 FR 1029*.
DOE–31 Firearms Qualification Records	74 FR 1030*.
DOE–33 Personnel Medical Records	74 FR 1032*.
DOE–34 Employee Assistance Program (EAP) Records	74 FR 1035*.
DOE–35 Personnel Radiation Exposure Records	74 FR 1037*.
DOE–38 Occupational and Industrial Accident Records	74 FR 1039*.
DOE–41 Legal Files (Claims, Litigation, Criminal Violations, Patents, and Others)	74 FR 1042*.
DOE–44 Special Access Authorization for Categories of Classified Information	74 FR 1045*.
DOE–45 Weapons Data Access Control System (WDACS)	74 FR 1047*.
DOE–46 Administrative Review Files	74 FR 1048*.
DOE–48 Security Education and/or Infraction Reports	74 FR 1049*.
DOE–49 Security Communications File	74 FR 1051*.
DOE–50 Human Reliability Program Records	74 FR 1052*.
DOE–51 Employee and Visitor Access Control Records	74 FR 1053*.
DOE–52 Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Start Printed Contractor Sites.	74 FR 1055*.
DOE–53 Access Authorization for ADP Equipment	74 FR 1057*.
DOE–54 Investigative Files of the Inspector General	74 FR 1058*.

System No. and name	Federal Register, citation(s)
DOE–55 Freedom of Information and Privacy Act (FOIA/PA) Requests for Records	74 FR 1059*.
DOE–56 Congressional Constituent Inquiries	74 FR 1061*.
DOE–57 Congressional Profiles	74 FR 1062*.
DOE–58 General Correspondence Files of the Office of the Secretary of Energy, Deputy Secretary and Under Secretary of Energy.	74 FR 1063*.
DOE–59 Mailing Lists for Requesters of Energy-Related Information	74 FR 1064*.
DOE–60 General Correspondence Files	74 FR 1065*.
DOE–61 Census of High Energy Physicists	74 FR 1066*.
DOE–62 Historical Files—Published Information Concerning Selected Persons in the Energy Field	74 FR 1067*.
DOE–63 Personal Identity Verification (PIV) Files	74 FR 1068*.
DOE–66 Power Sales to Individuals	74 FR 1071*.
DOE–71 The Radiation Accident Registry	74 FR 1072*.
DOE–72 The DOE Radiation Study Registry	74 FR 1073*.
DOE–73 The US–DPTA Registry	74 FR 1075*.
DOE–75 Call Detail Records	74 FR 1077*.
DOE–77 Physical Fitness Test Records	74 FR 1078*.
DOE–81 Counterintelligence Administrative and Analytical Records and Reports	74 FR 1080*.
DOE–82 Grant and Contract Records for Research Projects, Science Education, and Related Activities	74 FR 1082*.
DOE–83 Allegation-Based Inspection Files of the Office of Inspector General	74 FR 1083*.
DOE–84 Counterintelligence Investigative Records	74 FR 1084*.
DOE–86 Human Radiation Experiments Records	74 FR 1086*.
DOE–88 Epidemiologic and Other Health Studies, Surveys, and Surveillances	74 FR 1088*.
DOE–3 Employee Concerns Program Records	74 FR 41691*.
DOE–43 Personnel Security Files	76 FR 66917*.

An asterisk (*) designates the last full **Federal Register** notice that includes all the elements that are required to be in a System of Records Notice.

SECURITY CLASSIFICATION:

The applicable security classification is identified in each notice.

SYSTEM LOCATION:

The applicable Departmental Element is identified in each notice.

SYSTEM MANAGER(S):

The applicable system manager(s) is identified in each notice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOE (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. A record from this system may be disclosed as a routine use to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

These routine uses will be added to each SORN as they are updated and republished.

HISTORY:

The SORNs listed previously were last published in the **Federal Register** (FR), 74 FR 998–1090, on January 9, 2009, 74 FR 41691–41693, on August 18, 2009, and 76 FR 66917–66920, on October 28, 2011.

Signing Authority

This document of the Department of Energy was signed on October 12, 2023, by Ann Dunkin, Senior Agency Official for Privacy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 20, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–26002 Filed 11–24–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; System of Records

AGENCY: U.S. Department of Energy.

ACTION: Notice of a new system of records.

SUMMARY: As required by the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circulars A–108 and A–130, the Department of Energy (DOE or the Department) is publishing notice of a new Privacy Act System of Records. DOE proposes to establish System of Records DOE–78 Data Analytics Program Records. The Office of the Inspector General (OIG) proposes to establish this System of Records to undertake such analytics inquiries necessary to support OIG efforts to effectuate audits, inspections, evaluations, and investigations relating to Departmental programs and operations and to accommodate the requirements of the Digital

Accountability and Transparency Act of 2014 (DATA Act).

DATES: This new SORN will become applicable 30 days after the publication of the Final Rule associated with the ''Exemptions Promulgated for the System'' detailed below.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503 and to Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm. 8H–085, Washington, DC 20585 or by facsimile at 202–586–8151 or by email at *privacy@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm. 8H–085, Washington, DC 20585 or by facsimile at 202–586–8151 or by email at *privacy@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Under the Inspector General Act of 1978, Inspectors General, including the DOE Inspector General, are responsible for determining, conducting, supervising, and coordinating audits, inspections, evaluations, and investigations relating to programs and operations of the Federal agency for which their office is established to recognize and mitigate fraud, waste, and abuse. OIG is already utilizing existing systems of records which will remain in effect. This System of Records supports OIG's performance of its statutory responsibility through a data analytics program to conduct such activities necessary to: (1) assess risk to Departmental programs and operations; (2) determine, conduct, supervise, and coordinate audits, inspections, evaluations, and investigations relating to Departmental programs and operations; (3) promote economic efficiency and effective administration of programs; (4) prevent and detect fraud, waste and abuse in Departmental programs and operations; and (5) to accommodate the requirements of the DATA Act, Public Law 113–101, 31 31 U.S.C. 6101 note, 128 Stat. 1146.

Such activities may include, but are not limited to, analyzing (1) financial, operational, and performance information for fraud, inconsistencies, or unauthorized expenses; (2) contractor, subcontractor, grantee, subgrantee, and other awardees' corporate relationships, operations, and legal assertions as well as compliance with laws, rules, regulations, and best practices; (3) individual compliance with laws, rules, regulations, legal guidance, and Departmental orders; (4) program and operational adherence to laws, rules, regulations, and best practices; and (5) Departmental risks.

The data analytics program will provide OIG with timely insights from the data: (1) developed and maintained by OIG, General Accountability Office, and other DOE-related oversight organizations; (2) stored in DOE databases that OIG has legal authorization to access and maintain; (3) held by DOE contractors, subcontractors, grantees, and subgrantees that OIG has legal and Departmental authority to obtain and maintain; (4) collected by the Offices of Inspectors General of other Federal Departments and Agencies; and (5) publicly available data and data purchased from commercial vendors related to Departmental programs and operations. Commercial data supplements other data and is not a primary data source.

Pursuant to 5 U.S.C. 552a(b)(12), records maintained in this System of Records may be disclosed to a consumer reporting agency without the prior written consent of the individual to whom the record pertains. Such disclosure will only be made in accordance with 31 U.S.C. 3711(e). In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new System of Records.

Definitions: Any reference to the ''Department'' or ''DOE'' includes Departmental elements, the National Nuclear Security Administration, Energy Information Administration, Power Marketing Administrations, and Federal Energy Regulatory Commission. Any reference to ''contractor(s)'' in this System of Records Notice (SORN) includes management and operating (M&O) contractors, prime contractors, and any business entity with a direct contractual relationship with the Department. Any reference to ''subcontractor(s)'' in this SORN includes any business entity with an indirect contractual relationship with the Department as well as any business entity with a contractual relationship with the Department's contractors. Any general reference to ''employee(s)'' in this SORN includes, but is not limited to, federal employees, contractor employees, subcontractor employees, grantee employees, subgrantee employees, and any other individual, paid or unpaid, who provides goods or services to the Department or its contractors (*e.g.,* interns).

SYSTEM NAME AND NUMBER:

DOE–78 Data Analytics Program Records.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

This System of Records will primarily be held in a Federal Risk and Authorization Management Program (FedRAMP)-approved Government Cloud. Access to these electronic records includes any locations that the Department's OIG operates or that support OIG operations, including but not limited to, OIG Headquarters in the Forrestal Building (1000 Independence Ave. SW, Washington, DC 20585). Some or all system information may also be duplicated at other locations where the Department has granted direct access to support OIG operations, system backup, emergency preparedness, or continuity of operations. To determine the location of particular records, contact the system manager, whose contact information is listed in the System Managers section.

SYSTEM MANAGER(S):

Assistant Inspector General for Cybersecurity Assessments and Data Analytics, Kshemendra Paul, Office of the Inspector General, Department of Energy, 1000 Independence Ave. SW, Rm. 5B–250, Washington, DC 20585.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* Inspector General Act of 1978, as amended, 5 U.S.C. 401–424, Public Law 95–452; DATA Act, Public Law 113–101, 31 U.S.C. 6101 note, 128 Stat. 1146; 31 U.S.C. 3521 *et seq.;* Inspector General Empowerment Act of 2016, Public Law 114–317, 130 Stat. 1595.

PURPOSE(S) OF THE SYSTEM:

The system will aggregate, store, and use data OIG has the legal authority to collect and maintain to perform statistical analytics, data science, link analysis, and other mathematical techniques. The primary goal of this work is to identify anomalies that may indicate systemic or specific risks as well as fraudulent, abusive, wasteful, unlawful, or unethical activity in DOE programs and operations. The analysis may support other parts of OIG by helping to identify specific areas for OIG attention or the development of risk indicators. Other parts of OIG may use the analytic output of the system to determine predication or indication for audits, inspections, evaluations, and investigations, including joint refinement of preliminary analysis, under their specific authorities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by the system include current and former: DOE employees; DOE contractor, subcontractor, or consultant employees; persons suspected of violating DOE regulations, policies, or laws; recipients of DOE grants, awards, or funds, whether direct or indirect; parties to DOE cooperative agreements; non-appropriated funded employees; and interns of DOE.

CATEGORIES OF RECORDS IN THE SYSTEM:

In connection with OIG's broad oversight responsibilities to recognize and mitigate fraud, waste, abuse, and mismanagement in the programs and operations of the Department, this system may retain any or all the categories of records available in current and prior, previously approved DOE SORNs, such as those available at 74 FR 994 (January 9, 2009).

In connection with OIG's broad oversight responsibilities of the programs and operations of the Department to recognize and mitigate fraud, waste, abuse, and mismanagement, examples of data the system may contain, link, or access include the following types of data:

- Any unique identifiers for Department employees and applicants for employment with the Department (*e.g.,* DOE OneID, employee number, and any other government identifier);
- Any personally identifiable information (PII) or combination of PII that can be used to identify a specific individual (*e.g.,* name, date of birth, Social Security numbers, corporate-issued identifier such as a frequent flyer number);
- Department charge card data (*e.g.,* travel, purchase, fleet and integrated card transactions);
- Records of purchases of goods and services by the Department, contractors, subcontractors, grantees, and subgrantees;
- Federal, contractor, and subcontractor contracting actions and every modification thereof;
- Single audit results;
- Lists of Departmental contractors, subcontractors, grantees, and subgrantees; their ownership, officers and directors, auditors, and significant vendors;
- Lists of Departmental contractor, subcontractor, grantee, and subgrantee employees; their work unit, compensation, and timekeeping records;
- Financial awardees (grants and contracts) related to scientific research, indirect programs, etc.;
- Any bidding information related to procurement or any type of financial assistance, including grants and cooperative agreements;
- Any attempt to form a monetary or non-monetary (*e.g.,* intellectual property) relationship with the Department;
- Lists of IP addresses maintained by the Department and contractors that support Departmental activities (*e.g.,* online transactions);
- Lists of system identifiers/location information assigned to Departmental network;
- Travel records (*e.g.,* Department travel records and General Services Administration travel records);
- Timekeeping, project charge codes, and payroll information (including banking data); or
- Records, reports, and files from other parts of the Department, its contractors, subcontractors, and other Federal Agencies.

RECORD SOURCE CATEGORIES:

The records within this System of Records are sourced from the following: the subjects of audits, inspections, evaluations, and investigations; individuals with whom the subjects of investigations are associated; current and former Departmental officers and employees; Federal, State, local, foreign, tribal, and territorial agencies; other Offices of Inspectors General; other Federal databases; private citizens; witnesses; informants; public source materials; contractors, subcontractors, grantees, and subgrantees; financial institutions including those managing Department credit card and payroll information; and the system managers, or individuals acting on a system manager's behalf, for the DOE systems of records OIG has legal authorization to collect and maintain as part of its responsibility to conduct, supervise, and coordinate audits, inspections, evaluations, and investigations of Department programs and operations to recognize and mitigate fraud, waste, and abuse.

Public source materials (open data) can include information derived from websites, maps, and other similar information. Open data may be used on an *ad hoc, predicated* basis to support situations when there is a specific need. The collection of information from open data sources will be managed in accordance with the legal and regulatory framework protecting the civil rights and civil liberties of individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside of DOE as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. A record from the system may be disclosed as a routine use to the appropriate local, tribal, state, or federal agency when records, alone or in conjunction with other information, indicate a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

2. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witnesses, potential witnesses, or their representatives and assistants; and (4) any other persons who possess information pertaining to the matter when it is relevant and necessary to obtain information or testimony relevant to the matter.

3. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

a. The Department, its predecessor agencies, current or former contractor of the Department, or other United States Government agencies and their components, or

b. A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

4. A record from the system may be disclosed as a routine use to DOE contractors, subcontractors, grantees, and subgrantees in performance of their contracts, and their officers and

employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

5. A record from this system of records may be disclosed as a routine use to a Federal, state, tribal, or local agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

6. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's signed request for assistance.

7. A record from this system may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the System of Records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOE (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. A record from this system may be disclosed as a routine use to another Federal agency or Federal entity, when the Department determines that information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

9. A record from this system may be disclosed as a routine use to another federal, state, local, foreign, territorial, or tribal unit of government, including an Office of Inspector General, Congressional oversight committees/subcommittees, and Government Accountability Office, for the purposes of identifying fraud, waste, abuse, or improper payments related to federal programs, employees, contractors, subcontractors, grantees, subgrantees, or other beneficiaries of federal funds.

10. A record from this system may be disclosed as a routine use to complainants or victims to the extent necessary to provide such persons with information and explanations concerning the progress or results of the investigations or cases arising from the matters of which they complained or of which they were a victim.

11. A record from this system may be disclosed as a routine use to any person or entity that OIG has reason to believe possesses information regarding a matter within the jurisdiction of OIG, to the extent deemed to be necessary by OIG in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in an electronic form in a framework of computer systems that allows distributed processing of data sets in a cloud infrastructure. Records are stored securely in accordance with applicable executive orders, statutes, and agency implementing recommendations. Any electronic records that are stored on hard disks, removable storage devices, or other physical media are similarly stored securely in accordance with applicable executive orders, statutes, and agency implementing recommendations. Records may be stored as paper records and maintained in locked cabinets.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records can be retrieved by name or other identifiers, including but not limited to: a surname; Social Security number; Taxpayer Identification Number, including Employer Identification Number; email address; physical address; telephone number; bank account numbers; data elements from government-issued identification, such as driver's license or photo identification number; OIG-assigned case numbers; Alien Registration Number; assigned DOE charge card information; DOE unique identifier; any other DOE-assigned numbers; geo-code location (*e.g.,* physical addresses converted into geographic coordinates on a map); internet Protocol (IP) address; organizational name; employee payroll identifier; General Services Administration (GSA) Unique Entity Identifier; Data Universal Numbering System (DUNS number); grant awards; financial assistance awards; photographs; biometric information; or any other unique identifier that can be linked to an individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with the applicable records schedule for the systems from which they were collected. Any unscheduled records will be retained indefinitely, until they have been scheduled with the National Archives and Records Administration and have become eligible for disposition under those schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records may be secured and maintained on a cloud-based software server and operating system that resides in FedRAMP and Federal Information Security Modernization Act (FISMA) hosting environment. Data located in the cloud-based server is firewalled and encrypted at rest and in transit. The security mechanisms for handling data at rest and in transit are in accordance with DOE encryption standards. Records are protected from unauthorized access through the following appropriate safeguards:

- *Administrative:* Access to all records is limited to lawful government purposes only, with access to electronic records based on role and either two-factor authentication or password protection. The system requires passwords to be complex and to be changed frequently. Users accessing system records undergo frequent training in Privacy Act and information security requirements. Security and privacy controls are reviewed on an ongoing basis.
- *Technical:* Computerized records systems are safeguarded on Departmental networks configured for role-based access based on job responsibilities and organizational affiliation. Privacy and security controls are in place for this system and are updated in accordance with applicable requirements as determined by the National Institute of Standards and Technology and DOE directives and guidance.

• *Physical:* Computer servers on which electronic records are stored are located in secured Department facilities, which are protected by security guards, identification badges, and cameras. Paper copies of all records are locked in file cabinets, file rooms, or offices and are under the control of authorized personnel. Access to these facilities is granted only to authorized personnel and each person granted access to the system must be an individual authorized to use and/or administer the system.

RECORD ACCESS PROCEDURES:

The Department follows the procedures outlined in title 10 Code of Federal Regulations (CFR) part 1008.4. Valid identification of the individual making the request is required before information will be processed, given, access granted, or a correction considered, to ensure that information is processed, given, disclosed, or corrected only at the request of the proper person.

CONTESTING RECORD PROCEDURES:

Any individual may submit a request to the System Manager and request a copy of any records relating to them. In accordance with 10 CFR 1008.11, any individual may appeal the denial of a request made by him or her for information about or for access to or correction or amendment of records. An appeal shall be filed within 90 calendar days after receipt of the denial. When an appeal is filed by mail, the postmark is conclusive as to timeliness. The appeal shall be in writing and must be signed by the individual. The words ''PRIVACY ACT APPEAL'' should appear in capital letters on the envelope and the letter. Appeals of denials relating to records maintained in government-wide System of Records reported by Office of Personnel Management (OPM), shall be filed, as appropriate, with the Assistant Director for Agency Compliance and Evaluation, OPM, 1900 E Street NW, Washington, DC 20415. All other appeals relating to DOE records shall be directed to the Director, Office of Hearings and Appeals (OHA), 1000 Independence Ave. SW, Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, 10 CFR part 1008, a request by an individual to determine if a System of Records contains information about themselves should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name and the time period for which records are sought.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary plans to exempt this system from subsections (c)(3) and (4); (d)(1)–(4); (e)(1)–(3), (4)(G), (4)(H), and (4)(I); (e)(5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5). The exemptions will be applied only to the extent that the information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) or (k)(5). Rules are in the process of being promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e), and will be published in the **Federal Register**.

HISTORY:

This notice proposes to establish DOE–78 Data Analytics Program Records as a new System of Records. There has been no previous publication in the **Federal Register** pertaining to this System of Records.

Signing Authority

This document of the Department of Energy was signed on November 9, 2023, by Ann Dunkin, Senior Agency Official for Privacy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 20, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–25983 Filed 11–24–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. 22–167–LNG]

Notice of Availability for the Draft Environmental Assessment for the Mexico Pacific Limited Facility

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) has prepared a Draft Environmental Assessment (EA) to determine how to review the potential environmental impacts associated with authorizing Mexico Pacific Limited LLC (MPL) to export natural gas to Mexico and, after liquefaction in Mexico, to other countries from the proposed MPL Facility. DOE is also announcing a public comment period to receive comments on the Draft EA. DOE prepared the Draft EA in accordance with the National Environmental Policy Act of 1969 (NEPA), to inform its decision on authorization under the Natural Gas Act (NGA).

DATES: The 30-day public comment period extends from the date of publication of this Notice in the **Federal Register** through December 27, 2023.

ADDRESSES: Questions concerning the Draft EA or requests for a paper copy should be directed to: Brian Lavoie via email to *brian.lavoie@hq.doe.gov* or phone at (202) 586–2459.

Electronic Filing by email (Strongly encouraged): fergas@hq.doe.gov.

Postal Mail, Hand Delivery, or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–056, 1000 Independence Avenue SW, Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit filings electronically to ensure timely receipt.

An electronic copy of the Draft EA may be found online on the following website: *https://www.energy.gov/sites/default/files/2023-11/MPL_Draft%20Environmental%20Assessment_Final_11.21.23.pdf.*

FOR FURTHER INFORMATION CONTACT: Brian Lavoie, U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2459, *brian.lavoie@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2022, MPL filed an application (Application) [1] with DOE's

[1] Mexico Pacific Limited LLC, Application for Additional Long-Term, Multi-Contract Authorization to Export Natural Gas to Mexico and to Re-Export Liquefied Natural Gas to Free Trade

Office of Fossil Energy and Carbon Management (FECM) under section 3 of the Natural Gas Act (NGA).[2] MPL supplemented its Application on January 24, 2023.[3] MPL stated that it was seeking additional export authority in connection with the continuing development of its proposed liquefied natural gas (LNG) production and offtake facility, referred to as the MPL Facility, to be located on the Gulf of California, in the State of Sonora, Mexico.[4] Previously, in Docket No. 18–70–LNG, DOE authorized MPL to export U.S.-sourced LNG from the MPL Facility in a total volume equivalent to 621 billion cubic feet (Bcf) per year (Bcf/yr) of natural gas. MPL also stated that it has since advanced and refined the Facility's design to ''enhance the efficiency and optimize the operational capabilities of the MPL Facility.'' [5]

MPL requests long-term, multi-contract authorization to export an additional quantity of U.S.-sourced natural gas to Mexico, and after liquefaction in Mexico, to other countries, in a total volume equivalent to 425.57 billion cubic feet (Bcf) per year (Bcf/yr) of natural gas (1.17 Bcf per day (Bcf/d)),[6] as follows:

(i) To use approximately 134.35 Bcf/yr (0.37 Bcf/d) in Mexico as ''fuel for pipeline transportation or liquefaction in Mexico;'' [7]

(ii) To use approximately 291.22 Bcf/yr of natural gas (0.80 Bcf/d) of natural gas in the proposed MPL Facility, where the U.S.-sourced natural gas would be liquefied, then re-exported [8] as LNG by vessel to:

(a) Any country with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries), under NGA section 3(c); [9] and

(b) Any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries), under NGA section 3(a).[10]

MPL requests these FTA and non-FTA authorizations on a non-additive basis for a term to commence on the earlier of the date of first export or seven years from the date of the final order granting export authorization, and extending through December 31, 2050.[11] MPL states that the total volume of 425.57 Bcf/yr that it is seeking authorization to export, when added to the 621 Bcf/yr that MPL is currently authorized to export in Docket No. 18–70–LNG, would equal a total of 1,046.57 Bcf/yr to be exported from the MPL Facility.[12]

On April 28, 2023, in Order No. 4995, DOE granted the FTA portion of the Application, as required by NGA section 3(c).[13] MPL is thus authorized to export natural gas to Mexico in the total requested additional volume of 425.57 Bcf/yr of natural gas—which includes export by pipeline for use as a fuel for pipeline transportation or liquefaction (134.35 Bcf/yr) and re-export after liquefaction in Mexico to FTA countries (291.22 Bcf/yr).[14] The requested non-FTA volume, if approved, would not be additive to this FTA volume.

According to MPL, the U.S-sourced natural gas would be exported to Mexico at the United States-Mexico border via existing and, potentially, future cross-border natural gas transmission pipelines.[15] MPL adds that it would not source natural gas for the MPL Facility from Mexico.[16] MPL plans initially to receive the natural gas produced in the United States and exported to Mexico through existing cross-border natural gas transmission pipelines, including an interstate pipeline owned by Sierrita Gas Pipeline LLC, and intrastate natural gas pipelines owned by Comanche Trail Pipeline, LLC, Roadrunner Gas Transmission, LLC and Trans Pecos Pipeline, LLC.[17] MPL asserts that, if the proposed border crossing pipeline owned by Saguaro Connector Pipeline, L.L.C. obtains authorization and the related Presidential Permit from the Federal Energy Regulatory Commission (FERC), MPL would expect to add that pipeline to the several existing pipeline routes over which MPL and its customers may transport natural gas from the United States to Mexico for delivery to the MPL Facility.[18]

For the non-FTA portion of MPL's request,[19] DOE published a notice of the Application in the **Federal Register** (Notice of Application) on February 1, 2023.[20] The Notice of Application called on interested persons to submit protests, motions to intervene, notices of intervention, and comments by April 3, 2023.[21] On March 29, 2023, the Institute for Energy Economics and Financial Analysis filed comments opposing MPL's Application.[22] On April 3, 2023, Public Citizen, Inc. and Sierra Club each filed a motion to intervene and protest, with Sierra Club's filing including additional exhibits.[23]

Before reaching a final decision on a non-FTA application under NGA section 3(a), DOE must also comply with NEPA.[24] In evaluating applications for re-export authorization similar to MPL's Application, DOE has used recent guidance to inform its environmental analysis. On January 27, 2021, the President issued Executive Order (E.O.) No. 14008, *Tackling the Climate Crisis at Home and Abroad*.[25]

Agreement and Non-Free Trade Agreement Nations, Docket No. 22–167–LNG (Dec. 28, 2022) [hereinafter MPL App.].

[2] 15 U.S.C. 717b. The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA has been delegated to the Assistant Secretary for FECM in Redelegation Order No. S4–DEL–FE1–2023, issued on April 10, 2023.

[3] Mexico Pacific Limited LLC, Supplement to Application, Docket No. 22–167–LNG (Jan. 24, 2023) [hereinafter MPL App. Supp.].

[4] *See* MPL App. at 4, 6.

[5] *Id.* at 4.

[6] *Id.* at 1.

[7] *Id.* at 3.

[8] For purposes of this proceeding, ''re-export'' means to ship or transmit U.S.-sourced natural gas in its various forms (gas, compressed, or liquefied) subject to DOE's jurisdiction under the NGA, 15 U.S.C. 717b, from one foreign country (*i.e.,* a country other than the United States) to another foreign country.

[9] 15 U.S.C. 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

[10] 15 U.S.C. 717b(a); *see* MPL App. at 3, 4, 10.

[11] MPL App. at 10. Additionally, MPL requests these authorizations on its own behalf and as agent for other entities that hold title to the U.S.-sourced natural gas at the time it is exported to Mexico and/or at the time it is re-exported as LNG from Mexico. *Id.* at 11.

[12] *Id.* at 3, 8–9.

[13] *Mexico Pac. Ltd. LLC,* DOE/FECM Order No. 4995, Docket No. 22–167–LNG, Order Granting Long-Term Authorization to Export Natural Gas to Mexico and to Other Free Trade Agreement Nations (Apr. 28, 2023).

[14] *See id.* at 5, 13.

[15] *See* MPL App. at 9; *see also* MPL App. Supp. at 1–2.

[16] *See* MPL App. at 9.

[17] *See id.*

[18] MPL App. Supp. at 2.

[19] DOE finds that the requirement for public notice of applications, as well as other hearing-type procedures in 10 CFR part 590, apply only to applications seeking to export natural gas, including LNG, to non-FTA countries.

[20] *See* Mexico Pacific Limited LLC; Application for Additional Long-Term, Multi-Contract Authorization to Export U.S.-Sourced Natural Gas to Mexico and to Re-Export Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Countries; Notice of Application, 88 FR 6716 (Feb. 1, 2023) [hereinafter Notice of App.].

[21] *Id.*

[22] Institute for Energy Economics and Financial Analysis, Comments Regarding the Application to Expand Export and Re-Export Operations by Mexico Pacific Limited LLC, Docket No. 22–167–LNG (Mar. 29, 2023).

[23] Public Citizen, Inc., Motion to Intervene and Protest, Docket No. 22–167–LNG (Apr. 3, 2023); Sierra Club, Motion to Intervene and Protest, Docket No. 22–167–LNG (Apr. 3, 2023). For additional procedural history, including but not limited to Supplemental Comments subsequently filed by Sierra Club and opposed by MPL, see Docket No. 22–167–LNG.

[24] 42 U.S.C. 4321 *et seq.*

[25] E.O. 14008 sets forth policies to address climate change, specifically to ''organize and deploy the full

Continued

Additionally, on April 20, 2022, the Council on Environmental Quality (CEQ) issued a final rule for implementing CEQ's NEPA regulations, including the definition of environmental ''effects.'' [26] DOE has determined that, consistent with E.O. 14008 and its obligations under NEPA, it is appropriate to evaluate the potential environmental impacts—including the greenhouse gas emissions—of exporting (or re-exporting) U.S.-sourced LNG from the proposed MPL Facility to non-FTA countries. Therefore, on October 23, 2023, DOE issued a ''Notice of Environmental Assessment'' announcing that it is undertaking an environmental assessment (EA) under NEPA to analyze MPL's requested exports of U.S.-sourced LNG to non-FTA countries.[27]

The Draft EA examined the potential environmental impacts associated with unconventional natural gas exploration and production activities in the lower-48 states; the utilization of the cross-border pipelines that interconnect the United States and Mexico and that MPL may utilize for its U.S. natural gas supply; descriptions of Mexico's environmental review process for the construction and operation of liquefaction terminals and related facilities; marine transport of LNG exported from the proposed MPL Facility; and the global nature of GHG emissions associated with re-exporting U.S.-sourced LNG from Mexico from a life cycle perspective.

NEPA Process and Public Involvement

DOE prepared the Draft EA in accordance with the CEQ regulations at Title 40, *Code of Federal Regulations,* parts 1500–1508 (40 CFR 1500–1508) and DOE's NEPA implementing procedures at 10 CFR part 1021. DOE published a Notice of Environmental Assessment to Docket No. 22–167–LNG on October 23, 2023, announcing its intent to prepare an EA. DOE is providing opportunities for public review and comments on this Draft EA (see **DATES** and **ADDRESSES** sections of this notice).

Signed in Washington, DC, on November 21, 2023.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2023–26060 Filed 11–24–23; 8:45 am]

BILLING CODE 6450–01–P

capacity of [Federal] agencies to combat the climate crisis.'' Exec. Order No. 14008 of Jan. 27, 2021, Tackling the Climate Crisis at Home and Abroad, 86 FR 7619 (Feb. 1, 2021), *www.federalregister.gov/documents/2021/02/01/2021–02177/tackling-the-climate-crisisat-home-and-abroad.* E.O. 14008 further requires the ''Federal Government [to] drive assessment, disclosure, and mitigation of climate pollution and climate-related risks in every sector'' of the U.S. economy. *Id.*

[26] *See* Council on Envtl. Quality, National Environmental Policy Act Implementing Regulations Revisions; Final Rule, 87 FR 23453 (Apr. 20, 2022).

[27] *Mexico Pac. Ltd. LLC,* Notice of Environmental Assessment, Docket No. 22–167–LNG (Oct. 23, 2023).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–32–000.
Applicants: Jade Meadow LLC.
Description: Jade Meadow LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 11/17/23.
Accession Number: 20231117–5247.
Comment Date: 5 p.m. ET 12/8/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–1329–001.
Applicants: J.P. Morgan Ventures Energy Corporation.
Description: Compliance filing: JPMVEC Q3 2023 Notice of Change in Status Compliance Filing to be effective 11/20/2023.
Filed Date: 11/20/23.
Accession Number: 20231120–5169.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER20–59–006; ER10–1874–018; ER10–1946–018; ER10–2201–006; ER10–2721–017; ER10–2861–014; ER12–1308–017; ER13–291–005; ER13–1504–015; ER14–1468–016; ER14–2140–015; ER14–2141–015; ER14–2465–017; ER14–2466–017; ER14–2939–014; ER15–632–016; ER15–634–016; ER15–1471–016; ER15–1672–015; ER15–1952–015; ER15–2728–016; ER16–612–003; ER16–711–013; ER16–915–009; ER16–2010–010; ER16–2520–007; ER16–2561–009; ER17–318–007; ER18–97–005; ER19–8–007; ER19–9–012; ER19–2287–007; ER19–2294–007; ER19–2305–007; ER20–57–005; ER20–58–005; ER20–339–005; ER20–422–005.
Applicants: FL Solar 1, LLC, Twiggs County Solar, LLC, FL Solar 4, LLC, GA Solar 3, LLC, Valencia Power, LLC, Mesquite Power, LLC, Goal Line L.P., Mankato Energy Center II, LLC, Sweetwater Solar, LLC, MS Solar 3, LLC, Three Peaks Power, LLC, Sunflower Wind Project, LLC, Grand View PV Solar Two LLC, Hancock Wind, LLC, Comanche Solar PV, LLC, Pio Pico Energy Center, LLC, Greeley Energy Facility, LLC, Maricopa West Solar PV, LLC, Pavant Solar LLC, Evergreen Wind Power II, LLC, Blue Sky West, LLC, Cottonwood Solar, LLC, CID Solar, LLC, Imperial Valley Solar Company (IVSC) 2, LLC, RE Camelot LLC, RE Columbia Two LLC, Selmer Farm, LLC, Mulberry Farm, LLC, KMC Thermo, LLC, SWG Arapahoe, LLC, EnergyMark, LLC, Palouse Wind, LLC, Fountain Valley Power, L.L.C., El Paso Electric Company, Marina Energy, LLC, Broad River Energy LLC, Mankato Energy Center, LLC, AZ Solar 1, LLC.
Description: Notice of Non-Material Change in Status of AZ Solar 1, LLC, et al.
Filed Date: 11/20/23.
Accession Number: 20231120–5075.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER23–426–004.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2023–11–20 NAESB Compliance Filing—Version 003.3 to be effective 2/1/2024.
Filed Date: 11/20/23.
Accession Number: 20231120–5164.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER23–2663–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Submission of Response to Deficiency Letter, Original ISA, SA No. 7038 to be effective 12/31/9998.
Filed Date: 11/20/23.
Accession Number: 20231120–5143.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER24–154–000.
Applicants: BCE Los Alamitos, LLC.
Description: Supplement to October 19, 2023, BCE Los Alamitos, LLC Notice of Change in Status and Request for Cat 1 Seller Status in the SW Region to be effective 10/20/2023.
Filed Date: 11/17/23.
Accession Number: 20231117–5260.
Comment Date: 5 p.m. ET 11/27/23.

Docket Numbers: ER24–438–000.
Applicants: Jade Meadow LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 11/18/2023.
Filed Date: 11/17/23.
Accession Number: 20231117–5218.
Comment Date: 5 p.m. ET 12/8/23

Docket Numbers: ER24–440–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 6129; Queue No. AF1–287 to be effective 1/22/2024.
Filed Date: 11/20/23.

Accession Number: 20231120–5044.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER24–442–000.
Applicants: Innovative Solar 42, LLC.
Description: Compliance filing: Notice of Non-Material Change in Status and Revised Market-Based Rate Tariff to be effective 11/21/2023.
Filed Date: 11/20/23.
Accession Number: 20231120–5061.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER24–443–000.
Applicants: Deriva Energy Services, LLC.
Description: Compliance filing: Notice of Succession and Revised Market-Based Rate Tariff to be effective 11/21/2023.
Filed Date: 11/20/23.
Accession Number: 20231120–5067.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER24–444–000.
Applicants: Deriva Energy Beckjord Storage LLC.
Description: Compliance filing: Notice of Succession and Revised Market-Based Rate Tariff to be effective 11/21/2023.
Filed Date: 11/20/23.
Accession Number: 20231120–5069.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER24–445–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Photosol US Renewable Energy (Bayou Solar) LGIA Termination Filing to be effective 11/20/2023.
Filed Date: 11/20/23.
Accession Number: 20231120–5070.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER24–446–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Photosol US Renewable Energy (Mobile River Solar 1) LGIA Termination Filing to be effective 11/20/2023.
Filed Date: 11/20/23.
Accession Number: 20231120–5071.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER24–447–000.
Applicants: Santa Paula Energy Storage, LLC.
Description: § 205(d) Rate Filing: Santa Paula Energy Storage, LLC Co-Tenancy and Shared Facilities Agreement to be effective 11/21/2023.
Filed Date: 11/20/23.
Accession Number: 20231120–5076.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER24–448–000.
Applicants: ITC Midwest LLC.
Description: Baseline eTariff Filing: Filing of Contribution in Aid and Construction Agreement_ITC Midwest RS 231 to be effective 1/20/2024.
Filed Date: 11/20/23.
Accession Number: 20231120–5129.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER24–449–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, SA No. 7131; Queue No. W1–108 to be effective 1/20/2024.
Filed Date: 11/20/23.
Accession Number: 20231120–5151.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER24–450–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OA, Sch. 12 and RAA, Sch 17 re: 3Q 2023 Membership Lists to be effective 9/30/2023.
Filed Date: 11/20/23.
Accession Number: 20231120–5156.
Comment Date: 5 p.m. ET 12/11/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–26071 Filed 11–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–421–000]

JGT2 Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of JGT2 Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 11, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–26072 Filed 11–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Salt Lake City Area Integrated Projects and Colorado River Storage Project—Rate Order No. WAPA–206

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order concerning firm power fixed rates and transmission services, ancillary services, sale of surplus products, and joint dispatch transmission service formula rates.

SUMMARY: The provisional fixed rates for the Salt Lake City Area Integrated Projects (SLCA/IP) firm power service and the formula rates for the Colorado River Storage Project (CRSP) transmission services, ancillary services, sale of surplus products, and joint dispatch transmission service have been confirmed, approved, and placed into effect on an interim basis. The firm power rates under SLCA/IP Firm Power Rate Schedule SLIP–F12 expire December 31, 2023. Western Area Power Administration's (WAPA) CRSP Management Center (CRSP MC) is renewing all SLCA/IP and CRSP rates under one **Federal Register** notice (FRN), making all rates effective for the same period. These new rates replace existing firm power, transmission, ancillary services, sale of surplus products, and joint dispatch transmission service rates under Rate Orders No. WAPA–190, WAPA–195, and WAPA–199.

DATES: The provisional rates under Rate Schedules SLIP–F13, SP–NW6, SP–PTP10, SP–NFT9, SP–UU3, SP–EI6, SP–SSR6, SP–SS2, and SP–NFJDT are effective on the first day of the first full billing period beginning on or after January 1, 2024, and will remain in effect through December 31, 2028, pending confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis or until superseded. Pursuant to 10 CFR 903.21(b), the WAPA Administrator has set the effective date to align with the expiration of the existing rate.

FOR FURTHER INFORMATION CONTACT: Rodney Bailey, CRSP Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 1800 South Rio Grande Avenue, Montrose, CO 81401, 970–252–3000, or email: *CRSPMC-rate-adj@wapa.gov;* or Tamala Gheller, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 970–240–6545, or email: *CRSPMC-rate-adj@wapa.gov.*

SUPPLEMENTARY INFORMATION: On May 12, 2022, FERC approved and confirmed Rate Schedule SLIP–F12 for Firm Power Service under Rate Order No. WAPA–199 on a final basis through December 31, 2023.[1] On March 18, 2022, FERC approved and confirmed Rate Schedule SP–NFJDT for Joint Dispatch Transmission Service under Rate Order No. WAPA–195 on a final basis through September 30, 2024.[2] On December 17, 2020, FERC approved and confirmed the following rate schedules under Rate Order No. WAPA–190 on a final basis through September 30, 2025: [3] SLIP–F11 for Firm Power Service (superseded by SLIP–F12 under WAPA–199), SP–NW5 for Network Integration Transmission Service, SP–PTP9 for Firm Point-to-Point Transmission Service, SP–NFT8 for Non-Firm Point-to-Point Transmission Service, SP–UU2 for Unreserved Use Penalties, SP–E15 for Energy and Generation Imbalance, SP–SSR5 for Operating Reserves—Spinning and Supplemental Reserve Services, and SP–SS1 for Sale of Surplus Products.

On June 22, 2023, Western Area Power Administration (WAPA) published a **Federal Register** notice (Proposal FRN) (88 FR 40813) proposing new 5-year rates for firm power service, transmission services, ancillary services, sale of surplus products, and joint dispatch transmission service. The Proposal FRN initiated a 90-day public consultation and comment period and set forth the date and location of the public information and the public comment forums. The firm power rate is a fixed rate. The transmission services, ancillary services, surplus products, and joint dispatch rates continue the formula-based methodology that includes an annual update to the financial and load data in the applicable rate formulas. The inputs into the formulas and resulting charges under the rates will be annually updated on October 1.

On August 28, 2023, CRSP MC sent email notice to extend the Comment and Consultation Period for Proposed WAPA–206 from September 1, 2023, through October 3, 2023. The intent of this extension was to provide interested parties additional time to review and provide comments related to the results of the Bureau of Reclamation's August 24-month study data, along with other aspects of the rate proposal made available by WAPA during the original comment period.

Legal Authority

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the WAPA Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1–DEL–S3–2023, effective April 10, 2023, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates

[1] Order Confirming and Approving Rate Schedule on a Final Basis, FERC Docket No. EF 22–1–000 (179 FERC ¶ 62,085 (2022)).

[2] Order Confirming and Approving Rate Schedule on a Final Basis, FERC Docket No. EF 21–7–000 (178 FERC ¶ 62,154 (2022)).

[3] Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF 20–7–000 (173 FERC ¶ 61,230 (2020)).

into effect on an interim basis to WAPA's Administrator. This rate action is issued under Redelegation Order No. S3–DEL–WAPA1–2023 and Department of Energy procedures for public participation in rate adjustments set forth at 10 CFR part 903.[4]

Following DOE's review of CRSP MC's proposal, Rate Order No. WAPA–206, which provides the fixed rates for the SLCA/IP firm power service and the formula rates for the CRSP transmission services, ancillary services, sale of surplus products, and joint dispatch transmission service, is hereby confirmed, approved, and placed into effect on an interim basis. By this order, I may be placing the rates into effect in less than 30 days to meet contractual obligations and avoid financial difficulties. WAPA will submit Rate Order No. WAPA–206 to FERC for confirmation and approval on a final basis.

DEPARTMENT OF ENERGY

ADMINISTRATOR, WESTERN AREA POWER ADMINISTRATION

In the Matter of: Western Area Power Administration Colorado River Storage Project Management Center Rate Adjustment for the Salt Lake City Area Integrated Projects Firm Power Rates and the Colorado River Storage Project Transmission Services, Ancillary Services, Sale of Surplus Products, and Joint Dispatch Transmission Service

Rate Order No. WAPA–206

Order Confirming, Approving, and Placing the Fixed Firm Power Rates for the Salt Lake City Area Integrated Projects and the Formula Rates for Transmission Services, Ancillary Services, Sale of Surplus Products, and Joint Dispatch Transmission Service for the Colorado River Storage Project Into Effect on an Interim Basis

The rates in Rate Order No. WAPA–206 are established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152).[5]

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the Western Area Power Administration (WAPA) Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to the Federal Energy Regulatory Commission (FERC). By Delegation Order No. S1–DEL–S3–2023, effective April 10, 2023, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator. This rate action is issued under Redelegation Order No. S3–DEL–WAPA1–2023 and DOE procedures for public participation in rate adjustments set forth at 10 CFR part 903.[6]

Acronyms, Terms, and Definitions

As used in this Rate Order, the following acronyms, terms, and definitions apply:

Basin Fund: Upper Colorado River Basin Fund—a revolving fund that operates without annual appropriations.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kilowatts (kW).

Capacity Rate: The rate which sets forth the charges for capacity. It is expressed in $/kWmonth and applied to each kW delivered to each Customer.

CRC: Cost Recovery Charge—an additional surcharge on all SHP energy deliveries, which are long-term energy sales provided under WAPA's SLCA/IP firm electric service contracts.

CRCM: The North American Electric Reliability Corporation (NERC)-registered Joint Dispatch Transmission Service Provider for WAPA's Colorado River Storage Project Management Center (CRSP MC) transmission facilities included in the Transmission System within the Western Energy Imbalance Service (WEIS) Market Footprint.

CROD: Contract Rate of Delivery—the maximum amount of capacity made available to a Preference Customer for a period specified under a contract.

CRMMS: Colorado River Mid-term Modeling System—one of two river system models developed and maintained by Reclamation to support operational decision-making and planning for the Colorado River Basin.

CRSS: Colorado River Simulation System—is one of two river system models developed and maintained by the Bureau of Reclamation to support operational decision-making and planning for the Colorado River Basin.

Customer: Firm electric service customer(s) contractually receiving SLCA/IP power and energy.

Customer Rate Brochure: A document prepared for public distribution explaining the rationale and background for the information contained in the Proposed FRN and in this rate order.

CY: Calendar Year. When used in the CRC it is the 12-month period (January through December) the CRC is in effect.

DSA: Deliverable Sales Amount—marketable generation level, above which WAPA will forgo Purchased Power.

Energy Rate: The rate which sets forth the charge for energy. It is expressed in mills/kWh and applied to each kWh delivered to each Customer.

Firm: A type of product or service available at the time requested by the Customer.

FRN: **Federal Register** Notice—a document published in the **Federal Register**.

FY: WAPA's fiscal year, October 1 to September 30.

GWh: Gigawatthour—the electrical unit of energy that equals 1 billion watthours or 1 million kWh.

Integrated Projects: The resources and revenue requirements of the Collbran, Dolores, Rio Grande, and Seedskadee projects blended with the CRSP to create the SLCA/IP resources and rate.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatt-hour—the electrical unit of energy that equals 1,000 watts in 1 hour.

kWmonth: Kilowatt-month—the electrical unit of the monthly amount of capacity.

Load: The amount of electric power or energy delivered or required at any specified point(s) on a system.

Load Factor: The percentage of actual kWh delivered on a system in a designated period of time, as opposed to the total possible kWh that could be delivered on a system in a designated period time.

Mill: A monetary denomination of the United States that equals one tenth of a cent or one thousandth of a dollar.

MAF: Million Acre-Feet—the number of gallons of water required to cover 1 million acres, 1 foot in depth.

Mills/kWh: Mills per kilowatthour—the unit of charge for energy.

MOA: Memorandum of Agreement concerning the Basin Fund for Upper Division States to share their

[4] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

[5] This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and other acts that specifically apply to the projects involved.

[6] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

apportionment with each other through FY 2037. This agreement reduces the impact on the CRSP Firm Power rate by eliminating the collection of power revenue beyond the amount needed to repay the costs for participating irrigation projects.

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

MWh: One million watt-hours of electric energy. A unit of electrical energy which equals 1 megawatt of power used for 1 hour.

NEPA: National Environmental Policy Act of 1969, as amended.

New Rate Trigger: Under a New Rate Trigger, CRSP–MC would reassess an implemented CRC when the new rate goes into effect to determine if the implemented CRC should be superseded or terminated.

OATT: Open Access Transmission Tariff, including all schedules or attachments thereto, as amended from time to time and approved by FERC.

O&M: Operation and maintenance expenses.

Order RA 6120.2: DOE Order outlining Power Marketing Administration financial reporting and rate-making procedures.

Participating Projects: The Dolores and Seedskadee projects participating with CRSP according to the CRSP Act 1956.

Pinch Point: The year in the PRS that requires the greatest amount of revenue.

Power: Capacity and energy.

Project Use: Power used to operate SLCA/IP and CRSP facilities under Reclamation Law.

Proposed Rate: A rate that has been recommended by WAPA.

Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Secretary or his/her designee.

Power Repayment Study (PRS): Defined in DOE Order RA 6120.2 as a study portraying the annual repayment of power production and transmission costs of a power system through the application of revenues over the repayment period of the power system. The study shows, among other items, estimated revenues and expenses, year by year, over the remainder of the power system's repayment period (based upon conditions prevailing over the cost evaluation period), the estimated amount of Federal investment amortized during each year, and the total estimated amount of Federal investment remaining to be amortized.

Ratesetting PRS: The SLIP PRS used for the rate adjustment proposal.

Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework under which WAPA markets power.

Revenue Requirement: The revenue required by the PRS to recover O&M expenses, purchased power and transmission service expenses, interest, deferred expenses, and repayment of Federal investments, or other assigned costs.

SHP: Sustainable Hydro Power (long-term SLCA/IP hydro capacity with energy).

SLIP PRS: CRSP PRS that includes the Collbran, Dolores, Rio Grande, and Seedskadee revenue requirements.

Supporting Documentation: A book of data that supports this rate action and associated rates brochure.

Work Plan: An estimate of costs that are expected to become the Congressional Budget for WAPA and Reclamation. Also known as a Work Program.

WRF: Western Replacement Firming—WRF is optional purchased power to firm to customers' Sustainable Hydropower (SHP) allocation levels, the cost of which is passed through to firm power customers under a separate charge for those customers electing WRF.

Effective Date

The Provisional Rate Schedules SLIP–F13, SP–NW6, SP–PTP10, SP–NFT9, SP–UU3, SP–EI6, SP–SSR6, SP–SS2, and SP–NFJDT will take effect on the first day of the first full billing period beginning on or after January 1, 2024, and will remain in effect through December 31, 2028, pending approval by FERC on a final basis or until superseded.

Public Notice and Comment

CRSP MC followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. CRSP MC took the following steps to involve interested parties in the rate process:

1. On June 22, 2023, a **Federal Register** notice (88 FR 40813) (Proposal FRN) announced the proposed rates and launched a 71-day public consultation and comment period, set to end on September 1, 2023. The original public consultation and comment period was shorter than 90 days, in accordance with 10 CFR 903.14(a). The CRSP MC shortened the comment period to less than 90 days for good cause. There was a delay in processing the Proposal FRN resulting from the unexpected loss of key rates personnel. Decreasing the comment period timeframe was deemed necessary to implement the new rate effective January 1, 2024.

2. On June 22, 2023, CRSP MC notified all Customers and interested parties of the proposed rates and provided a copy of the Proposal FRN and the link to the WAPA–206 rate action site at: *www.wapa.gov/about-wapa/regions/crsp-2/rates/rate-order-206* (website).

3. On July 19, 2023, CRSP MC held a Public Information Forum (PIF) in Salt Lake City, Utah. The PIF was held both in-house, as well as virtually. CRSP MC's representatives explained the proposed rates, answered questions, and gave notice that additional information was made available in the Customer Rate Brochure.

4. On August 15, 2023, CRSP MC held a virtual public comment forum to provide an opportunity for customers and other interested parties to comment for the record.

5. During the consultation and comment period, which ended on October 3, 2023, CRSP MC received four oral comments (two at the August 15, 2023, and two at the September 19, 2023, public comment forums) and eight written sets of comments. CRSP MC posted an updated Rate Brochure and Supporting Documents to the website on September 19, 2023. The other comments and CRSP MC's responses are addressed below.

6. On August 18, 2023, CRSP MC held a webinar on purchased power data sources and calculations.

7. On August 28, 2023, CRSP MC notified customers and interested parties via email, extending the consultation and comment period from September 1, 2023, to October 3, 2023. The comments received during the extended comment period and CRSP MC's responses are addressed below. CRSP MC posted the comments to the website on October 12, 2023. All comments have been considered in the preparation of this Rate Order.

Oral comments were received from the following organization:

Colorado River Energy Distributors Association (CREDA)
Arizona Electric Power Cooperative (AEPCO)

Written comments were received on behalf of the following organizations during the original and extended comment periods:

Arizona Electric Power Cooperative (AEPCO)
Colorado River Energy Distributors Association (CREDA)
Electrical District No. 4 of Pinal County (ED4)
Electrical District No. 7 of Maricopa County (ED7)
Irrigation & Electrical Districts Association of Arizona (IEDA)

Maricopa Water District (MWD)
Navajo Tribal Utility Authority (NTUA)
Wyoming Municipal Power Agency (WMPA)

Power Repayment Study—Firm Power Service Rate Discussion

CRSP MC prepares PRSs each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the SLCA/IP. Repayment criteria are based on applicable laws and legislation as well as policies including DOE Order RA 6120.2. Under the existing rate methodology, rates for firm power service are designed to recover an annual revenue requirement that includes power investment repayment, aid to irrigation repayment, interest, purchase power, O&M, and other expenses within the allowable period. To meet the Cost Recovery Criteria outlined in DOE Order RA 6120.2, the CRSP MC developed a rate adjustment to demonstrate sufficient revenues will be collected under the Provisional Rates to meet future obligations. The revenue requirement for SLCA/IP firm power service decreased slightly, while the energy and capacity rates are set to remain the same, as indicated in Table 1:

TABLE 1—COMPARISON OF REVENUE REQUIREMENTS AND RATES

Firm power service	Existing requirements under SLIP–F12 (December 1, 2021)	Provisional requirements under SLIP–F13 (January 1, 2024)	Percent change
Revenue Requirement (million $)	$181,197	$180,239	−0.5
Energy Rate (mills/kWh)	12.36	12.36	0.0
Capacity Rate ($/kWmonth)	5.25	5.25	0.0

Statement of Revenue and Related Expenses

Table 2 provides a comparison of the average annual expense data for the SLCA/IP firm power service revenue requirement through the rate-setting period.

TABLE 2—ANNUAL REVENUE REQUIREMENTS AND FIRM POWER RATES COMPARISON TABLE

	Existing rate, SLIP–F12 ($1,000)	Provisional rate, SLIP–F13 ($1,000)	Difference ($1,000)
Rate Setting Period	2022–2045	2024–2045	
Revenue Distribution:			
Expenses:			
O&M	$103,095	$111,548	$8,453
Purchase Power	$833	$1,136	$303
Transmission	$8,984	$7,000	($1,984)
Integrated Projects requirements	$7,043	$7,501	$458
Interest	$6,207	$11,152	$4,945
Other	$13,547	$13,508	($39)
Total Expenses	$139,709	$151,845	$12,136
Principal Payments:			
Capitalized Expenses (deficits)	$838	$0	($838)
Replacements	$29,581	$13,702	($15,879)
Original Project and Additions	$1,846	$936	($910)
Irrigation	$9,223	$13,756	$4,533
Total Principal Payments	$41,488	$28,394	($13,094)
Annual Revenue Requirement	$181,197	$180,239	($958)
Composite Rate	30.51	31.38	2.85%
Energy Rate (mills/kWh)	12.36	12.36	0.00%
Capacity Rate ($/kWmonth)	5.25	5.25	0.00%

Any purchased power expense required to supplement hydropower deliveries up to contractual levels will be passed through to Customers under a separate charge, WRF, which would be in addition to the rate for hydropower deliveries. Any Customer not receiving WRF will not be charged the purchased power charge and would receive its proportionate amount of the DSA capacity and energy from WAPA each month.

SLCA/IP Firm Power Rate

The revenue requirement for *Rate Schedule SLIP–F13* is based on FY 2022 financial data, WAPA and Reclamation's FY 2025 Work Plans, and Reclamation's *August 2023 24-Month Study* (24-month Study) and the April 2023 CRSS traces.

For the first two years of the effective rate period, FY 2024 and FY 2025, CRSP MC is basing sales in the rate on forecasted generation from Reclamation's August 2023 24-month Study and is basing sales for the last three years of the effective rate period, FY 2026 through FY 2028, on forecasted generation from Reclamation's April 2023 CRSS Traces. Additionally, Rate Schedule SLIP–F13 includes actions CRSP MC will take should Lake Powell's water level drop below the level at which power can be generated.

CRSP MC will not automatically purchase firming power to SHP levels. For those Customers who elect, CRSP MC will purchase WRF power as a pass-through cost, at market rates, up to SHP levels. CRSP MC will purchase power to firm to the forecasted generation level, referred to as the DSA. CRSP MC will continue to use the DSA methodology established in Rate Order No. WAPA–199 to address drought conditions in the southwestern United States and volatile purchased power costs. The DSA will be updated quarterly as shown in Table 3. Customers will have at least 14 days to affirmatively select WRF for each quarter. Quarterly notices provide flexibility in responding to changes in hydrology and will not impact the rates. Customers can elect the full quarter or specific months within the quarter.

TABLE 3—DELIVERABLE SALES AMOUNT QUARTERLY UPDATES TO CUSTOMERS

Quarter	24-Month study	Customer notification (estimated)	Start date
Q2 Jan–Mar	*November*	November 20	January 1.
Q3 Apr–Jun	*February*	February 20	April 1.
Q4 Jul–Sep	*May*	May 20	July 1.
Q1 Oct–Dec	*August*	August 20	October 1.

Deliverable Sales Amount

Under the DSA methodology, sales are limited to projected generation, and CRSP MC will make firming purchases up to the forecasted DSA level. FY 2022 and FY 2023 costs for operational expenses necessary to meet DSA have been included in the rate. Outyear DSA energy projections are based on Reclamation's August 2023 24-month study (for FY 2024 and FY 2025) and Reclamation's April 2023 CRMMS study through the end of the rate setting period (for FY2026, FY2027, and FY2028). CRSP MC will continue to offer the WRF product. WRF is optional purchased power to firm to customers' Sustainable Hydropower (SHP) allocation levels, the cost of which is passed through to firm power customers under a separate charge for those customers electing WRF. Both DSA and WRF will continue to be updated quarterly using the applicable 24-month study from Reclamation. WRF will continue to be billed as it is requested to match cost collection with cost occurrence.

Any customer electing not to receive its share of the purchased power costs through WRF will not be charged for WRF. These customers will receive a proportionate amount of capacity and energy from CRSP MC each month under the DSA, charged at the proposed firm power rate, reflecting projected hydropower generation levels.

Cost Recovery Charge

CRSP MC maintains the ability to implement a CRC, if necessary. The CRC is a mechanism to adequately recover and maintain a sufficient balance in the Basin Fund in the event projected expenses significantly exceed projected revenue estimates. The Basin Fund is a revolving fund and operates without annual appropriations. The CRC is an additional surcharge on all SHP energy deliveries, which are long-term energy sales provided under WAPA's SLCA/IP firm electric service contracts. The CRC may be implemented when, among other things, the Basin Fund's cash balance is at risk due to low hydropower generation, high prices for firming power, or emergency capitalized investment funding. The CRC is based only on Basin Fund cash analysis and is independent of the SLCA/IP PRS calculations.

CRSP Transmission Services

In accordance with WAPA's OATT, CRSP MC offers Network Integration Transmission Service, Firm, Non-Firm Point-to-Point, and Joint Dispatch Transmission Services (JDTS). These services include the transmission of energy to points of delivery on the CRSP interconnected high-voltage system, which is comprised of transmission lines, substations, and related facilities. The transmission rates include the cost for Scheduling, System Control, and Dispatch Service. The CRSP MC is proposing no change to the formula rates associated with the CRSP Transmission Services; only to make the effective dates align with the SLCA/IP firm power rate time period. The Provisional Rates are as described in the respective Rate Schedules and apply to transmission-only sales.

Network Integration Transmission Service, Firm, and Non-Firm Point-to-Point Transmission Services, Formula Rates SP–NW6 (Network), SP–PTP10 (Firm) and SP–NFT9 (Non-Firm)

The Provisional Rates are as described in the Rate Schedules and apply to transmission-only sales. The cost of transmission service for WAPA's SLCA/IP long-term, firm electric service will continue to be included in the SLCA/IP firm power rate.

Joint Dispatch Transmission Service, Formula Rate SP–NFJDT

Rate Schedule SP–NFJDT is used when CRCM is participating in the WEIS market. JDTS customers shall compensate the CRSP Transmission Service Provider for JDTS commensurate with the receipt or delivery of energy dispatched for the JDTS Customer pursuant to the WEIS Tariff under the formula rate described herein.

Unreserved Use Penalties, Formula Rate SP–UU3

Unreserved Use occurs when an eligible customer uses transmission service that it has not reserved, or a transmission customer uses transmission service in excess of its reserved capacity. Unreserved Use may also include a customer's failure to curtail transmission when requested. The Transmission Customer shall compensate the CRSP Transmission Service Provider each month for any unreserved use of the transmission system under the applicable transmission service rates as outlined herein.

Ancillary Services

Energy Imbalance (EI) and Generator Imbalance (GI) Services, Formula Rate SP–EI6

No changes to the rate schedule for energy imbalance and generator imbalance under proposed Rate Schedule SP–EI6. EI/GI Services are provided through the Western Area Colorado Missouri (WACM) Balancing Authority under Rate Schedules L–AS4 and L–AS9, or as superseded.

Spinning and Supplemental Reserves Services, Formula Rate SP–SSR6

No changes to the rate schedule for spinning and supplemental reserves services under proposed Rate Schedule SP–SSR6. The transmission customer serving loads within the transmission provider's balancing authority must acquire Spinning and Supplemental Reserve services from CRSP, from a third party, or by self-supply.

Sale of Surplus Products, Formula Rate SP–SS2

No changes to the rate schedule for sale of surplus products under proposed Rate Schedule SP–SS2. The charge for each product will be determined at the time of the sale based on market rates, plus administrative costs. The customer will be responsible for acquiring transmission service necessary to deliver the product(s), for which a separate charge may be incurred.

Comments

WAPA received 41 separate oral and/or written comments during the public consultation and comment period. The comments expressed have been paraphrased and/or combined, where appropriate, without compromising the meaning of the comments.

Comments on Firm Power Rates

A. *Comment:* Commentors recommended CRSP MC implement a 2-year Firm Power rate instead of the proposed 5-year rate, due to concerns with instability of hydrological conditions and potential developing market situations.

Response: CRSP MC is implementing a 5-year rate to help with long term rate stability and based on established business processes will continue to annually reassess rate adequacy versus changes to budgets, hydrological conditions, and any other rate affecting factors. If CRSP MC identifies factors prompting an update to the rate, CRSP MC will initiate a public process to implement a new rate.

B. *Comment:* A commentor expressed support for CRSP MC's goal to maintain the rate the same as currently in effect per WAPA–199.

Response: CRSP MC appreciates the feedback.

Comment on Transmission

A. *Comment:* A commentor asked that if customers are only getting DSA levels, with little to no firming, why does CRSP MC forecast transmission demand used to develop the CRSP transmission rate in excess of reasonably anticipated levels of Sustainable Hydroelectric Power (''SHP''), DSA, and the CROD, over portions of the forecast period thus restricting the transmission capacity from being offered to others to enable renewable generators to replace aging coal plants; plus, this over statement of reservations increases the costs to the SLCA/IP power rates.

Response: The CRSP MC has, for well over a decade, held the current amount of point-to-point transmission capacity. CRSP MC reasonably projects this amount of capacity will continue to be needed within the rate-making window. Although DSA levels reflect projected generation, they remain uncertain due to changes in water releases. Firming purchases are often necessary even in months where hydropower generation is higher than normal; firming purchases and excess energy sales are made in shoulder hours as hydrologic operations cannot respond immediately to customer schedules. CRSP MC is unique in its use of point-to-point transmission, as opposed to network transmission service, but has found that point-to-point reservations best ensure it can successfully operate during periods when water releases and energy generation are higher than normal, such what occurred in the summer of 2003, as well as respond to outage conditions allowing rerouting of energy schedules without disruption, as well as to meet requirements of power replacement programs.

Comments on Purchased Power

A. *Comment:* A commentor stated that WAPA–199's primary objective was to maintain a sufficient balance in the Basin Fund, while obligating the responsibility of replacement power to the customers. With almost two years of operating experience under that paradigm, they recommended that CRSP MC continue to maintain the same rate by including $0 in the WAPA–206 purchased power line item, consistent with WAPA–199. They also noted that WAPA–206 continues the customers' responsibility of making replacement power purchases, which reduces the Basin Fund's obligations. Given the positive hydrology the Colorado River system experienced this spring, and the results of the August 2023 24-month study projections, and in support of a two-year rate, the Basin Fund should be able to support any firming purchases required for operational purposes.

Response: Due to timing-based operational needs, CRSP MC continues to experience purchased power expenses to meet customer energy needs, especially in shoulder hours of the scheduling day. CRSP MC's rate design takes into account those timing based operational purchased power expenses.

Comments on Other

A. *Comment:* A commentor recommended that CRSP MC and Reclamation continue to evaluate the cost assignment based on the concept of ''beneficiary pays''.

Response: CRSP MC appreciates the comment. CRSP MC agrees with the concept of beneficiary pays and continues to work with Reclamation to update cost-allocations as appropriate.

B. *Comment:* Commentor requested that $1.624 million be removed from the ''Other Expense'' category based on pending legislative changes supported by the seven Colorado River Basin States, for the Colorado River Salinity Control Program, which changes center around non-reimbursable and reducing the Basin Fund's obligations.

Response: At the time Reclamation provides a final decision regarding the Salinity obligation, those assumptions, along with all annual results of operations, will be vetted through the SLIP PRS for annual rate impact assessment. If within those annual assessments we find there is a need to amend or adjust the existing rate, we will then engage customers and the public to inform them of current recommendations. As of August 2023, Reclamation shared that the proposed language to the Salinity Control Act 23639 is still undergoing discussion.

C. *Comment:* A commenter appreciated CRSP MC's inclusion of a rate brochure statement that the proposed rate does not ''imply any interpretation of or waiver of any of the terms and conditions of the Firm Electric Service contracts.'' While the rate may reflect an operational paradigm which hopefully will improve in coming years, the sanctity of the FES contracts has not changed with the rate structures originally proposed in WAPA–199 and will continue with WAPA–206.

Response: CRSP MC appreciates the comment and support.

Comments on CRSP's Proposal To Participate in the Southwest Power Pool Regional Transmission Organization

A. *Comment:* A commenter stated that WAPA has never provided any transparent, documented analysis of the impact of [WAPA's] decision to pursue SPP membership on CRSP contractors' costs. This void in the administrative record makes it difficult to see how WAPA expects to make the showing required by Section 3 of Delegation Order No. 204–108, 58 FR 59716, 59717

(1993) for review and confirmation of the WAPA–206 rates: that ''the rates are the lowest possible to customers consistent with sound business principles.''

Response: These concerns have been addressed in a separate public process specific to this subject. On April 28, 2023, WAPA published an FRN (88 FR 26298) with a ''Recommendation for the Western Area Power Administration's Rocky Mountain Region and Colorado River Storage Project Management Center to Pursue Final Negotiations Regarding Membership in the Southwest Power Pool Regional Transmission Organization, and for the Upper Great Plains Region To Expand Its Participation.'' WAPA engaged in outreach to customers and other interested stakeholders via a public information meeting followed by a question-and-answer session on May 11, 2023. WAPA then held a follow up public question-and-answer session on May 25, 2023. WAPA reopened the comment period and held an additional narrowly focused information webinar and question-and-answer session on June 27, 2023. Over the course of the 75-day public comment period, WAPA received 69 written comment letters. The written comments and a summary of WAPA's responses are available on WAPA's website: *www.wapa.gov/about-wapa/key-topics-2/southwest-power-pool-membership.*

B. *Comment:* A commenter stated it has a good working relationship with WAPA that allows the customer to import and export power necessary for economic growth but is concerned that WAPA's expanded participation in SPP could jeopardize the customer's ability to continue to do so economically. The customer respectfully requests that any final agreement on WAPA's membership and expanded participation in SPP include provisions to protect the customer's existing contract rights.

Response: CRSP MC appreciates the comment. As responded to in a previous comment, WAPA published a **Federal Register** notice (FRN) with a ''Recommendation for the Western Area Power Administration's Rocky Mountain Region and Colorado River Storage Project Management Center to Pursue Final Negotiations Regarding Membership in the Southwest Power Pool Regional Transmission Organization, and for the Upper Great Plains Region To Expand Its Participation'' on April 28, 2023. Information about this process and proposal, as well as responses to customer comments and questions, and decision documents are available on WAPA's website: *www.wapa.gov/about-wapa/key-topics-2/southwest-power-pool-membership.*

Certification of Rates

I have certified that the Provisional Rates for SLCA/IP firm power and sales of surplus products and the CRSP transmission and ancillary services under Rate Schedules SLIP–F13, SP–NW6, SP–PTP10, SP–NFT9, SP–UU3, SP–EI6, SP–SSR6, SP–SS2, and SP–NFJDT are the lowest possible rates, consistent with sound business principles. The Provisional Rates were developed following administrative policies and applicable laws.

Availability of Information

Information used by CRSP MC to develop the Provisional Rates is available for inspection and copying at the Colorado River Storage Project Management Center, Western Area Power Administration, 1800 South Rio Grande Avenue, Montrose, CO 81401. Many of these documents are also available on WAPA's website: *www.wapa.gov/about-wapa/regions/crsp-2/rates.*

Ratemaking Procedure Requirements

Environmental Compliance

WAPA has determined that this action fits within the following categorical exclusion listed in appendix B to subpart D of 10 CFR 1021.410: B4.3 (Electric power marketing rate changes). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment.[7] A copy of the categorical exclusion determination is available on WAPA's website: *www.wapa.gov/about-wapa/regions/crsp-2/about-crsp/environment-3.*

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the Federal Energy Regulatory Commission

The Provisional Rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the above, and under the authority delegated to me, I hereby confirm, approve, and place into effect, on an interim basis, Rate Order No. WAPA–206. The rates will remain in effect on an interim basis until: (1) FERC confirms and approves them on a final basis; (2) subsequent rates are confirmed and approved; or (3) such rates are superseded.

Signing Authority

This document of the Department of Energy was signed on November 20, 2023, by Tracey A. LeBeau, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 21, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

Rate Schedule SLIP–F13
(Supersedes Rate Schedule SLIP–F12)

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project Management Center Salt Lake City Area Integrated Projects

Schedule of Rates for Firm Power Service (Approved Under Rate Order No. WAPA–206)

Effective:

The first day of the first full billing period beginning on or after January 1, 2024, and extending through December 31, 2028, or until superseded by another rate schedule, whichever occurs earlier.

Available:

In the area served by the Salt Lake City Area Integrated Projects.

Applicable:

To the wholesale power Customer for firm power service supplied through one meter at one point of delivery or as otherwise established by contract.

Character:

[7] The determination was done in compliance with NEPA (42 U.S.C. 4321–4347); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate:

DEMAND CHARGE: $5.25 per kilowatt of billing demand.

ENERGY CHARGE: $12.36 mills per kilowatthour of use of Deliverable Sales Amount (DSA) energy.

Modification of Purchase Power:

WAPA has included an amount of expense to represent the inefficiencies of market transactions and incidental firming costs associated with DSA energy scheduling. For more significant firming expenses, WAPA will provide a pass-through cost option to purchase firming power from the DSA level up to Sustainable Hydropower (SHP) levels for requesting Customers.

Western Replacement Firming (WRF):

WRF applies to pass-through purchased power costs for energy provided between the DSA level and SHP energy allocation. WRF is an optional product. Customers must elect quarterly, and may elect specific months within the quarter, to receive WRF. The charge for this purchased power will be determined at the time of the purchase based on market rates. There are no losses or an administrative fee charged to WRF. A schedule for the quarterly updates is in the rate brochure on the rate action website: *www.wapa.gov/about-wapa/regions/crsp-2/rates/rate-order-206.*

Billing Demand:

The billing demand will be the greater of:

1. The highest 30-minute integrated demand measured during the month up to, but not more than, the delivery obligation under the power sales contract, or,

2. The Contract Rate of Delivery.

Billing Energy:

The billing energy will be the energy measured during the month up to, but not more than, the delivery obligation under the power sales contract.

Adjustment for Transformer Losses:

If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided in the contract.

Adjustment for Power Factor:

The Customer will be required to maintain a power factor at all points of measurement between 95 percent lagging and 95 percent leading.

Adjustment for Western Replacement Power (WRP):

Pursuant to the Customer's Firm Electric Service Contract, as amended, WAPA will bill the Customer for its proportionate share of the costs of WRP within a given time. WAPA will include in the monthly power bill the cost of the WRP, and the incremental administrative costs associated with WRP.

Adjustment for Customer Displacement Power (CDP) Administrative Charges:

WAPA will include in the Customer's regular monthly power bill the incremental administrative costs associated with CDP.

Adjustment for Minimum Power Pool:

If Lake Powell drops below ''minimum power pool'' and power cannot be generated, WAPA will provide 30 days' notice to the Customers prior to reducing the DSA and will work with Customers to mitigate impacts and develop alternative solutions.

Cost Recovery Charge (CRC):

To adequately recover and maintain a sufficient balance in the Basin Fund, WAPA uses a cost recovery mechanism, called a CRC. The CRC is a charge on all long-term energy sales provided under WAPA's SLCA/IP firm electric service contracts.

This charge will be, at a minimum, recalculated before July 1 of each year, and WAPA will provide notification to the Customers consistent with the procedures in 10 CFR 903. WAPA has the discretion to implement the CRC at any point throughout the year using the criteria in Table 1. The charge, if needed, will be placed into effect on the first day of the first full billing period beginning on or after the first day of the month the CRC is implemented. For the purposes of the CRC, the 12-month period of a CRC will be described as a calendar year (CY). The CRC will be calculated as follows:

TABLE 1—CRC TIERS

Tier	Criteria, if the Basin Fund Beginning Balance (BFBB) is:	Notification
i	Greater than $150 million, with an expected decrease to below $75 million	Annually (July).
ii	Less than $150 million but greater than $120 million, with an expected 50 percent decrease in the next CY.	
iii	Less than $120 million but greater than $90 million, with an expected 40 percent decrease in the next CY.	
iv	Less than $90 million but greater than $60 million, with an expected 25 percent decrease in the next CY.	Semi-Annual (July/January).
v	Less than $60 million but greater than $40 million with an expected decrease to below $40 million in the next CY.	Monthly.

CRC sample calculations, narratives, and schedules showing the dates for implementing a CRC throughout the year are located at the CRC web page at: *www.wapa.gov/about-wapa/regions/crsp-2/rates/cost-recovery-charge.*

Waiver Level (WL):

WAPA will establish a WL that provides WAPA the ability to reduce purchased power expenses by scheduling less energy than what is contractually required. Therefore, for those Customers who voluntarily schedule no more energy than their proportionate share of the WL, WAPA will waive the CRC for that year. After the Funds Available have been determined, the WL will be set at the sum of the energy that can be provided through hydro generation and purchased with Funds Available. The WL will not be less than the forecasted Hydro Energy.

Trigger for Water Release Criteria:

In the event that Reclamation's 24-month study projects Glen Canyon Dam water releases will drop below 8.23 million acre feet (MAF) in a water year (October through September), WAPA will recalculate the CRC to include those lower estimates of hydropower generation. WAPA, as in the yearly projection for the CRC, will give the Customers a 45-day notice to request a waiver of the CRC if they do not want to have the CRC charge added to their energy bills. This recalculation will remain in effect for the remainder of the CY.

If the annual water release volumes from Glen Canyon Dam return to 8.23 MAF or higher during the trigger implementation, a new CRC will be calculated for the next month, and the Customer will be notified.

Trigger for New Rate Criteria:

WAPA would reassess an implemented CRC when a new rate goes into effect to determine if the implemented CRC should be continued, superseded, or terminated.

Prior Year Adjustment for CRC:

Since the annual determination of the CRC is based upon estimates, an annual, prior-year adjustment (PYA) will be calculated for those who did not elect the waiver level. The PYA will be based on the 12-month period the CRC was in effect.

The Customers' PYA will be based on their prior 12-months' energy multiplied by the PYA mills/kWh to determine the dollar value that will be assessed. The Customer will be charged or credited for this dollar amount equally in the remaining months of the next 12-month billing cycle. WAPA will complete this calculation within 2 months of the end of the CRC. Therefore, if the PYA is calculated in June, the charge/credit will be spread over the remaining 9 months of the CY (July through March).

Adjustment for CRC Waiver:

Customers can choose not to take the full DSA energy supplied as determined in the attached formulas for CRC and will be billed the Energy and Capacity rates listed above, but not the CRC.

Rate Schedule SP-NW6
ATTACHMENT H to Tariff
(Supersedes Rate Schedule SP-NW5)

UNITED STATES DEPARTMENT OF ENERGY

WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project Management Center Colorado River Storage Project

Network Integration Transmission Service (Approved Under Rate Order No. WAPA–206)

Effective:

Rate Schedule SP-NW6 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after January 1, 2024, and will remain in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis through December 31, 2028, or until the rate schedules are superseded.

Applicable:

The Transmission Customer will compensate the Colorado River Storage Project each month for Network Integration Transmission Service under the applicable Network Integration Transmission Service Agreement and the formula rate described herein.

Formula Rate:

$$\text{Monthly Charge} = \frac{\text{Annual Transmission Revenue Requirement for Network Integration Transmission Service}}{12} \times \text{Transmission Customer's Load-Ratio Share}$$

A calculated Annual Transmission Revenue Requirement for Network Integration Transmission Service will go into effect every October 1 based on the above formula and updated financial and operational data. WAPA will notify the transmission customer annually of the recalculated annual Revenue Requirement on or before September 1.

Billing:

Billing determinants for the formula rate above will be as specified in the service agreement. Billing will occur monthly under the formula rate.

Adjustment for Losses:

Losses incurred for service under this rate schedule will be accounted as agreed to by the parties in accordance with the service agreement. If losses are not fully provided by a transmission customer, charges for financial compensation may apply.

Rate Schedule SP-PTP10
SCHEDULE 7 to Tariff
(Supersedes Schedule SP-PTP9)

UNITED STATES DEPARTMENT OF ENERGY

WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project Management Center Colorado River Storage Project

Firm Point-to-Point Transmission Service (Approved Under Rate Order No. WAPA–206)

Effective:

Rate Schedule SP-PTP10 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after January 1, 2024, and will remain in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis through December 31, 2028, or until the rate schedules are superseded.

Applicable:

The Transmission Customer will compensate the Colorado River Storage Project each month for Reserved Capacity under the applicable Firm Point-To-Point Transmission Service Agreement and the formula rate described herein.

Formula Rate:

$$\text{Firm Point-To-Point Transmission Rate} = \frac{\text{Annual Transmission Revenue Requirement (\$)}}{\text{Firm Transmission Capacity Reservations} + \text{Network Integration Transmission Service Capacity (kW)}}$$

A recalculated rate will go into effect every October 1 based on the above formula and updated financial and operational data. WAPA will notify the transmission customer annually of the recalculated rate on or before September 1. Discounts may be offered from time to time in accordance with WAPA's Open Access Transmission Tariff.

Billing:

The formula rate above applies to the maximum amount of capacity reserved for periods ranging from 1 hour to 1 month, payable whether used or not. Billing will occur monthly.

Adjustment for Losses:

Losses incurred for service under this rate schedule will be accounted for as agreed to by the parties in accordance with the service agreement. If losses are not fully provided by a transmission customer, charges for financial compensation may apply.

Rate Schedule SP-NFT9

SCHEDULE 8 to Tariff

(Supersedes Schedule SP-NFT8)

UNITED STATES DEPARTMENT OF ENERGY

WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project Management Center Colorado River Storage Project

Non-Firm Point-to-Point Transmission Service (Approved Under Rate Order No. WAPA–206)

Effective:

Rate Schedule SP-NFT9 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after January 1, 2024, and will remain in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis through December 31, 2028, or until the rate schedules are superseded.

Applicable:

The Transmission Customer will compensate the Colorado River Storage Project each month for Non-Firm, Point-to-Point Transmission Service under the applicable Non-Firm, Point-to-Point Transmission Service Agreement and the formula rate described herein.

Formula Rate:

$$\text{Maximum Non-Firm Point-To-Point Transmission Rate} = \text{Firm Point-To-Point Transmission Rate}$$

A recalculated rate will go into effect every October 1 based on the above formula and updated financial and load data. WAPA will notify the transmission customer annually of the recalculated rate on or before September 1. Discounts may be offered from time-to-time in accordance with WAPA's Open Access Transmission Tariff.

Billing:

The formula rate above applies to the maximum amount of capacity reserved for periods ranging from 1 hour to 1 month, payable whether used or not. Billing will occur monthly.

Adjustment for Losses:

Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract. If losses are not fully provided by a transmission customer, charges for financial compensation may apply.

Rate Schedule SP-UU3

SCHEDULE 10 to Tariff

(Supersedes Schedule SP-UU2)

UNITED STATES DEPARTMENT OF ENERGY

WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project Management Center Colorado River Storage Project

Unreserved Use Penalties (Approved Under Rate Order No. WAPA–206)

Effective:

Rate Schedule SP-UU3 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after January 1, 2024, and will remain in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis through December 31, 2028, or until the rate schedules are superseded.

Applicable:

The Transmission Customer shall compensate the Colorado River Storage Project (CRSP) each month for any unreserved use of the transmission system (Unreserved Use) under the applicable transmission service rates as outlined herein. Unreserved Use occurs when an eligible customer uses transmission service that it has not reserved or a transmission customer uses transmission service in excess of its reserved capacity. Unreserved Use may also include a customer's failure to curtail transmission when requested.

Penalty Rate:

The penalty rate for a Transmission Customer that engages in Unreserved Use is 200 percent of CRSP's approved transmission service rate for point-to-point (SP-PTP9) transmission service assessed as follows:

(i) The Unreserved Use Penalty for a single hour of Unreserved Use is based upon the rate for daily firm PTP service.

(ii) The Unreserved Use Penalty for more than one assessment for a given duration (*e.g.,* daily) increases to the next longest duration (*e.g.,* weekly).

(iii) The Unreserved Use Penalty for multiple instances of Unreserved Use (*e.g.,* more than 1 hour) within a day is based on the rate for daily firm PTP service. The Unreserved Use Penalty charge for multiple instances of Unreserved Use isolated to 1 calendar week would result in a penalty based on the rate for weekly firm PTP service. The Unreserved Use Penalty charge for multiple instances of Unreserved Use during more than 1 week in a calendar month will be based on the rate for monthly firm PTP service.

A Transmission Customer that exceeds its firm reserved capacity at any point of receipt or point of delivery or an eligible customer that uses transmission service at a point of receipt or point of delivery that it has not reserved is required to pay for all ancillary services identified in WAPA's Open Access Transmission Tariff that were provided by the CRSP and associated with the Unreserved Use. The Transmission Customer will pay for ancillary services based on the amount of transmission service it used and did not reserve.

Rate:

The rate for Unreserved Use Penalties is 200 percent of WAPA's approved rate for firm point-to-point transmission service assessed as described above. Any change to the rate for Unreserved Use Penalties will be listed in a revision to this rate schedule issued under applicable Federal laws and policies and made part of the applicable service agreement.

Rate Schedule SP–EI6

SCHEDULES 4 & 9 to Tariff

(Supersedes Rate Schedule SP–EI5)

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project Management Center Colorado River Storage Project

Energy and Generator Imbalance Services (Approved Under Rate Order No. WAPA–206)

Effective:

Rate Schedule SP–EI6 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after January 1, 2024, and will remain in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis through December 31, 2028, or until the rate schedules are superseded.

Applicable:

To all CRSP Transmission Customers receiving this service.

Formula Rates:

Provided through the Western Area Colorado Missouri (WACM) Balancing Authority under Rate Schedules L–AS4 and L–AS9, or as superseded.

Rate Schedule SP–SSR6
SCHEDULES 5 & 6 to Tariff
(Supersedes Rate Schedule SP–SSR5)

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project Management Center Colorado River Storage Project

Operating Reserves—Spinning and Supplemental Reserve Services (Approved Under Rate Order No. WAPA–206)

Effective:

Rate Schedule SP–SSR5 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after January 1, 2024, and will remain in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis through December 31, 2028, or until the rate schedules are superseded.

Applicable:

To all CRSP Transmission Customers receiving this service.

Formula Rate:

The Transmission Customer serving loads within the transmission provider's balancing authority must acquire Spinning and Supplemental Reserve services from CRSP, from a third party, or by self-supply.

Rate Schedule SP–SS2
(Supersedes Rate Schedule SP–SS1)

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project Management Center Colorado River Storage Project

Sale of Surplus Products (Approved Under Rate Order No. WAPA–206)

Effective:

The first day of the first full billing period beginning on or after January 1, 2024, and extending through December 31, 2028, or until superseded by another rate schedule, whichever occurs earlier.

Applicable:

This Rate Schedule applies to the sale of the following Salt Lake City Area Integrated Projects (SLCA/IP) surplus energy and capacity products: energy, frequency response, regulation, and reserves. If any of the above SLCA/IP surplus products are available, SLCA/IP can make the product(s) available for sale, providing entities enter into separate agreement(s) with CRSP Marketing which will specify the terms of the sale(s).

Formula Rate:

The charge for each product will be determined at the time of the sale based on market rates, plus administrative costs. The customer will be responsible for acquiring transmission service necessary to deliver the product(s), for which a separate charge may be incurred.

Rate Schedule SP–NFJDT

SCHEDULE 8R to OATT Attachment

(Supersedes Rate Schedule SP–NFJDT dated

October 1, 2021, through September 30, 2024)

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project Management Center Colorado River Storage Project

Joint Dispatch Transmission Service (Approved Under Rate Order No. WAPA–206)

Effective:

The first day of the first full billing period beginning on or after January 1, 2024, and extending through December 31, 2028, or until superseded by another rate schedule, whichever occurs earlier.

Applicable:

This rate schedule applies to the Colorado River Storage Project (CRSP) as the Transmission Service Provider (TSP) when the Colorado River Storage Project Management Center is participating in the Western Energy Imbalance Service (WEIS) Market. The Joint Dispatch Transmission Service (JDTS) Customer shall compensate the CRSP TSP for JDTS commensurate with the receipt or delivery of energy dispatched for the JDTS Customer pursuant to the WEIS Tariff under the formula rate described herein.

Formula Rate:

Hourly delivery:

On-Peak Hours: the on-peak charge $0.00/MWh

Off-Peak Hours: the off-peak charge $0.00/MWh

[FR Doc. 2023–26049 Filed 11–24–23; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11565–01–OA]

Local Government Advisory Committee (LGAC) and Small Communities Advisory Subcommittee (SCAS); Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the EPA hereby provides notice of a meeting for the Local Government Advisory Committee (LGAC) and its Small Communities Advisory Subcommittee (SCAS) on the date and time described below. This meeting will be open to the public. For information on public attendance and participation, please see registration details under **SUPPLEMENTARY INFORMATION**.

DATES: The LGAC and SCAS will have a virtual meeting on December 15th, 2023, from 1:00 to 2:00 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Paige Lieberman, Designated Federal Officer (DFO) of the Local Government Advisory Committee, at *LGAC@epa.gov* or 202–564–9957 or Lynzi Barnes, DFO of the Small Community Advisory Subcommittee, at *barnes.edlynzia@epa.gov* or (773) 638–9158.

Information on Accessibility: For information on access or services for individuals requiring accessibility accommodations, please contact Paige Lieberman by email at *LGAC@epa.gov.* To request accommodation, please do so five (5) business days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION:

Content

The LGAC and SCAS will discuss recommendations from the environmental justice and equity workgroup that involves a cumulative impacts framework. Meeting materials and recommendations will be posted closer to the meeting.

Registration

The meeting will be held virtually via Microsoft Teams. Members of the public who wish to participate should register by contacting the Designated Federal Officer (DFO) at *LGAC@epa.gov* by December 8th, 2023. Once available, the agenda and other supportive meeting materials will be available online at *https://www.epa.gov/ocir/local-government-advisory-committee-lgac* and will be emailed to all registered. In the event of cancellation for unforeseen circumstances, please contact the DFO or check the website above for reschedule information.

Paige Lieberman,

Designated Federal Officer, U.S. Environmental Protection Agency.

[FR Doc. 2023–26000 Filed 11–24–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2023–0551; FRL–8242.2–02–OW]

Implementing the Supreme Court's Maui Decision in the Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft guidance.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for public comment a draft guidance on applying the recent decision of the United States Supreme Court in *County of Maui* v. *Hawaii Wildlife Fund,* in the Clean Water Act Section 402 National Pollutant Discharge Elimination System (NPDES) permit program for point source discharges that travel through groundwater before reaching a water of the United States. This guidance will not have the force and effect of law and it will not bind the public in any way. By issuing this guidance, the EPA intends only to provide clarity to the public regarding existing requirements under the law or Agency policies.

DATES: Comments must be received on or before December 27, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2023–0551, by any of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.*

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Marcus Zobrist, Office of Wastewater Management, Water Permits Division (MC4203M), Environmental Protection Agency. 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–8311; email address: *Zobrist.Marcus@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2023–0551, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. How can I get copies of this document and other related information?

You may access this document electronically at *https://www.epa.gov/npdes/releases-point-source-groundwater* or at *https://www.federalregister.gov.* The EPA established an official public docket under Docket ID No. EPA–HQ–OW–2023–0551 which is accessible electronically at *http://www.regulations.gov* that will also contain copies of this **Federal Register** document. The public docket does not include CBI or other information whose disclosure is restricted by statute. The telephone number for the Water Docket is (202) 566–2426.

Radhika Fox,

Assistant Administrator.

[FR Doc. 2023–26038 Filed 11–24–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11519–01–OMS]

Senior Executive Service Performance Review Board; Membership

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: Notice is hereby given of the membership of the U.S. Environmental Protection Agency (EPA) Performance Review Board for 2023.

FOR FURTHER INFORMATION CONTACT: Lizabeth Engebretson, Deputy Director, Strategic HR Insights Division, 3606R, Office of Human Resources Strategy, Office of Mission Support, U.S. Environmental Protection Agency, 1300 Pennsylvania Avenue NW, Washington DC 20460, telephone number: (202) 564–0804, email address: *engebretson.lizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. This board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointment authority relative to the performance of the senior executive. Members of the 2023 EPA Performance Review Board are:

Tom Brennan, Director, Science Advisory Board, Office of the Administrator.

Erica Canzler, Director, National Enforcement Investigations Center, Office of Enforcement and Compliance Assurance.

Louis D'Amico, Associate Director for Science, Office of Science Advisor, Policy and Engagement, Office of Research and Development.

Jeffrey Dawson, Senior Science Advisor, Office of Chemical Safety and Pollution Prevention.
Lilian Dorka, Deputy Assistant Administrator for External Civil Rights, Office of Environmental Justice and External Civil Rights.
Alison Goss Eng, Deputy Director, Office of Resource Management, Office of Research and Development.
Lizabeth Engebretson, (Ex-Officio) Deputy Director, Strategic HR Insights Division, Office of Human Resources Strategy, Office of Mission Support.
Michael Harris, Director, Enforcement and Compliance Division, Region 5.
Meshell Jones-Peeler, Controller, Office of the Chief Financial Officer.
Juan Carlos Hunt, (Ex-Officio) Director, Office of Civil Rights, Office of the Administrator.
Mara J. Kamen, (Ex-Officio) Director, Office of Human Resources Strategy, Office of Mission Support.
Javier Laureano, Director, Water Division, Region 2.
Madison Le, Director, Biopesticides and Pollution Prevention Division, Office of Chemical Safety and Pollution Prevention.
Pamela Legare, Director, Office of Acquisition Solutions, Office of Mission Support.
David Lloyd, Director, Office of Brownfields and Land Revitalization, Office of Land and Emergency Management.
James McDonald, Mission Support Division Director, Region 6.
Vickie Richardson, Director, Office of Management and International Services, Office of International and Tribal Affairs.
Helen Serassio, Associate General, Cross-Cutting Issues Law Office, Office of General Counsel.
Vickie Tellis, Director, Mission Support Division, Region 4.
Thomas Wall, Director, Watershed Restoration, Assessment and Protection Division, Office of Water.
Richard ''Chet'' Wayland, Director of the Air Quality Assessment Division, Office of Air Quality Planning and Standards, Office of Air and Radiation.

Mara J. Kamen,

EPA Deputy Chief Human Capital Officer and Director, Office of Human Resources Strategy, Office of Mission Support.

[FR Doc. 2023–26074 Filed 11–24–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, December 12, 2023 at 10:30 a.m. and its continuation at the conclusion of the open meeting on December 14, 2023

PLACE: 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2023–26220 Filed 11–22–23; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

[Docket No. FMC–2023–0017]

Agency Information Collection Activities: 30-Day Public Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Thirty-day notice; request for comments.

SUMMARY: The Federal Maritime Commission (Commission) is giving public notice that the agency has submitted to the Office of Management and Budget (OMB) for approval a renewal of an existing information collection related to Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984. The public is invited to comment on the information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before 11:59 p.m. Eastern Standard Time on December 27, 2023.

ADDRESSES: Comments should be submitted to: (1) the Commission through the Federal eRulemaking Portal at *www.regulations.gov* (docket FMC–2023–0017); and (2) the Office of Management and Budget's Office of Information and Regulatory Affairs through the portal at *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection at *Reginfo.gov* by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

If your material cannot be submitted to the addresses above, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

A copy of this notice can be found at *https://www.regulations.gov/* under Docket No. FMC–2023–0017. The associated forms can be found at the same location.

FOR FURTHER INFORMATION CONTACT: Amy Strauss, Acting Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collections listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for OMB approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (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.

Previous Request for Comments

On August 23, 2023, the Commission published a notice and request for comment in the **Federal Register** (88 FR 57459) regarding the agency's request for approval from OMB for information collections as required by the Paperwork Reduction Act of 1995. During the 60-day period, the Commission received no comments on the request for OMB clearance.

Information Collections Open for Comment

Title: 46 CFR 535—Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984.

OMB Approval Number: 3072–0045 (Expires February 29, 2024).

Abstract: Section 4 of the Shipping Act of 1984, 46 U.S.C. 40301(a)–(c), identifies certain agreements by or among ocean common carriers (carriers) and marine terminal operators (MTOs) that fall within the jurisdiction of that Act. Section 5 of the Act, 46 U.S.C. 40302, requires that carriers and MTOs file those agreements with the Federal Maritime Commission. Section 6 of the Act, 46 U.S.C. 40304, 40306, and 41307(b)–(d), specifies the Commission actions that may be taken with respect to filed agreements, including requiring the submission of additional information. Section 15 of the Act, 46 U.S.C. 40104, authorizes the Commission to require that carriers and MTOs, among other persons, file periodic or special reports. Requests for additional information and the filing of periodic or special reports are meant to assist the Commission in fulfilling its statutory mandate of overseeing the activities of the ocean transportation industry. These reports are necessary so that the Commission can monitor agreement parties' activities to determine how or if their activities will have an impact on competition.

This update includes a revised FMC–150 form, which is collected upon agreement filing for a subset of agreements under 46 CFR part 535. The Commission intends that filers will have a choice between using the existing FMC–150 or the revised FMC–150 pending any other changes in part 535 through rulemaking. This update also includes an increase in the number of responses received. The total estimated burden hours has decreased.

Current Actions: Revision of Form FMC–150.

Type of Review: Extension.

Needs and Uses: The Commission uses the information filed by agreement parties to monitor their activities as required by the Shipping Act. Under 46 U.S.C. 41307, the Commission must determine whether an agreement will have, or has resulted in, a substantial reduction in competition within the prevailing market leading to an unreasonable reduction in transportation service or an unreasonable increase in transportation costs ''or to substantially lessen competition in the purchasing of certain covered services.'' In such cases, the Commission would take action to seek to enjoin the agreement in the U.S. District Court for the District of Columbia.

Frequency: This information will be collected as required by the regulations at part 535.

Type of Respondents: The types of respondents are marine terminal operators, vessel-operating common carriers (VOCCs), and other parties to FMC-filed agreements.

Number of Annual Respondents: The 2019 notice stated that the number of respondents was 334. This number erroneously counted the number of VOCCs and MTOs as the number of respondents. The adjusted number accounts for the number of filings of agreements and monitoring information, as well as those subject to recordkeeping, under the regulations at part 535. Some MTOs and VOCCs are not required to submit any information, some are subject only to the recordkeeping, and a relatively small subset are parties to multiple agreements and therefore file multiple types of information under this collection with different periodicity. The agency will consider these separate respondents for the purpose of this collection. The total number is 2,887.

Estimated Time Per Response:

Responses associated with Agreement filings under part 535:

• The average time per response to file an Agreement that includes Form FMC–150 is 75 hours.

• The average time per response to file an Agreement that does not require FMC–150 is 6 hours.

• The time to file an Agreement termination averages 0.25 hours.

Responses associated with Monitoring Requirements under part 535:

• The average time for meeting minutes is 2 hours.

• The average time for filing quarterly monitoring reports for VOCC rate discussion agreements is 50 hours.

• The average time for filing FMC–151 (filed by alliance parties) is 160 hours.

• Other reporting requirements average 10 hours.

• Recordkeeping for optionally filed agreements is estimated at 0.25 hours.

Total Annual Burden:

Associated with Agreement filings under part 535:

• Filing an Agreement that includes Form FMC–150: 15 responses × 75 hours = 1,125 person-hours.

• Filing an Agreement that does not require FMC–150: 60 responses × 6 hours = 360 person-hours.

• Termination of Agreements: 36 responses × 0.25 hours = 9 person-hours.

Associated with Monitoring Requirements under part 535:

• Filing meeting minutes: 850 responses × 2 hours = 1,700 person-hours.

• Reporting for VOCC rate discussion agreements: 40 × 50 = 2,000 person-hours.

• Reporting on FMC–151 (filed by Alliance parties): 36 × 160 = 5,760 person-hours.

• Other reporting requirements = 300 × 10 = 3,000 person-hours.

• Recordkeeping for optionally filed agreements = 1,300 × 0.25 = 325 person-hours.

Total burden equals 14,279 hours.

Carl Savoy,

Federal Register Alternate Liaison Officer.

[FR Doc. 2023–26086 Filed 11–24–23; 8:45 am]

BILLING CODE 6730–02–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0118; Docket No. 2023–0001; Sequence No. 3]

Submission for OMB Review; Federal Management Regulation; Statement of Witness; Standard Form 94

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division invites members of the public to comment on an extension to an existing information collection requirement regarding OMB Control No. 3090–0118, Statement of Witness, Standard Form 94.

DATES: Submit comments on or before December 27, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments''; or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Wynter, GSA, OGP, Office of Asset and Transportation Management, at telephone 202–501–3802 or via email to *ray.wynter@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA's Office of Government-wide Policy is announcing the availability of Standard Form 94, Statement of Witness that is publicly available on *http://www.gsa.gov/forms*. This form will be used to collect information from witnesses reporting accidents and/or damage to Federal Fleet Vehicles. Standard Form (SF) 94 provides additional accounts of motor vehicle accidents that supplement statements made by a motor vehicle operator. Use of the SF 94 is prescribed in Federal Management Regulation, 41 CFR 102–34.290(b) and Federal Property Management Regulations, 41 CFR 101–39.401(b). The SF 94 is usually completed at the time of an accident involving a motor vehicle owned or leased by the Government.

The SF 94 is an essential part of the investigation of motor vehicle accidents, especially those involving the public with a potential for claims against the United States. It is a vital piece of information in lawsuits and provides the Assistant United States Attorneys with a written statement to refresh recollection of accidents, as necessary.

B. Annual Reporting Burden

Respondents: 290.
Responses per Respondent: 1.
Total Annual Responses: 290.
Hours per Response: 0.333.
Total Burden Hours: 97.

C. Public Comments

A 60-day notice published in the **Federal Register** at 88 FR 64912 on September 20, 2023. No public comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division, at *GSARegSec@gsa.gov*. Please cite OMB Control No. 3090–0118, Statement of Witness, Standard Form 94, in all correspondence.

Lesley Briante,

Acting Deputy Chief Information Officer.

[FR Doc. 2023–26036 Filed 11–24–23; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0322; Docket No. 2023–0001; Sequence No. 10]

General Services Administration Acquisition Regulation; Information Collection; Prohibition on Certain Supply Chain Services or Equipment Under Lease Acquisitions and Commercial Solution Openings

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for comments regarding a revision to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a revision of a previously approved information collection requirement for Prohibition to Certain Telecommunications and Video Surveillance Services or Equipment under Lease Acquisitions and Commercial Solution Openings. The revision now includes new information to be collected related to supply chain risk information sharing and exclusion or removal orders consistent with the Federal Acquisition Supply Chain Security Act of 2018.

DATES: Submit comments on or before January 26, 2024.

ADDRESSES: Submit comments identified by Information Collection 3090–0322, Prohibition on Certain Supply Chain Services or Equipment Under Lease Acquisitions and Commercial Solution Openings via *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0322. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0322, Prohibition on Certain Supply Chain Services or Equipment Under Lease Acquisitions and Commercial Solution Openings''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0322, Prohibition on Certain Supply Chain Services or Equipment Under Lease Acquisitions and Commercial Solution Openings'' on your attached document.

Instructions: Please submit comments only and cite Information Collection 3090–0322, Prohibition on Certain Supply Chain Services or Equipment Under Lease Acquisitions and Commercial Solution Openings, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov*, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov*, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Carroll, Procurement Analyst, General Services Acquisition Policy Division, 817–253–7858 or via email at *gsarpolicy@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

There are two purposes. The first (''889'') supports implementation of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) under lease acquisitions and commercial solution openings. This section prohibits agencies from procuring, obtaining, extending or renewing a contract with contractors that will provide or use covered telecommunication equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system on or after August 13, 2020 unless an exception applies.

The second (''FASCSA Orders'') supports implementation of supply chain risk information sharing and exclusion or removal orders consistent with the Federal Acquisition Supply Chain Security Act of 2018 and a final rule issued by the Federal Acquisition Security Council. The implementation of supply chain risk information sharing and exclusion or removal orders FAR interim rule requires complying with exclusion or removal orders (''FASCSA Orders'') and sharing certain supply chain risk information with the Federal Acquisition Security Council (FASC) when applicable FASCSA orders are issued from one or a combination of the following FASCSA orders-issuing agencies: Department of Homeland Security (DHS), the Department of Defense (DoD), and/or the Office of the Director of National Intelligence (DNI). Only DHS may issue orders applicable to GSA (*i.e.,* civilian agencies).

For 889, the requirement is implemented in the Federal Acquisition Regulation (FAR) through the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and the clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

For FASCSA Orders, the requirement is implemented in the FAR through the provision at FAR 52.204–29, Federal Acquisition Supply Chain Security Act Orders-Representation and Disclosures and the clause at FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition.

B. Annual Reporting Burden

1. FAR 52.204–24 for GSA Lease Acquisitions

Respondents: 3,100.

Responses per Respondent: 1.
Total Responses: 3,000.
Hours per Response: 1.5.
Total Burden Hours: 4,650.

2. FAR 52.204–25 for GSA Lease Acquisitions

Respondents: 62.
Responses per Respondent: 1.
Total Responses: 62.
Hours per Response: 1.5.
Total Burden Hours: 93.

3. FAR 52.204–29 for GSA Lease Acquisitions

Respondents: 186.
Responses per Respondent: 1.
Total Responses: 186.
Hours per Response: 2.
Total Burden Hours: 372.

4. FAR 52.204–30 for GSA Lease Acquisitions

Respondents: 124.
Responses per Respondent: 1.
Total Responses: 124.
Hours per Response: 2.
Total Burden Hours: 248.

Note: GSA solicits and awards so few CSO procurements (on average less than 5 per year), the burden is negligible and therefore not included in this estimate.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite ''Information Collection 3090–0322'', in all correspondence.

Jeffrey Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2023–26035 Filed 11–24–23; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0290; Docket No. 2023–0001; Sequence No. 4]

Submission for OMB Review; System for Award Management Registration Requirements for Financial Assistance Recipients

AGENCY: Office of Systems Management, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat Division invites the public to comment on an extension to an existing information collection requirement regarding the pre-award registration requirements for Prime Financial Assistance Recipients.

DATES: Submit comments on or before December 27, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments''; or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Salomeh Ghorbani, Director, IAE Outreach and Stakeholder Engagement Division, at telephone number 703–605–3467 or *IAE_Admin@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection requires applicants and recipients of Federal financial assistance, unless the applicant is an individual or Federal awarding agency that is excepted from those requirements, to register in SAM and maintain an active SAM registration with current information at all times during which they have an active Federal award or an application or plan under consideration by an agency pursuant to 2 CFR Subtitle A, Chapter I, and Part 25 (75 FR 55673 as amended at 79 FR 75879). This facilitates prime awardee reporting of sub-award and executive compensation data pursuant to the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended by section 6202(a) of Pub. L. 110–252). This information collection requires that all prime financial assistance awardees, subject to reporting under the Transparency Act, register and maintain their registration in *SAM.gov.*

This information collection was amended to meet a statutory requirement of the National Defense Authorization Act (NDAA) of FY 2013. The NDAA of 2013 requires that the Federal Awardee Performance and Integrity Information System (FAPIIS) (currently located at *SAM.gov*) include information on a non-Federal entity's parent, subsidiary, or successor entities. Additionally, the information collection was amended to increase transparency regarding Federal spending and to support implementation of the Digital Accountability and Transparency Act of 2014 (DATA ACT).

OMB expanded the requirement to register in SAM beyond grants, cooperative agreements, and contracts, to entities that receive financial assistance such as loans, insurance, and direct appropriations. This information collection requirement (published in the **Federal Register** at 85 FR 49506 on August 13, 2020) is included in OMB's revision to guidance in 2 CFR Subtitle A, Chapter I, and Parts 25, 170, and 200, effective June 12, 2023.

B. Annual Reporting Burden

Respondents: 211,959.
Responses per Respondent: 1.
Total Annual Responses: 211,959.
Hours per Response: 2.5.
Total Burden Hours: 529,898.

C. Public Comments

A 60-day notice published in the **Federal Register** at 88 FR 64911 on September 20, 2023. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB) at *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0290, System for Award Management Registration Requirements for Financial Assistance Recipients, in all correspondence.

Lesley Briante,

Acting Deputy Chief Information Officer.

[FR Doc. 2023–26037 Filed 11–24–23; 8:45 am]

BILLING CODE 6820–WY–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–0931; Docket No. CDC–2023–0094]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Blood Lead Surveillance System (BLSS). The National Center for Environmental Health (NCEH) is leading a three-year Extension for two CDC information collections, one for childhood blood lead surveillance by NCEH and another for adult blood lead surveillance by the National Institute for Occupational Safety and Health (NIOSH).

DATES: CDC must receive written comments on or before January 26, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0094 by either of the following methods:

• *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Blood Lead Surveillance System (BLSS) (OMB Control No. 0920–0931, Exp. 7/31/2024)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a request for a three-year extension for an existing Paperwork Reduction Act (PRA) clearance titled ''Blood Lead Surveillance System (BLSS)'' (OMB Control No. 0920–0931; Exp. 7/31/2024). The National Center for Environmental Health (NCEH) is leading this Information Collection Request (ICR) for two Centers for Disease Control and Prevention (CDC) collections, one for childhood blood lead surveillance by NCEH and another for adult blood lead surveillance by the National Institute for Occupational Safety and Health (NIOSH).

The goal of the NCEH Childhood Blood Lead Surveillance (CBLS) Program is to support blood lead screening and to promote primary prevention of exposure to lead. Also, the CBLS Program supports secondary prevention of adverse health effects when lead exposures occur in children, through improved program management and oversight in respondent jurisdictions. The goal of the NIOSH Adult Blood Lead Epidemiology and Surveillance (ABLES) Program is to build state capacity for adult blood lead surveillance programs to measure trends in adult blood lead levels and to prevent lead over-exposures.

NCEH has a five-year cooperative agreement, titled ''Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children'' (Funding Opportunity Announcement [FOA] No. CDC–RFA–EH21–2102). The first two years of this ICR will extend from FY24, through FY26, and thus will be covered for two-thirds of the ICR's three-year approval period, while funding for the third year of this ICR will be determined in the future. Data submission is voluntary and completed through data sharing agreements with state agencies or their bona fide agents.

Blood lead surveillance over the human lifespan is covered under this single ICR, specifically for children younger than 16 years through CBLS at NCEH, and for adults 16 years and older, through ABLES at NIOSH. Over the past several decades there have been substantial efforts in environmental lead abatement, improved protection from occupational lead exposure, and a reduction in the prevalence of population blood lead levels (BLLs) over time. The U.S. population BLLs have substantially decreased over the last four decades. For example, the CDC has reported the 1976–1980 U.S. mean BLL in children six months to five years was 16.0 micrograms per deciliter (mcg/dL), and 14.1 mcg/dL among adults 18 to 74 years. More recently, the CDC reported the 2009–2010 U.S. BLL geometric means among children ages one to five years and among adults 20 years and older as 1.2 mcg/dL for both age groups. In 2012, the National Toxicology Program (NTP) concluded that there is sufficient evidence that even BLLs less than 5.0 mcg/dL are associated with adverse health effects in both children and adults. Despite the reduction in the overall population BLL over four decades, lead exposures continue to occur at unacceptable levels for individuals in communities and workplaces across the nation. Surveillance will continue through CBLS and ABLES to identify individuals with BLLs greater than most children who may need follow-up. Surveillance can also help prioritize communities for primary prevention of lead exposure and expanding blood lead testing. As of October 2021, NCEH defines its Blood Lead Reference Value (BLRV) for children at 3.5 mcg/dL. NIOSH defines an elevated BLLs as greater than or equal to 5.0 mcg/dL for adults.

Respondents are defined as state, local, and territorial health departments with lead poisoning prevention programs. The estimated annual time burden for NCEH CBLS is 1,058 hours. The estimated annual time burden for NIOSH ABLES is 280 hours. In total, CDC is requesting approval for a total annual time burden of 1,338 hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State, Local and Territorial Health Departments, or their Bona Fide Agents.	CBLS Variables (ASCII Text Files)	66	4	4	1,056
	CBLS Aggregate Records Form (Excel).	1	1	2	2
	ABLES Case Records Form and Brief Narrative Report.	32	1	8	256
	ABLES Aggregate Records Form and Brief Narrative Report.	8	1	3	24
Total					1,338

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–26085 Filed 11–24–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–0260]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ‘‘Health Hazard Evaluations/Technical Assistance and Emerging Problems’’ to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ‘‘Proposed Data Collection Submitted for Public Comment and Recommendations’’ notice on August 1, 2023 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ‘‘Currently under 30-day Review—Open for Public Comments’’ or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Health Hazard Evaluations/Technical Assistance and Emerging Problems (OMB Control No. 0920–0260, Exp. 3/31/2024)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In accordance with its mandates under the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977, NIOSH responds to requests for a Health Hazare Evaluation (HHE) to identify chemical, biological or physical hazards in workplaces throughout the United States. Each year, NIOSH receives approximately 250 such requests although that number has been lower in recent years presumably due to the COVID–19 pandemic. Most HHE requests come from workplaces in the following industrial sectors: services, manufacturing, health and social services, transportation, and construction.

A printed HHE request form is available in English and in Spanish. The form is also available on the internet and differs from the printed version only in format and in the fact that it can be submitted directly from the website. The request form takes an estimated 12 minutes to complete. The form provides the mechanism for employees, employers, and other authorized representatives to supply the information required by the regulations governing the NIOSH HHE program (42 CFR 85.3–1). NIOSH reviews the HHE request to determine if an on-site evaluation is needed. The primary purpose of an on-site evaluation is to help employers and employees identify and eliminate occupational health hazards. For approximately 25% of the requests received NIOSH determines an on-site evaluation is needed.

Using previous HHE program experience and data, approximately 73% of on-site evaluations include employees that are interviewed in an informal manner to help further define concerns. Interviews may take approximately 15 minutes per respondent. The interview questions are specific to each workplace and its suspected diseases and hazards. However, interviews are based on standard medical practices. In approximately 37% of on-site evaluations, questionnaires are distributed or administered by NIOSH staff to employees. Questionnaires may require approximately 30 minutes to complete. The survey questions are specific to each workplace, and its suspected diseases and hazards; however, items in the questionnaires are derived from standardized or widely used medical and epidemiologic data collection instruments. Approximately five (6%) of the on-site evaluations involve medical tests or the collection of biological samples that would require informed consent. The estimated time to complete the informed consent process is 30 minutes. If 30 employees are monitored at each of the five work sites, the burden from this activity is 75 hours.

Approximately 73% of the on-site evaluations involve employee exposure monitoring in the workplace. Employees participating in on-site evaluations by wearing a sampling or monitoring device to measure personal workplace exposures are offered the opportunity to receive notification of their exposure results. To indicate their preference and, if interested, provide contact information, employees complete a contact information post card or form. Completing the contact card or form may take five minutes or less. The number of employees monitored for workplace exposures per on-site evaluation is estimated to be 25 per site.

NIOSH distributes interim and final reports of HHEs, excluding personal identifiers, to the following: requesters, employers, employee representatives; the Department of Labor (Occupational Safety and Health Administration or Mine Safety and Health Administration, as appropriate); state health departments; and, as needed, other state and federal agencies. NIOSH administers a followback program to assess the effectiveness of its HHE program in reducing workplace hazards. This program entails the distribution of followback surveys to employer and employee representatives at all the workplaces where NIOSH conducted an on-site evaluation. In a small number of instances, a followback on-site evaluation may be completed. The first followback survey is sent shortly after the first visit for an on-site evaluation and takes about 10 minutes to complete. A second followback survey is sent after the final report is completed and requires about 20 minutes to complete. At 12 months, a third followback survey is sent, which takes about 15 minutes to complete. For requests where NIOSH does not conduct an on-site evaluation, the requestor receives the first followback survey after our response letter is sent and a second one 12 months after our response. The first survey takes about 10 minutes to complete, and the second survey takes about 15 minutes to complete.

Because of the number of investigations conducted each year, the need to respond quickly to requests for assistance, the diverse and unpredictable nature of these investigations, and its followback program to assess evaluation effectiveness, NIOSH requests a consolidated clearance for data collections performed within the domain of its HHE program. The total estimated burden hours are 2267 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Employees and Representatives	Health Hazard Evaluation Request Form	175	1	12/60
Employers *	Health Hazard Evaluation Request Form	75	1	12/60
Employees	Health Hazard Evaluation Specific Interview Example	1,710	1	15/60
Employees	Health Hazard Evaluation Specific Questionnaire Example	2,900	1	30/60
Employees	HHE specific Informed Consent Form	150	1	30/60
Employees	Contact Information Post Card	1,425	1	5/60
Employees and Representatives; Employers—Year 1 (on-site evaluation).	First Followback Survey	140	1	10/60
Employees and Representatives; Employers—Year 1(on-site evaluation).	Second Followback Survey	140	1	20/60
Employees and Representatives; Employers—Year 2 (on-site evaluation).	Third Followback Survey	140	1	15/60
Employees and Representatives Year 1 (without on-site evaluation).	First Followback Survey	94	1	10/60
Employees and Representatives Year 2 (without on-site evaluation).	Second Followback Survey	94	1	15/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–26080 Filed 11–24–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors Infectious Diseases; (Formerly Known as the Board of Scientific Counselors, Deputy Director for Infectious Diseases); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), announces the renewal of the charter of the Board of Scientific Counselors Infectious Diseases (BSC ID); (formerly known as the Board of Scientific Counselors, Deputy Director for Infectious Diseases (BSC, DDID)).

FOR FURTHER INFORMATION CONTACT: Sarah Wiley, M.P.H., Designated Federal Officer, Board of Scientific Counselors Infectious Diseases, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road NE, Mailstop H16–5, Atlanta, Georgia 30329–4027. Telephone: (404) 639–4840; Email: *SWiley@cdc.gov.*

SUPPLEMENTARY INFORMATION: CDC is providing notice under 5 U.S.C. 1001–1014 of the renewal of the charter of the Board of Scientific Counselors Infectious Diseases (formerly known as the Board of Scientific Counselors, Deputy Director for Infectious Diseases), Centers for Disease Control and Prevention, Department of Health and Human Services. This charter has been renewed for a two-year period through October 31, 2025.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–26040 Filed 11–24–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

World Trade Center Health Program Scientific/Technical Advisory Committee; Amended Notice of Solicitation of Nominations

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the World Trade Center (WTC) Health Program Scientific/Technical Advisory Committee (WTCHP–STAC), in accordance with provisions of the James Zadroga 9/11 Health and Compensation Act of 2010. The WTCHP–STAC consists of 17 members including experts in fields associated with occupational medicine, pulmonary medicine, environmental medicine, environmental health, industrial hygiene, epidemiology, toxicology, and mental health, and representatives of WTC responders as well as representatives of certified-eligible WTC survivors.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the solicitation of nominations for appointment to the World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP–STAC).

The solicitation of nominations notice was published in the **Federal Register** on October 6, 2023, 88 FR 69636–69637.

The solicitation notice is being amended to extend the deadline for submission of nominations from November 20, 2023, in the original **Federal Register** notice, to December 30, 2023. The notice should read as follows:

DATES: Nominations for membership on the STAC must be received no later than December 30, 2023. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to NIOSH Docket 229–K, c/o Ms. Mia Wallace, Committee Management Specialist, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–4, Atlanta, Georgia 30329–4027, or emailed to *nioshdocket@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Tania Carreón-Valencia, Ph.D., M.S., Designated Federal Officer, World Trade Center Health Program Scientific/Technical Advisory Committee, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop R–12, Atlanta, Georgia 30329–4027. Telephone: (513) 841–4515 (this is not a toll-free number); Email: *TCarreonValencia@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–26039 Filed 11–24–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–23GC]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''NCEZID Rapid Message Testing & Development System'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on June 16, 2023 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Rapid Message Testing & Development System—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's National Center for Emerging and Zoonotic Infectious Diseases (NCEZID) offers numerous powerful resources to anticipate, prevent, and address outbreaks of infectious diseases. From researchers to emergency responders; from laboratories to surveillance of mobile populations; from collaborations at the federal level to partnerships at the local level, NCEZID keeps people safe from threats like anthrax, Ebola virus, Zika virus, sepsis, mpox, and foodborne illnesses like Salmonella. These efforts are vital to protect and save lives. The ability to effectively communicate with the public about these threats is one of NCEZID's most vital roles. Particularly during an outbreak, it is critical that the public understands what is happening and why, and trusts and follows public health leaders' guidance. Recent public health responses to COVID–19 and mpox have underscored the need to improve the speed and content of health communications, particularly among populations at higher risk for zoonotic and infectious diseases.

This Rapid Message Testing & Message Development System will enable NCEZID to collect information vital to the development of clear, salient, relevant, appealing, and persuasive messages related to outbreaks and other emerging and zoonotic diseases. The System will also allow for the relatively rapid testing of messages when the need arises within the Center, prior to the dissemination of those messages and associated communications materials. The data collection is intended to ensure NCEZID messages are clear, salient, appealing, and persuasive to target audiences. Data will guide revisions to existing or draft messages, inform the development of new messages, and otherwise enable message developers to make optimal decisions about message content, format, and dissemination so that NCEZID's messages effectively reach and resonate with their intended audiences. Data collection methods proposed for this system include in-depth interviews, online or in-person focus groups, and online surveys.

CDC requests OMB approval for an estimated 3,431 annualized burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Online surveys (general public)	Content question bank	10,000	1	10/60
Online in-depth interview screening (healthcare and specialty audiences).	Screening question bank	720	1	5/60
Online in-depth interviews (healthcare and specialty audiences)	Content question bank	72	1	1
Online focus group screening (general public)	Screening question bank	2,880	1	5/60
Online focus groups (general public)	Content question bank	288	1	2
Online focus group screening (healthcare and specialty audiences).	Screening question bank	2,880	1	5/60
Online focus groups (healthcare and specialty audiences)	Content question bank	288	1	2

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–26081 Filed 11–24–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)-RFA–OH–22–002, NIOSH Centers for Agricultural Safety and Health.

Date: March 14, 2024.

Time: 1 p.m.–5 p.m., EDT.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Marilyn Ridenour, B.S.N., M.P.H., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone: (304) 285–5879; Email: *MRidenour@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–26042 Filed 11–24–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control; Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), announces the renewal of the charter of the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC).

FOR FURTHER INFORMATION CONTACT: Christopher Harper, Ph.D., Designated Federal Officer, Board of Scientific Counselors, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road NE, Mailstop S106–9, Atlanta, Georgia 30329–4029. Telephone: (404) 718–8330; Email: *CRHarper1@cdc.gov.*

SUPPLEMENTARY INFORMATION: CDC is providing notice under 5 U.S.C. 1001–1014 of the renewal of the charter of the Board of Scientific Counselors, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, Department of Health and Human Services. This charter has been renewed for a two-year period through November 5, 2025.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–26041 Filed 11–24–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–23HC]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Food safety knowledge, attitude, and practices survey of correctional workers'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 7, 2023 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting

''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Food safety knowledge, attitude, and practices survey of correctional workers—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2017, an analysis of Foodborne Disease Outbreak Surveillance System (FDOSS) epidemiology data demonstrated a disproportionately high burden of foodborne outbreaks and outbreak-associated illnesses in correctional settings compared to other settings (Marlow et al., Am J Public Health 2017). The CDC is developing training programs to reduce foodborne illness in correctional facilities. However, CDC has little understanding of current training and overall food safety culture among individuals working in correctional settings. This survey will allow for the collection of baseline knowledge, attitudes, and practices (KAP) of correctional staff working in a variety of U.S. correctional facilities (including federal, state, tribal, local and private facilities). The survey will assess overall food infrastructure, food safety training, and the receptiveness of correctional staff to being a part of food safety at their facilities. The plan will be to repeat the survey two years later to support interim evaluation of CDC programs.

CDC requests OMB approval for an estimated 2,500 annual burden hours to conduct a KAP survey of correctional workers. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Correctional workers	KAP survey of correctional workers	5,000	1	0.5

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–26084 Filed 11–24–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Information: Temporary Assistance for Needy Families (TANF) Implementation of Sections 302 and 304 of the Fiscal Responsibility Act of 2023

AGENCY: Office of Family Assistance, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for information (RFI).

SUMMARY: The Administration for Children and Families (ACF), in the U.S. Department of Health and Human Services (HHS), invites public comments on the possibilities for design and implementation of the new pilot program and work outcomes measures of the Fiscal Responsibility Act of 2023 (FRA), in the Temporary Assistance for Needy Families (TANF) program. The FRA requires HHS to carry out a pilot program for up to five states to promote accountability by measuring employment and earnings outcomes as well as additional indicators of family stability and well-being for TANF recipients. In addition, it requires all states to report the information necessary to calculate certain statutory work outcomes measures. ACF seeks input from partners to help understand some of the options, opportunities, and potential challenges associated with the development and implementation of the pilot program and the reporting of new statutory work outcomes measures applicable to all states.

DATES: Comments are due January 11, 2024.

ADDRESSES: Submit responses to *TANFquestions@acf.hhs.gov.* Please include ''TANF FRA'' in the subject line of the email.

Guidance for Submitting Comments

- To ensure that your comments are clearly understood and properly contextualized, please identify the specific question or section of this notice that your comments address, as well as your experience or role that informs your response.
- You are encouraged to comment on any issues or concerns you believe are relevant or appropriate for our consideration and to submit written data, facts, and views addressing this subject, including but not limited to the questions below.
- You do not need to answer all questions listed—only the question(s) for which you have relevant information. The written RFI response should address ONLY the topics for which the respondent has knowledge or expertise.
- Wherever possible, please provide credible data and specific examples to support your views. If you cite academic or other studies, they should be publicly available to be considered.
- All submissions are public records and may be published on *www.regulations.gov.* Do NOT submit sensitive, confidential, or personally identifiable information.

SUPPLEMENTARY INFORMATION:

1.0 Background

1.1 Pilot Program

Section 302 of the FRA authorizes a pilot program under which HHS may select up to five states to test alternative performance metrics in the TANF program. Section 302 of the FRA provides that for the duration of the pilot projects, the work participation requirements shall not apply to the pilot states and instead, participating states will comply with agreed upon performance measures and benchmarks. In lieu of the work participation rate (WPR), state performance will be measured by (A) the percentage of work-eligible individuals who are employed during the 2nd quarter after exiting the TANF program; (B) the level of earnings of those individuals in the 2nd and 4th quarters after exit; and (C) other indicators of family stability and well-being as established by HHS. States that fail to meet agreed upon performance benchmarks for these measures will be required to enter into a plan with HHS to either achieve the level of performance or adjust the benchmarks. In the event neither is accomplished, the state will no longer be permitted to participate in the pilot. The pilots will be in effect for six years, with the first year being used to establish baseline data.

Since TANF was enacted in 1996, the chief measure of program performance has been the requirement that states meet WPR targets. The WPR measure the extent to which states engage families receiving TANF cash assistance in certain work activities for a specified number of hours each week each month during a fiscal year. A state must meet an overall (or ''all families'') and a two-parent work participation requirement or face a potential financial penalty. The WPR targets are 50 percent for all families and 90 percent for two-parent families, but a state's individual targets equal the statutory rates adjusted downward by the number of percentage points by which the caseload has fallen since a base year for reasons other than changes in eligibility rules.

Over time, states, members of Congress, and others have advocated for moving TANF beyond solely relying on the WPR as a means of defining the success of states in supporting TANF recipients in entering employment and gaining the skills they need for economic stability. Many have also noted that the WPR is a process measure rather than an outcome measure, as it measures only a state's ability to engage individuals in specified countable activities that lack research to support their connection to long term employment outcomes.[1]

While this performance standard structure has remained largely unchanged since 1996, in recent years there has been an increasing interest in alternative methods of measuring state performance in TANF and other human services programs.[2] The FRA authorized pilots to test alternatives to the WPR.

As an alternative to the WPR, states participating in the pilots would be measured against negotiated benchmarks for work outcomes and other indicators of family stability and well-being. The pilots will provide an important opportunity for selected states to demonstrate different approaches to measuring their performance in assisting families with low incomes. We encourage states to think about strategies for promoting and measuring economic success and family stabilization. ACF is interested in learning more about the opportunities that the pilot program presents for states. ACF is committed to a successful pilot program, one that results in useful information for policymakers and leads to a more effective TANF program that further benefits American families.

1.2 Work Outcomes Measures

Section 304 of the FRA requires all states to collect and submit ''the information necessary'' to determine four indicators of performance. These are:

- *Employment in the Second Quarter after Exit:* The percentage of individuals who were work-eligible individuals as of the time of exit from the program, who are in unsubsidized employment during the second quarter after the exit;
- *Employment Retention:* The percentage of individuals who were work-eligible individuals who were in unsubsidized employment in the second quarter after the exit, who are also in unsubsidized employment during the fourth quarter after the exit;
- *Median Earnings:* The median earnings of individuals who were work-eligible individuals as of the time of exit from the program, who are in unsubsidized employment during the second quarter after the exit; and
- *High School Attainment:* The percentage of individuals who have not attained 24 years of age, are attending high school or enrolled in an equivalency program, and are work-eligible individuals or were work-eligible individuals as of the time of exit from the program, who obtain a high school degree or its recognized equivalent while receiving assistance under the State program funded under this part or within 1 year after the exit.

Section 304 specifies that to ensure nationwide comparability of data, HHS shall issue regulations governing reporting of the performance indicators after it consults with the Secretary of Labor and with states. This RFI is one of the ways HHS is consulting with states.

The above measures are similar to some of the performance accountability measures required under the Workforce Innovation and Opportunity Act of 2014 (WIOA).[3] The FRA does not specify which data sources should be used for the above measures. For the first three measures, ACF is considering requiring states to submit Social Security Numbers (SSN) of all work-eligible individuals who left TANF in a given quarter and ACF would then match those SSNs with quarterly wage records in the National Directory of New Hires (NDNH).[4] ACF would then use the matched results to compute the first three work outcomes measures on behalf of states. This approach would allow for standardized measures and would not require states to initiate new data sharing agreements at the state level. ACF is interested in learning about alternative data sources, such as unemployment insurance quarterly wage records contained in the State Wage Interchange System (SWIS),[5] as well as data sources that could be used to supplement standardized measures. Under WIOA, states are allowed to submit ''other information as is necessary to measure the progress of those participants through methods other than quarterly wage record information'' if quarterly wage records are not available for a participant.[6] ACF has matched individual TANF case records with NDNH wage records since FY 2002 for the High Performance Bonus measures, and later for performance measures that are reported as part of the Congressional Budget Justification,[7] but ACF has not calculated a high school attainment measure and so is looking for information about potential data sources and key considerations. Other areas include how to operationally define TANF exiters, which are defined in the statute as those who ''cease[ ] to receive assistance under the program funded by this part.'' However, many studies have defined an ''exit'' from TANF in different ways, taking churn into account; TANF ''leavers'' studies from the early 2000s often defined a ''leaver'' as someone who has left cash assistance for at least two months, while WIOA defines a ''common exit'' as a participant not receiving Department of Labor-administered services for at least 90 days.[8]

These work outcomes measures are intended to assist federal—and state—policymakers in better understanding

[1] See *https://www.acf.hhs.gov/opre/report/measuring-employment-outcomes-tanf.*

[2] See p.19 *https://crsreports.congress.gov/product/pdf/R/R45966; https://www.acf.hhs.gov/opre/report/measuring-employment-outcomes-tanf.*

[3] See *https://www.dol.gov/agencies/eta/performance/performance-indicators.*

[4] See *https://www.acf.hhs.gov/css/training-technical-assistance/overview-national-directory-new-hires.*

[5] See *https://www.dol.gov/agencies/eta/performance/swis.*

[6] See *https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2017/TEGL_26-16_Acc.pdf.*

[7] See TANF–ACF–PI–2002–01 (FY 2002 TANF High Performance Bonus (HPB): New Reporting Requirements) *https://www.acf.hhs.gov/ofa/policy-guidance/tanf-acf-pi-2002-01-fy-2002-tanf-high-performance-bonus-hpb-new-reporting;* FY 2024 Congressional Budget Justification, p. 338 *https://www.acf.hhs.gov/sites/default/files/documents/olab/fy-2024-congressional-justification.pdf.*

[8] See *https://aspe.hhs.gov/tanf-leavers-applicants-caseload-studies* and *https://www.dol.gov/agencies/eta/performance/definitions.*

the effectiveness of TANF programs in promoting successful employment and credential attainment. As with the pilots, the work outcomes measures may inform future improvements to the TANF program. ACF is interested in hearing from states their thoughts on operationalizing these new measures including the potential administrative cost and burden involved.

2.0 Request for Information.

Through this RFI, ACF is soliciting input and information from a broad array of stakeholders on how best to design and implement the FRA pilot program and the new work outcomes measures.

This RFI is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of ACF or HHS.

We ask respondents to address the following questions. You do not need to address every question and should focus on those for which you have relevant expertise or experience. In your response, please provide a brief description of yourself or your organization.

3.0 Key Questions—Pilot Program

3.1 What are the most important criteria a state should meet for selection into the pilot program, and why? Are there a minimum set of requirements a state should meet to be eligible for a pilot? If so, which ones? Are there aspects of state TANF programs that may increase their likelihood of success as a pilot? Are there aspects of state TANF programs that may impede their likelihood of success as a pilot? For example, if the benefit amounts or caseloads are low, full family sanction and family cap policies exist, etc. Is there particular past experience or past performance achievement that might be predictive of states' ability to successfully carry out a pilot?

3.2 What factors might influence a state's decision whether to pursue participation in the pilot program?

3.3 What technical assistance or supports would be helpful for states and service providers in designing and implementing pilots? What obstacles do you foresee and how can ACF provide assistance to overcome or manage them?

3.4 What indicators of family stability and well-being, including alternative measures related to employment, for families participating in TANF should we consider measuring as part of the pilot? For example, should pilots include measures related to family poverty, interactions with the child welfare system, or other indicators related to child well-being? Please explain your reasoning. What data source(s) would be of most utility in tracking your recommended indicators? For example, if a state is interested in measuring job quality as an indicator of family well-being, would a state be able to measure that by tracking jobs with benefits such as a paid leave or employer contribution retirement plans? Should family income be included as a measure of family stability and well-being and, if so, what are the important components, who should be included, and what would be the most reliable and practical sources of data? Should any indicators be measured for all low-income families, irrespective of TANF participation, to evaluate whether a state's TANF program is successfully serving these families (*e.g.,* the share of families living in deep poverty, taking into account all sources of income)?

3.5 What factors (*e.g.,* demographic, economic, policy, programmatic) should be considered when establishing performance benchmarks? In your experience, what are the most important factors and variables to take into consideration when developing statistical adjustment models for performance benchmarks?

3.6 What information should be collected about the pilots to help evaluate and explain their level of success? Is there information HHS should collect to help determine how a successful pilot program may be replicated in a different state? Should the pilot program undergo a formal evaluation? If so, what form should it take? Please provide your reasoning.

3.7 At what point(s) in the continuum of participation in a program should work and family well-being indicators be measured (*e.g.,* while a family is still receiving assistance, upon exit, two quarters after exit, a year after exit)?

3.8 What characteristics among pilot states (*e.g.,* programmatic, geographic, economic, demographic) would be most helpful in providing useful and scalable results for TANF administrators and policymakers? What level of diversity among pilot sites (*e.g.,* geographic, size, location) would be most helpful in providing relevant results across states?

3.9 In what ways should equity be considered when implementing a pilot? Are there tools or resources needed to promote equity in pilot design, implementation, and evaluation? What factors or data points would you consider important to ensuring equity (avoiding disparate impacts) in the implementation of work and family well-being measures as part of the pilot? How do we ensure that the individual experiences of families that receive TANF cash assistance are considered in the pilot design, implementation, and evaluation?

3.10 Are there similar past pilot efforts (federal, state, local) from which HHS should draw lessons learned in setting up this pilot project?

3.11 Are there any other questions or issues related to the pilots for which you wish to provide comments?

4.0 Key Questions—Work Outcomes Measures

4.1 In your experience, what data sources on employment and earnings are most accurate and practical for work outcomes measures similar to those required by the FRA? What do you see as advantages and limitations of matching with the National Directory of New Hires (NDNH) at the federal level, as compared to the State Wage Interchange System (SWIS) or other alternatives? We are particularly interested in understanding the costs, timing, administrative burden, and reliability of different data sources.

4.2 If given the opportunity, do you believe state agencies would have the interest and capacity to voluntarily submit supplemental wage information (similar to WIOA [9]) in addition to information needed for a match with the NDNH? If so, would states be more likely to submit supplemental individual-level data or aggregated outcomes measures using an alternative data source? We are interested in the rationale behind the preferred approach.

4.3 In your experience, what data sources are most accurate and practical for high school degree or secondary school diploma equivalency attainment? Is it feasible to reliably determine high school completion or secondary school diploma equivalency attainment for current and former TANF recipients using survey data? Please share the nature of your experience.

4.4 When thinking about exit from the TANF program, what are the most important considerations? In what manner, if any, should the issue of "churn" be addressed? (That is, those cases that cycle off for short periods of time due to causes such as administrative errors, delays in redetermination, or sanctions.)

4.5 We are interested in understanding the timelines involved in reliably reporting and calculating outcome measures. What operational issues affect the timing and availability of data for the work outcomes measures, including TANF caseload, employment

[9] See *https://www.dol.gov/agencies/eta/advisories/training-and-employment-guidance-letter-no-26-16.*

and earnings, and education data? For example, what is the earliest turnaround time for reliably reporting that a TANF case has closed? What are the timelines involved in matching and working with employment and earnings data and education data?

4.6 What factors (*e.g.,* demographic, economic, policy, programmatic) should be considered for presenting the work outcomes measures in context? Are there variables such as state economic conditions that may impact state outcomes and are outside a state TANF program's control?

4.7 In what ways should equity be considered when implementing work outcome measures? What are the advantages of and/or possible difficulties associated with reporting data disaggregated by race, ethnicity, gender, age, disability, other demographic characteristics, or geography to enable equity analyses around work outcomes? [10]

4.8 What technical assistance or supports would be helpful for collecting data for work outcomes? What obstacles do you foresee and how can ACF and its partners provide assistance to overcome or manage those barriers?

4.9 Please describe the characteristics of successful partnerships between the public workforce system and the TANF system that support the collection of data for the work outcomes measures required by the FRA?

4.10 Please describe the specific steps for a state to begin collecting and reporting data and their estimated duration. For example, please estimate the timeframe for system changes to generate a list of SSNs of work-eligible individuals who left TANF in a given quarter.

4.11 Are there any other questions or issues related to the work outcomes measures for which you wish to provide comments?

4.12 HHS has determined that tribes are NOT required to report work outcomes measures as laid out in the Fiscal Responsibility Act. However, OFA is committed to supporting Tribal TANF programs that wish to voluntarily measure work outcomes for their caseloads. As we explore this possibility, what factors do we need to better understand? What training or technical assistance could support Tribal TANF programs interested in measuring work outcomes?

Authority: Fiscal Responsibility Act of 2023.

Ann Flagg,

Director, Office of Family Assistance.

[FR Doc. 2023–26100 Filed 11–22–23; 11:15 am]

BILLING CODE 4184–36–P

[10] See *https://www.whitehouse.gov/wp-content/uploads/2022/04/eo13985-vision-for-equitable-data.pdf.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1554]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Qualitative Feedback on Agency Service Delivery

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by December 27, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0697. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Qualitative Feedback on Agency Service Delivery

OMB Control Number 0910–0697—Extension

FDA will garner qualitative customer and stakeholder feedback using a variety of methods in order to gain useful insights into customer or stakeholder perceptions, experiences, and expectations; provide an early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

Respondents to this collection of information cover a broad range of customers and stakeholders who have specific characteristics related to certain products or services regulated by FDA. These stakeholders include members of the general public, healthcare professionals, industry, and others who have experience with a product under FDA's jurisdiction.

In the **Federal Register** of May 25, 2023 (88 FR 33889), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received but it was outside the scope of the PRA.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Focus groups	3,000	1	3,000	1.75	5,250
Customer comment cards/forms	1,500	1	1,500	0.25 (15 minutes)	375
Small discussion groups	800	1	800	1.75	1,400
Customer satisfaction surveys	20,000	1	20,000	0.33 (20 minutes)	6,600
Usability studies	1,100	1	1,100	1	1,100
Total					14,725

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we increased the number of respondents for focus groups, customer comment cards/forms, customer satisfaction surveys, and usability studies. This adjustment results in an overall burden increase of 6,234 hours.

Dated: November 21, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26043 Filed 11–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2894]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Good Laboratory Practice Requirements for Nonclinical Laboratory Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, we, or the Agency) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by December 27, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0119. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Good Laboratory Practice Requirements for Nonclinical Laboratory Studies—21 CFR Part 58

OMB Control Number 0910–0119—Extension

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 360b, and 360e) and related statutes require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits. Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the Agency issued good laboratory practice (GLP) regulations for nonclinical laboratory studies in part 58 (21 CFR part 58). The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOPs), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification, and include information collection provisions.

Part 58 requires testing facilities engaged in conducting toxicological studies to retain, and make available to regulatory officials, records regarding compliance with GLPs. Records are maintained on file at each testing facility and examined there periodically by FDA inspectors. The GLP regulations require that, for each nonclinical laboratory study, a final report be prepared that documents the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also require written records pertaining to: (1) personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOPs; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

Description of Respondents: Respondents to the collection of information are sponsors of nonclinical laboratory studies that support or are intended to support applications for research or marketing permits for products regulated by FDA.

In the **Federal Register** of August 8, 2023 (88 FR 53492), we published a 60-day notice soliciting comment on the proposed collection of information. One comment was received underscoring the critical nature of language translations in information exchange between international communities but did not suggest any modifications to our burden estimates.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 58.35(b)(7); Quality assurance unit	300	60.25	18,075	1	18,075
§ 58.185; Reporting of nonclinical laboratory study results	300	60.25	18,075	27.65	499,774
Total					517,849

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
§ 58.29(b); Personnel	300	20	6,000	.21 (13 minutes)	1,260
§ 58.35(b)(1)–(6), and (c); Quality assurance unit	300	270.76	81,228	3.36	272,926
§ 58.63(b) and (c); Maintenance and calibration of equipment.	300	60	18,000	.09 (5 minutes)	1,620
§ 58.81(a)–(c); SOPs	300	301.80	90,540	.14 (8 minutes)	12,676
§ 58.90(c) and (g); Animal care	300	62.70	18,810	.13 (8 minutes)	2,445
§ 58.105(a) and (b); Test and control article characterization.	300	5	1,500	11.8	17,700
§ 58.107(d); Test and control article handling	300	1	300	4.25	1,275
§ 58.113(a); Mixtures of articles with carriers	300	15.33	4,599	6.8	31,273
§ 58.120; Protocol	300	15.38	4,614	32.7	150,878
§ 58.195; Retention of records	300	251.50	75,450	3.9	294,255
Total					786,308

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on an evaluation of the information collection, we are retaining the currently approved estimates. Our assumptions made regarding the time needed for the respective activities is based on our experience with the information collection and informal communications with respondents.

Dated: November 21, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26044 Filed 11–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Declaration Under the Public Readiness and Emergency Preparedness Act for Countermeasures Against Ebolavirus and/or Ebola Disease and Marburgvirus and/or Marburg Disease

ACTION: Notice of amendment.

SUMMARY: The Secretary issues this amendment pursuant to section 319F–3 of the Public Health Service Act to amend the Declaration for Countermeasures against Marburgvirus and/or Marburg Disease to cover both Ebolaviruses and Marburgviruses and republishes the declaration, as amended. The amended republished Declaration clarifies that the disease threat includes Ebolaviruses and Marburgviruses, updates the title of the Declaration, expands the Covered Countermeasures, and extends the effective time period.

DATES: The amendment is effective as of January 1, 2024.

FOR FURTHER INFORMATION CONTACT: L. Paige Ezernack, Office of the Assistant Secretary for Preparedness and Response, Office of the Secretary, U.S. Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; 202–260–0365, *PREPAct@hhs.gov*.

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of the U.S. Department of Health and Human Services (the HHS Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the manufacture, distribution, administration, or use of medical countermeasures (Covered Countermeasures), except for claims involving ''willful misconduct'' as defined in the PREP Act. Under the PREP Act, a Declaration may be amended as circumstances warrant.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, 2. It amended the Public Health Service (PHS) Act, adding section 319F–3, which addresses liability immunity, and section 319F–4, which creates a compensation program. These sections are codified at 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively. Section 319F–3 of the PHS Act has been amended by the Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, enacted on March 13, 2013, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, enacted on March 27, 2020, to expand Covered Countermeasures under the PREP Act.

The PREP Act Declaration for Countermeasures Against Marburgvirus and/or Marburg Disease was first issued effective November 25, 2020. (85 FR 79198 (December 9, 2020)). The PREP Act Declaration for Ebola Virus Disease Vaccines was first issued December 3, 2014 (79 FR 73315 (Dec.10, 2014)), and amended December 3, 2015 (80 FR 76541 (Dec. 9, 2015)), December 3, 2016 (81 FR 89471 (Dec. 12, 2016)), and December 1, 2018 (84 FR 764 (Jan. 31, 2019)). The Declaration for Ebola Virus

Disease Therapeutics was issued effective February 27, 2015 (80 FR 22534 (April 22, 2015)), and amended February 27, 2015 (80 FR 76536 (December 9, 2015)), and December 1, 2018 (84 FR 757 (January 31, 2019)).

I am extending PREP Act Coverage for both Ebolaviruses and Marburgviruses due to the continued national security threat posed by these viruses. Ebolaviruses and Marburgviruses have the potential to cause significant morbidity and mortality during outbreaks. The risk of domestic cases is high due to ongoing outbreaks in other countries over the past decade. Development of and stockpiling vaccines, therapeutics, devices, and diagnostics for all species of both Ebolaviruses and Marburgviruses is needed for continued U.S. preparedness against the credible threat of a public health emergency due to outbreaks of these viruses.

I am amending the PREP Act Declaration for Countermeasures Against Marburgvirus and/or Marburg Disease to cover countermeasures previously covered under the Declaration for Ebola Virus Disease Vaccines and the Declaration for Ebola Virus Disease Therapeutics due to the similarities of the viruses and the need to expand Covered Countermeasures against Ebola Disease to include all vaccines, diagnostics, and devices in addition to previously covered vaccines and therapeutics, and to cover these countermeasures when administered or used by an Authority Having Jurisdiction to respond to a declared emergency, in addition to previously covered activities directly supported by the United States. All previously Covered Countermeasures for Ebolavirus and distribution activities continue to be covered. This action has the effect of combining the three previous Declarations into one amended Declaration and makes PREP Act coverage for Ebolavirus countermeasures consistent with PREP Act coverage provided for other health threats, including Marburg, Smallpox, Pandemic Influenza, Anthrax, and Acute Radiation Syndrome and emerging infectious diseases such as COVID–19.[1] This amended Declaration for Countermeasures Against Ebolavirus and/or Ebola Disease and Marburgvirus and/or Marburg Disease supersedes the PREP Act Declaration for Ebola Virus Disease Vaccines and the PREP Act Declaration for Ebola Virus Disease Therapeutics. The Declarations for Ebola Virus Disease Vaccines and Ebola Virus Disease Therapeutics will expire under their own terms on December 31, 2023 and this amended Declaration becomes effective January 1, 2024, effectively replacing the three prior Declarations.

To be consistent with the most current World Health Organization International Classification of Diseases, the term Ebola disease or ''EBOD'' is used in this Declaration to refer to the disease, health condition, or threat to health that constitutes or may constitute a public health emergency. The term Marburg Disease or ''MARD'' is used in this Declaration to refer to the disease, health condition, or threat to health that constitutes or may constitute a public health emergency.[2]

Specifically, I am now amending the PREP Act Declaration Against Marburgvirus and/or Marburg Disease Countermeasures to: amend the title of the declaration to reflect that it covers Ebolaviruses and Marburgviruses; update Section I to identify the public health threat as arising from Ebolaviruses and Marburgviruses; update Section VI to amend the definition of Covered Countermeasures and to extend coverage to all vaccines, diagnostics, and devices for Ebolavirus in addition to vaccines and therapeutics; extend Section VII of the Declaration to provide coverage for Ebolavirus Countermeasures when administered or used by an Authority Having Jurisdiction to respond to a declared emergency; update Section VIII to amend the category of disease to be inclusive of Ebolaviruses and Marburgviruses; extend in Section XII the effective time period of the declaration through December 31, 2028; and republish the declaration in its entirety, as amended.

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Description of This Amendment by Section

I am now amending the title of the Declaration to ''Declaration, as Amended, for Public Readiness and Emergency Preparedness Act Coverage for Countermeasures against Ebolaviruses and/or Ebola Disease and Marburgvirus and/or Marburg Disease.''

Section I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

I am amending Section I of the Declaration to update the determination of a public health emergency to state that the spread of Ebolaviruses and Marburgviruses, and any resulting diseases or conditions including EBOD and MARD, and any virus or disease subcategories of these, presents a credible risk of a future public health emergency. Continued coverage under the PREP Act, as provided in this Declaration, is intended to prepare for and mitigate that credible risk.

Section VI. Covered Countermeasures

I am amending Section VI of the Declaration to include any antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine, used to diagnose, mitigate, prevent, treat, cure, or limit EBOD, MARD, or the transmission of Ebolaviruses, Marburgviruses, or a virus mutating therefrom, or any device used in the administration of any such product, and all components and constituent materials of any such product.

Section VIII. Category of Disease, Health Condition, or Threat

I am amending Section VIII of the Declaration to update the category of disease to include any diseases or conditions including EBOD and MARD caused by Ebolaviruses and Marburgviruses, or any virus or disease subcategories of these or virus mutating therefrom.

Section XII. Effective Time Period

I am extending the effective time period for the Declaration through December 31, 2028.

Other conforming changes and technical corrections may be made throughout the Declaration for consistency and clarity.

Declaration, as Amended, for Public Readiness and Emergency Preparedness Act Coverage for Countermeasures Against Ebolavirus and/or Ebola Disease and Marburgvirus and/or Marburg Disease

To the extent any term previously included in the Declaration for Countermeasures Against Marburgvirus and/or Marburg Disease, the Declaration for Vaccines Against Ebola Virus Disease, or the Declaration for Therapeutics Against Ebola Virus Disease, including amendments, are inconsistent with any provision of this Republished Declaration, the terms of this Republished Declaration are controlling.

I. Determination of Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that the spread of Ebolaviruses and Marburgviruses, and

[1] See *https://aspr.hhs.gov/legal/PREPact/Pages/default.aspx.*

[2] See *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6637750/.*

any resulting diseases or conditions including Ebola Disease (EBOD) and Marburg Disease (MARD), and any virus or disease subcategories of these may in the future constitute a public health emergency. For the purposes of this Declaration, MARD is the illness resulting from infection by any virus of the *Orthomarburgvirus* genus. EBOD is the illness resulting from infection of any of the following virus species of the *Orthoebolavirus* genus:

• Bundibugyo virus
• Ebola virus
• Sudan virus
• Taï Forest virus
• Ebolaviruses with undefined pathogenicity in humans

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this Declaration, the manufacture, testing, development, distribution, administration, and use of the Covered Countermeasures.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the PREP Act and conditions stated in this Declaration is in effect for the Recommended Activities described in Section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are ''manufacturers,'' ''distributors,'' ''program planners,'' ''qualified persons,'' and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States. In addition, I have determined that the following additional persons are qualified persons: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in Section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a Declaration of an emergency; (b) any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with section 564 of the FD&C Act; and (c) any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with section 564A of the FD&C Act.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are: (1) any antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine, used to diagnose, mitigate, prevent, treat, cure, or limit the harm EBOD, MARD, or the transmission of Ebolaviruses, Marburgviruses, or a virus mutating therefrom, any device used in the administration of any such product, and all components and constituent materials of any such product; (2) any product to diagnose, mitigate, prevent, treat, or cure a serious or life-threatening disease or condition caused by a product described in clause (1); or (3) a product or technology intended to enhance the use or effect of a drug, biological product, or device described in clause (1) or (2).

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d}6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to:

(a) Present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other federal agreements, or activities directly conducted by the Federal Government; or

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures following a Declaration of an emergency.

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, tribal, state, or federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A Declaration of emergency means any Declaration by any authorized local, regional, state, or federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a federal Declaration in support of an Emergency Use Authorization under section 564 of the FD&C Act unless such Declaration specifies otherwise.

I have also determined that, for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is any diseases or conditions including EBOD and MARD caused by Ebolaviruses and Marburgviruses, or any virus or disease subcategories of these or virus mutating therefrom.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered

Countermeasures in accordance with this Declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population, or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in any designated geographic area; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in any designated geographic area, or the program planner or qualified person reasonably could have believed the recipient was in that geographic area.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction and extends through December 31, 2028.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with a Declaration and lasts through (1) the final day the emergency Declaration is in effect, or (2) December 31, 2028, whichever occurs first.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional 12 months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the Strategic National Stockpile (SNS) during the effective period of this Declaration are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a covered serious physical injury as the direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical, and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at the toll-free number 1–855–266–2427 or *http://www.hrsa.gov/cicp/*.

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

The December 3, 2014, Declaration under the PREP Act for Countermeasures Against Ebola Virus Disease Vaccines was first published on December 10, 2014, and amended and republished on December 9, 2015, December 12, 2016, and January 31, 2019. The republished amended Declaration for Countermeasures Against Ebolavirus and/or Ebola Disease and Marburgvirus and/or Marburg Disease supersedes the Declaration for Countermeasures Against Ebola Virus Disease Vaccines.

The February 27, 2015, Declaration under the PREP Act for Countermeasures Against Ebola Virus Disease Therapeutics was first published on April 22, 2015, and amended and republished on December 9, 2015, December 12, 2016, and January 31, 2019. The republished amended Declaration for Countermeasures Against Ebolavirus and/or Ebola Disease and Marburgvirus and/or Marburg Disease supersedes the Declaration for Countermeasures Against Ebola Virus Disease Therapeutics.

The November 25, 2020, Declaration under the PREP Act for Countermeasures Against Marburgvirus and/or Marburg Disease was published on December 9, 2020. This is the first amendment to and republication of the Declaration.

Any further amendments to this Declaration will be published in the **Federal Register**, as warranted.

Authority: 42 U.S.C. 247d–6d.

Dated: November 21, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–26075 Filed 11–24–23; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amend Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel T32 Diversity Training Grants, December 1, 2023, 11:00 a.m. to 1:00 p.m., National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 26, 2023, FR Document No. 2023–23751, 88 FRN 73863.

This notice is being amended to change the meeting title to ‘‘The National Heart, Lung, and Blood Institute Special Emphasis Panel T32 Member Conflicts SEP.’’ The meeting is closed to the public.

Dated: November 20, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–26020 Filed 11–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Customs Broker Permit User Fee Payment for 2024 and Announcement of eCBP Portal Payment Option

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

ACTION: General notice.

SUMMARY: This document provides notice to customs brokers that the annual user fee that is assessed for each

permit held by a customs broker, whether it may be an individual, partnership, association, or corporation, is due no later than February 9, 2024. Pursuant to fee adjustments required by the Fixing America's Surface Transportation Act (FAST Act) and the U.S. Customs and Border Protection (CBP) regulations, the customs broker permit user fee payable for calendar year 2024 will be $174.80. CBP is also announcing that customs brokers may pay the fee electronically via the electronic Customs and Border Protection (eCBP) portal.

DATES: Payment of the 2024 Customs Broker Permit User Fee is due no later than February 9, 2024.

FOR FURTHER INFORMATION CONTACT: Mohammad O. Qureshi, Chief, Broker Management Branch, Office of Trade, (202) 909–3753, or *mohammad.o.qureshi@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Customs Broker Permit User Fee Payment for 2024

Pursuant to section 111.96 of title 19 of the Code of Federal Regulations (CFR) (19 CFR 111.96(c)), U.S. Customs and Border Protection (CBP) assesses an annual user fee for each customs broker permit granted to an individual, partnership, association, or corporation. The CBP regulations provide that this fee is payable each calendar year for a national permit held by a customs broker and must be paid by the due date published annually in the **Federal Register**. *See* 19 CFR 24.22(h) and (i); 19 CFR 111.96(c).

Section 24.22 of title 19 of the CFR (19 CFR 24.22) sets forth the terms and conditions for when fees for certain services, including specific customs user fees, are required. The specific customs user fee amounts that appear in 19 CFR 24.22 are not the actual fees but represent the base year amounts that are subject to adjustment each fiscal year in accordance with the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94, December 4, 2015). Section 32201 of the FAST Act amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by requiring the Secretary of the Treasury to adjust certain customs COBRA user fees and corresponding limitations to reflect certain increases in inflation. Paragraph (k) of section 24.22 of title 19 of the CFR (19 CFR 24.22(k)) sets forth the methodology to adjust fees for inflation and to determine the change in inflation, including the factor by which the fees and limitations will be adjusted, if necessary.

Customs brokers are subject to an annual customs broker permit user fee calculated using the base year amount in appendix A to 19 CFR part 24, as adjusted by the terms in 19 CFR 24.22(k). *See* 19 U.S.C. 58c(a)(7) and 19 CFR 24.22(h). In accordance with 19 CFR 24.22, CBP determines annually whether an adjustment to the fees and limitations is necessary and publishes a **Federal Register** notice specifying the amount of the fees and limitations for each fiscal year. On July 28, 2023, CBP published a **Federal Register** notice, entitled COBRA Fees to be Adjusted for Inflation in Fiscal Year 2024 (CBP Dec. 23–08), which announced, among other fee adjustments, that the annual customs broker permit user fee will increase to $174.80 for calendar year 2024. *See* 88 FR 48900.

Thus, as required by 19 CFR 24.22, CBP provided notice in the **Federal Register** of the annual fee amount at least 60 days prior to the date that the payment is due for each customs broker national permit. This document notifies customs brokers that, for calendar year 2024, the due date for payment of the annual customs broker permit user fee is February 9, 2024. If a customs broker fails to pay the annual customs broker permit user fee by February 9, 2024, the national permit is revoked by operation of law. *See* 19 CFR 111.45(b) and 111.96(c).

Announcement of eCBP Portal Payment Option

On October 18, 2022, CBP published a final rule titled ''Modernization of the Customs Broker Regulations'' in the **Federal Register** (87 FR 63267), which announced the deployment of the electronic Customs and Border Protection (eCBP) portal, an online system for processing electronic payments of licensed customs broker fees and submissions, and stated that CBP would announce additional eCBP functionalities, including an enhancement allowing the payment of annual permit user fees, in the **Federal Register**. Accordingly, in this document, CBP is announcing the deployment of new eCBP functionality allowing the payment of the annual customs broker permit user fee. CBP anticipates that the eCBP portal will be open for the collection of annual customs broker permit user fee payments starting on November 29, 2023.

With this new functionality, customs brokers may either submit the fee through the eCBP portal or submit the fee at the processing Center, as defined in 19 CFR 111.1, in accordance with the remittance procedures in 19 CFR 24.22(i). The eCBP portal streamlines the payment process, allows for easy collection of fees, and offers customs brokers the flexibility and convenience to pay licensed customs broker fees easily and effectively. Thus, CBP encourages customs brokers to pay the annual customs broker permit user fee electronically via the eCBP portal. Customs brokers who wish to use the eCBP portal, located on CBP's website or at *https://e.cbp.dhs.gov/brokers/#/home,* must create a *Login.gov* account as a first-time user. Instructions and training resources, such as user and quick reference guides, for customs brokers on how to create a *Login.gov* account and how to use the eCBP portal can be found on CBP's website.

John P. Leonard,

Acting Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2023–26050 Filed 11–24–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2023–0044]

Homeland Security Academic Partnership Council

AGENCY: The Office of Partnership and Engagement (OPE), The U.S. Department of Homeland Security (DHS).

ACTION: Notice of public meeting of the Homeland Security Academic Partnership Council.

SUMMARY: The Homeland Security Academic Partnership Council (HSAPC) will hold a virtual meeting on Wednesday, December 13, 2023 from 3:30 p.m. EST to 4:30 p.m. EST. Public participation is welcome via Zoom pre-registration.

DATES: The meeting will take place from 3:30 p.m. EST to 4 p.m. EST on Wednesday, December 13, 2023. Please note that the meeting may end early if the Council completes its business.

ADDRESSES: The HSAPC meeting will be held via Zoom. Members of the public interested in participating may do so by following the process outlined below. The public will remain in listen-only mode except during the public comment session. Members of the public may register to participate in this Council meeting via Zoom under the following procedures. Each individual must provide their full legal name and email address no later than 5 p.m. EST on Tuesday, December 12, 2023 to Zarinah ''Traci'' Silas via email at *HSAPC@hq.dhs.gov* or via phone at 202–891–2876. Members of the public who have registered to participate will be provided the Zoom link after the closing of the public registration period and prior to the start of the meeting. Written comments may be submitted no later than 5 p.m. EST on Friday, December 22, 2023. Comments must be identified by Docket No. DHS–2023–0044 and may be submitted using one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments, OR

• *Email: HSAPC@hq.dhs.gov*. Include Docket No. DHS–2023–0044 in the subject line of the message.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and ''DHS–2023–0044,'' the docket number for your comments. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of *www.regulations.gov*.

Docket: For access to the docket to read comments received by the Council, go to *http://www.regulations.gov,* search ''DHS–2023–0044,'' and ''Open Docket Folder'' to view the comments.

FOR FURTHER INFORMATION CONTACT: Zarinah ''Traci'' Silas, Executive Director of the Office of Academic Engagement and Designated Federal Officer of the Homeland Security Academic Partnership Council, U.S. Department of Homeland Security at *HSAPC@hq.dhs.gov* or 202–891–2876.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 117–286 (5 U.S.C. ch. 10), which requires all FACA committee meetings to be open to the public unless the President, or the head of the Agency to which the advisory committee reports, determines that a portion of the meeting requires closing it to the public in accordance with 5 U.S.C. 552b(c).

The HSAPC provides organizationally independent, strategic, timely, specific, and actionable recommendations to the Secretary on key issues at the intersection of education, academia, and the DHS mission.

Due to the current Middle East conflict, the Secretary requested that the HSAPC form a Subcommittee to provide advice and recommendations on ways DHS can support the academic community in protecting against campus violence and promoting inclusivity across K–12 and higher education institutions. The meeting will include:

(1) Remarks from Senior DHS leaders and HSAPC Chairperson,

(2) Member discussion, public comment, deliberation and voting on one draft report from the School and Campus Safety Considering the Conflict in the Middle East Subcommittee.

Members of the public will remain in listen-only mode except during the public comment session. Members of the public may pre-register to attend this Council meeting via Zoom by sending each individual attendee's full legal name and email address to Executive Director Zarinah ''Traci'' Silas via email to *HSAPC@hq.dhs.gov* or via phone at *202–891–2876* no later than 5 p.m. EST on Friday, December 8, 2023.

Members of the public who have pre-registered to attend will be provided the Zoom link after the closing of the public registration period and prior to the start of the meeting. For more information about the HSAPC, please visit our website: *https://www.dhs.gov/homeland-security-academic-partnership-council-hsapc*.

Lastly, the Department is committed to ensuring all participants have equal access and opportunity to attend the meeting. If you require reasonable accommodations, please send your request to Zarinah ''Traci'' Silas at *HSAPC@hq.dhs.gov or via phone at 202–891–2876* no later than 5 p.m. EST on Wednesday, December 6, 2023 for handling.

Zarinah T. Silas,

Designated Federal Officer, Homeland Security Academic Partnership Council, U.S. Department of Homeland Security.

[FR Doc. 2023–26048 Filed 11–24–23; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_MT_FRN_MO4500176159]

Notice of Western Montana Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Western Montana District Resource Advisory Council (Council) will meet as follows.

DATES: The Council will hold a virtual meeting on December 11, 2023, from 1 p.m. to 4 p.m. Mountain Time (MT) and an in-person meeting with a virtual participation option on January 11, 2024, from 9 a.m. to 4 p.m. MT in Missoula, Montana.

ADDRESSES: Meeting arrangements, including precise location, will be confirmed for the public via BLM news release, social media, and on the Council's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/montana-dakotas/western-montana-rac,* and through personal contact at least 2 weeks prior to the meeting.

Written comments for the Council may be sent electronically in advance of the scheduled meeting to Public Affairs Specialist David Abrams at *dabrams@blm.gov,* or in writing to BLM, Western Montana District/Public Affairs, 101 N Parkmont, Butte, MT 59701. All comments will be provided to the Council.

FOR FURTHER INFORMATION CONTACT: David Abrams, Public Affairs Specialist, BLM Western Montana District Office, telephone: (406) 437–2562, email: *dabrams@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Abrams. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Council provides recommendations to the Secretary of the Interior concerning the planning and management of the public land resources located within the BLM's Western Montana District and offers advice on the implementation of the comprehensive, long-range plan for management, use, development, and protection of the public lands within the District. Agenda topics for the December meeting include a discussion on the proposed Butte BLM Business Plan and fee proposal. Agenda topics for the January meeting include updates/discussions on Restoration Landscape projects and funding from the Missoula and Dillon Field Offices; the Madison River Recreation business plan; the Garnet Ghost Town business plan; field office updates; a summary of recent BLM litigation; and other resource management issues the Council may raise. Updated agendas will be published with the news releases confirming the meeting details 2 weeks before the meeting.

Both meetings are open to the public and a public comment period will be offered at 1:45 p.m. to 2:15 p.m. MT for the Dec. 11 meeting and 3:30 p.m. to 4 p.m. MT for the in-person Jan. 11 meeting. While the January meeting is scheduled from 9 a.m. to 4 p.m., it may end earlier or later depending on the needs of group members. Therefore, members of the public interested in a specific agenda item or discussion should schedule their arrival accordingly. The BLM will provide a virtual participation option via Teams for the January meeting. A link to the Teams meeting will be posted on the Council's web page 2 weeks in advance of the meeting. Individuals who want to participate virtually must register at least 1 week in advance of the meeting.

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to allow for sufficient time to process the request. All reasonable accommodation requests are managed on a case-by-case basis.

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.

Detailed minutes for Council meetings will be maintained in the BLM Western Montana District Office. Minutes will also be posted to the Council's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/montana-dakotas/western-montana-rac.*

(Authority: 43 CFR 1784.4–2)

Kathryn A. Stevens,

BLM Western Montana BLM District Manager.

[FR Doc. 2023–25996 Filed 11–24–23; 8:45 am]

BILLING CODE 4331–20–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–056]

Sunshine Act Meetings

Agency Holding the Meeting: United States International Trade Commission.

TIME AND DATE: December 6, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 731–TA–1378–1379 (Review)(Low Melt Polyester Staple Fiber (PSF) from South Korea and Taiwan). The Commission currently is scheduled to complete and file its determinations and views of the Commission on December 13, 2023.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: November 22, 2023.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2023–26214 Filed 11–22–23; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–695–698 and 731–TA–1643–1657 (Preliminary)]

Aluminum Extrusions From China, Colombia, Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of aluminum extrusions from China, Colombia, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates and Vietnam provided for in subheadings 7604.10.10, 7604.10.30, 7604.10.50, 7604.21.00, 7604.29.10, 7604.29.30, 7604.29.50, 7608.10.00, 7608.20.00, 7609.00.00, 7610.10.00, and 7610.90.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the governments of China, Indonesia, and Mexico. The Commission also determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of aluminum extrusions from Turkey that are alleged to be subsidized by the government of Turkey.[2]

The Commission further finds that imports of aluminum extrusions from the Dominican Republic that are allegedly sold in the United States at LTFV are negligible pursuant to section 771(24) of the Act, and its investigation with regard to imports from the Dominican Republic is thereby terminated pursuant to section 733(a)(1) of the Act.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 88 FR 74421 and 88 FR 74433 (October 31, 2023).

published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On October 4, 2023, the U.S. Aluminum Extruders Coalition (consisting of Alexandria Extrusion Company, Alexandria, Minnesota; APEL Extrusions Inc., Coburg, Oregon; Bonnell Aluminum, Newnan, Georgia; Brazeway, Adrian, Michigan; Custom Aluminum Products, South Elgin, Illinois; Extrudex Aluminum, North Jackson, Ohio; International Extrusions, Garden City, Michigan; Jordan Aluminum Company, Memphis, Tennessee; M–D Building Products, Oklahoma City, Oklahoma; Merit Aluminum, Corona, California; MI Metals, Oldsmar, Florida; Pennex Aluminum, Wellsville, Pennsylvania; Tower Extrusions, Olney, Texas; and Western Extrusions, Carrollton, Texas) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Pittsburgh, Pennsylvania filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of aluminum extrusions from China, Indonesia, Mexico, and Turkey and LTFV imports of aluminum extrusions from China, Colombia, Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates and Vietnam. Accordingly, effective October 4, 2023, the Commission instituted countervailing duty investigation Nos. 701-TA-695–698 and antidumping duty investigation Nos. 731-TA-1643–1657 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 13, 2023 (88 FR 71020). The Commission conducted its conference on October 25, 2023. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on November 20, 2023. The views of the Commission are contained in USITC Publication 5477 (November 2023), entitled *Aluminum Extrusions from China, Colombia, Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, and Vietnam: Investigation Nos. 701–TA–695–698 and 731–TA–1643–1657 (Preliminary).*

By order of the Commission.

Issued: November 21, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–26057 Filed 11–24–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1377]

Certain Products Containing Tirzepatide and Products Purporting To Contain Tirzepatide; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 19, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of Eli Lilly and Company of Indianapolis, Indiana. A supplement was filed on November 10, 2023. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain products containing tirzepatide and products purporting to contain tirzepatide by reason of the infringement of U.S. Trademark Registration No. 6,809,369 (''the '369 mark''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complaint also alleges violations of section 337 based upon the importation into the United States, or in the sale of certain products containing tirzepatide and products purporting to contain tirzepatide by reason of false designation of source and false and misleading advertising, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order or, in the alternative, a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 20, 2023, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (3) by reason of

false designation of source and false and misleading advertising, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (3) by reason of infringement of the '369 mark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(3) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''products containing tirzepatide or purporting to contain tirzepatide sold in powdered or constituted form'';

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Eli Lilly and Company, Lilly Corporate Center, Indianapolis, IN 46285

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Arctic Peptides LLC, 2104 NE Oak Dr, Ankeny, IA 50021

Audrey Beauty Co., Flat C 23/F Lucky Plaza, 315–321 Lockhart Road, Wan Chai, Hong Kong, China

Biolabshop Limited, 25 Scotforth Road, Lancaster, PR1 4XX, United Kingdom

Mew Mews Company Limited, RM C1 11/F Blk 1 152 Tai Lin Pai Road, Golden Dragon IND Ctr., Kwai Chung, New Territories, Hong Kong, China

Strate Labs LLC, 18482 Kuykendahl Road #123, Spring, TX 77379–8123

Steroide Kaufen, W. Polna 2017, 15–698 Bialystok, Poland

Super Human Store, Passeig Del Taulat 267, 5O 4A, Barcelona 08019, Spain

Supopeptide, 371 Little Falls Road Ste 4, Cedar Grove, NJ 07009

Triggered Supplements LLC, (d/b/a The Triggered Brand), 1361 S Martin Luther King Jr Ave., Clearwater, FL 33756

Unewlife, 371 Little Falls Road Ste 4, Cedar Grove, NJ 07009

Xiamen Austronext Trading Co., Ltd. (d/b/a AustroPeptide), Room 3001, No. 5998, Maqing Rd., Haicang District, Xiamen, Fujian, China 361026

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 21, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–26058 Filed 11–24–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Under Attack: Assaults on Our Nation's Law Enforcement

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division, Department of Justice (DOJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 26, 2024

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin Harris/FBI CJIS, 1000 Custer Hollow Road, Clarksburg, WV 26306, (304) 625–2000, *OSAT@fbi.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Serious assaults on law enforcement in the United States are a growing problem, with both assaults with injury and felonious killings of law enforcement officers trending upward (FBI, 2022). While the Law Enforcement Officers Killed and Assaulted (LEOKA) data collection answers many questions related to these assaults and deaths, such as the who, what, when, where, and how, the data does not answer why these assaults are happening. Without knowing and understanding why these assaults are happening, we cannot begin to prevent them. Outside of the previous studies conducted by the FBI, there is a lack of research into this question of *why* offenders assault police officers. In particular, there is a lack of research that looks at both the officer and the offender in such incidents, and how the relationship between the two impacts the assault.

The purposes of this qualitative study are to examine the possibility of predicting assaults on officers and to use this information to prevent future assaults. To date, very few studies outside of the FBI's Officer Safety Awareness Training (OSAT) research projects, have looked at these assaults from the perspectives of both the officer and the offender. By interviewing officers and offenders, this study seeks to gain a more thorough understanding of why these incidents take place, and the context surrounding them. Based on the recent trends and the modicum of previous research, it is expected the current study would make a large contribution to what is currently known about these attacks, and would play a substantial role in the preparedness, prevention, and mitigation of these incidents by informing those who develop training and operational practices.

This mixed method research effort will use the Perpetrator-Motive Research Design (PMRD). PMRD is a 12-step methodological design that focuses on gaining a thorough understanding of the motivations of offenders. Interviewing incarcerated offenders allows for increased accessibility, increased sample size, interviewer security, and avoidance of ethical or potential legal entanglements which interviewers might be exposed to while questioning offenders still at large or whose cases have not yet exhausted the criminal legal process. Because PMRD is suited to identify and understand offender motives, the findings can be used in the development of training interventions for law enforcement officials which could improve officer safety. As part of the study, researchers will also seek to examine the incident reports associated with the assaults and the FBI criminal history record information of offenders. Researchers will also seek to obtain, examine, and use any body-worn camera or dashboard camera recordings associated with the assaults for research and training purposes.

Overview of This Information Collection

1. *Type of Information Collection:* New Collection.

2. *The Title of the Form/Collection:* Under Attack: Assaults on Our Nation's Law Enforcement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no form number. The forms are titled ''Officer Protocol Questionnaire'' and ''Offender Protocol Questionnaire''/ FBI CJIS Division.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* State, local, and tribal governments. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* A total of 120 respondents. The time per response will be 2 hours per survey. Each participant will fill out either the officer form or the offender form. One questionnaire per respondent. The estimated response time will be 2 hours per respondent.

6. *An estimate of the total annual burden (in hours) associated with the collection:* This is not an annual collection. This is a one-time study.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
Officer Protocol Questionnaire	60	1 per respondent	60	2	120
Offender Protocol Questionnaire	60	1 per respondent	60	2	120
Unduplicated Totals	120	1 per respondent	120		240

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: November 21, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–26091 Filed 11–24–23; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Recruitment Outreach Data Collection

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, on September 25, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until December 27, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Vaughn Smith by email at *Vaughn.Smith@atf.gov,* or by telephone at (202) 648–7208.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—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.

Written comments and recommendations for this 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 and entering in the title of the information collection. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* New Collection.
2. *Title of the Form/Collection:* Recruitment Outreach Data Collection.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 2310.2.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Individuals or households.

Abstract: The collection of this data ensures ATF recruiters can follow-up with potential applicants that have expressed an interest in ATF careers. This data collection is imperative to the accurate reporting of ATF's recruitment and outreach events which prioritize populations that are underrepresented within the agency. The data collected will be used to brief ATF management on the success/challenges of recruitment/outreach events and compiled to report efforts to DOJ via reports such as the Disabled Veterans Affirmative Action Program (DVAAP).

5. *Obligation To Respond:* The obligation to respond is voluntary.
6. *Total Estimated Number of Respondents:* 80 respondents.
7. *Estimated Time per Respondent:* 5 minutes.
8. *Frequency:* Once annually.
9. *Total Estimated Annual Time Burden:* 6.667 hours.
10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: November 21, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–26094 Filed 11–24–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Current Population Survey (CPS) Disability Supplement.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before January 26, 2024.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room G225, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The July 2024 CPS Disability Supplement will be conducted at the request of the Department of Labor's Chief Evaluation Office. The Disability Supplement will provide information on the labor force participation rates for people with disabilities and those experiencing work-limiting health conditions or difficulties; the health conditions or difficulties they face; barriers to employment; challenges that make it difficult to perform their jobs; and job-related accommodations.

Since the supplement was last collected in 2021, work patterns have changed, policies have changed, and assistive technologies have advanced. In the 2024 iteration of the Disability Supplement, a number of questions will be added and others will be dropped, and overall there is no additional burden on the respondents.

New questions are being added to identify individuals with health conditions or difficulties that limit their ability to work, to complement data collected by the six disability questions currently included in the basic CPS, which ask a series of yes or no questions about whether a person:

1. Is deaf or has serious difficulty hearing
2. Is blind or has serious difficulty seeing (even with the assistance of corrective lenses)
3. Has serious difficulty concentrating, remembering, or making decisions
4. Has serious difficulty walking or climbing stairs
5. Has difficulty dressing or bathing
6. Has difficulty doing errands alone

A number of questions are thus being added to the 2024 Supplement to identify individuals with a work-limiting health condition or difficulty and to classify or identify these conditions. Questions also will be asked to determine if work-limiting conditions or disabilities are temporary. The supplement will continue to include questions about barriers to employment and workplace accommodations. Questions about participation in specific assistance programs, the receipt of financial assistance, working from home, and others will be dropped to accommodate the new focus.

Because the Disability Supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available about respondents to the supplement. Thus, comparisons will be possible across respondent characteristics, including sex, race, ethnicity, age, and educational attainment. It will also be possible to create estimates for those who are employed, unemployed, and not in the labor force. Because the CPS is a rich source of information on the employment status of the population, it will be possible to examine in detail the nature of various employment and unemployment situations. Additionally, questions about telework are now asked on the monthly CPS; they will enable analyses of how the incidence of telework and disability intersect.

II. Current Action

Office of Management and Budget clearance is being sought for a revision of the CPS Disability Supplement. These data are necessary to provide information about the labor market challenges facing persons with a disability and will contribute to improvements in policies and programs designed to assist these individuals.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: CPS Disability Supplement.

OMB Number: 1220–0186.

Type of Review: Revision.

Affected Public: Individuals or households.

Total Respondents: 50,000.

Frequency: Once.

Total Responses: 50,000.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 4,167 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on November 21, 2023.

Leslie A. Bennett,

Chief, Division of Management Systems.

[FR Doc. 2023–26089 Filed 11–24–23; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research (DMR)—Materials Innovation Platform on BioPolymers, Automated Cellular Infrastructure, Flow, and Integrated Chemistry (BioPACIFIC MIP) Site Visit Review (#1203).

Date and Time: January 22, 2024; 7:50 a.m.–6:00 p.m. January 23, 2024; 8:00 a.m.–3:30 p.m.

Place: California Institutes for Sciences and Innovation, University of California, 1601 Elings Hall, Mesa Road, Santa Barbara, CA 93106.

Type of Meeting: Part open.

Contact Person: Z. Charles Ying, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone (703) 292–8428.

Purpose of Meeting: Site visit to provide advice and recommendations concerning further support of the BioPACIFIC MIP at University of California.

Agenda

Monday, January 22, 2024

7:50 a.m.–8:20 a.m. Executive Session (Closed)
8:20 a.m.–11:30 a.m. Review of BioPACIFIC MIP (Open)
11:30 a.m.–1:30 p.m. Executive Session (Closed)
1:30 p.m.–3:30 p.m. Review of BioPACIFIC MIP (Open)
3:30 p.m.–6:00 p.m. Executive Session (Closed)

Tuesday, January 23, 2024

8:00 a.m.–3:30 p.m. Executive Session (Closed)

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 21, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–26063 Filed 11–24–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board's Awards and Facilities Committee (A&F) hereby gives notice of the scheduling of a meeting for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Tuesday, November 28, 2023, from 1:00:–5:00 p.m. Eastern. The open portion is from 1:00–1:30 p.m. The closed portion is from 1:30–5:00 p.m.

PLACE: This meeting will be held virtually and in person at NSF headquarters, 2145 Eisenhower Ave., Alexandria, VA 22314, and by videoconference.

STATUS: Portions open and closed as described below.

MATTERS TO BE CONSIDERED: The agenda of the open portion of the meeting is: Committee chair's Opening Remarks; Next Generation Very Large Array Briefing.

The agenda of the closed portion of the meeting is: Committee Chair's Opening Remarks regarding the agenda; Annual Report of the Chief Officer for Research Facilities; Antarctic Research Season Briefing; Discussion and vote on Leadership-Class Computing Facility Construction Award; Discussion of U.S. Extremely Large Telescope Program.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Michelle McCrackin, *mmccrack@nsf.gov,* (703) 292–7000. Members of the public can observe the public portion of this meeting through a YouTube livestream. The link is: *https://www.youtube.com/watch?v=dU9-rjFpghM.* Meeting information and updates may be found at *www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–26207 Filed 11–22–23; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of November 27, December 4, 11, 18, 25, 2023 and January 1, 2024. 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 *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of November 27, 2023

There are no meetings scheduled for the week of November 27, 2023.

Week of December 4, 2023—Tentative

There are no meetings scheduled for the week of December 4, 2023.

Week of December 11, 2023—Tentative

Tuesday, December 12, 2023

10:00 a.m. Discussion of the Administration's Short- and Long-term Domestic Uranium Fuel Strategy (Public Meeting). (Contact: Haile Lindsay: 301–415–0616)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Thursday, December 14, 2023

10:00 a.m. Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting). (Contact: Erin Deeds: 301–415–2887).

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of December 18, 2023—Tentative

There are no meetings scheduled for the week of December 18, 2023.

Week of December 25, 2023—Tentative

There are no meetings scheduled for the week of December 25, 2023.

Week of January 1, 2024—Tentative

There are no meetings scheduled for the week of January 1, 2024.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: November 22, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–26143 Filed 11–22–23; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

712th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on December 15, 2023. The Committee will be conducting this meeting virtually via MS Teams. Interested members of the public are encouraged to participate remotely in any open sessions via MS Teams or via phone at 301–576–2978, passcode 859572303#. A more detailed agenda including the MS Teams link may be found at the ACRS public website at *https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html.* If you would like the MS Teams link forwarded to you, please contact the Designated Federal Officer as follows: *Quynh.Nguyen@nrc.gov,* or *Lawrence.Burkhart@nrc.gov. This is a special meeting being held due to the potential report preparation workload and in accordance with the ACRS bylaws.*

Friday, December 15, 2023

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–6:30 p.m.: Preparation of Reports for the topics of Technology Inclusive Content of Application Project/Advanced Reactor Content of Application Project (TICAP/ARCAP) Guidance and/or Transportation Framework for Micro-Reactors (Open)—The Committee will deliberate and prepare reports on the subject topics.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Officer (DFO) (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the cognizant ACRS staff at least one day before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System, which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2023–26034 Filed 11–24–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0060]

Information Collection: Codes and Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a proposed collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Codes and Standards.''

DATES: Submit comments by December 27, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0060 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0060.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML23256A171 and ML23072A434.

• *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a proposed collection of information to OMB for review entitled ''Codes and Standards.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 30, 2023, 88 FR 59950.

1. *The title of the information collection:* 10 CFR 50.55a, Codes and Standards.

2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.

3. *Type of submission:* New.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Reports are submitted on occasion, typically at each refueling outage or when an alternative is

requested. Inservice Testing (IST) Program Test and Examination Plans must be submitted within 90 days of their implementation for the applicable 120-month IST Program interval.

6. *Who will be required or asked to respond:* Licensees and applicants for or holders of an operating license or construction permit, applicants for a standard design certification under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR) of this chapter, or an applicant for or holder of a standard design approval, or a combined license.

7. *The estimated number of annual responses:* 754 (660 reporting responses plus 94 recordkeepers).

8. *The estimated number of annual respondents:* 94.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 336,416 (119,276 reporting + 217,140 recordkeeping).

10. *Abstract:* Paragraph 50.55a, ''Codes and Standards,'' specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may take determinations necessary to protect the health and safety of the public, in accordance with the Atomic Energy Act of 1954, as amended. The reporting and recordkeeping requirements contained in 10 CFR 50.55a are mandatory for the affected licensees and applicants.

Dated: November 21, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–26068 Filed 11–24–23; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Announcement of OMB Approvals of Information Collections

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of OMB approvals.

SUMMARY: The Office of Management and Budget (OMB) has approved Pension Benefit Guaranty Corporation (PBGC) information collections under the Paperwork Reduction Act. This notice lists the approved information collections and provides their corresponding OMB control number and current expiration date.

FOR FURTHER INFORMATION CONTACT: Monica O'Donnell (*o'donnell.monica@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–8706. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and its implementing regulations require Federal agencies, after receiving OMB approval of information collections, to display OMB control numbers and inform respondents of their legal significance. In accordance with those requirements, PBGC hereby notifies the public that the following information collections, that are contained in PBGC's regulations and do not have a corresponding form, have been approved by OMB.

- OMB Control Number 1212–0063 Filings for Reconsiderations. The expiration date for this information collection contained in 29 CFR part 4003 is August 31, 2025.
- OMB Control Number 1212–0021 Variances for Sale of Assets. The expiration date for this information collection contained in 29 CFR part 4204 is May 31, 2026.
- OMB Control Number 1212–0023 Extension of Special Withdrawal Liability Rules. The expiration date for this information collection contained in 29 CFR part 4203 is May 31, 2026.
- OMB Control Number 1212–0031 Procedures for PBGC Approval of Plan Amendments. The expiration date for this information collection contained in 29 CFR part 4220 is May 31, 2026.
- OMB Control Number 1212–0034 Notice, Collection, and Redetermination of Withdrawal Liability. The expiration date of this information collection contained in 29 CFR part 4219 is May 31, 2026.
- OMB Control Number 1212–0035 Allocating Unfunded Vested Benefits. The expiration date for this information collection contained in 29 CFR part 4211 is May 31, 2026.
- OMB Control Number 1212–0039 Reduction or Waiver of Partial Withdrawal Liability. The expiration date for this information collection contained in 29 CFR part 4208 is May 31, 2026.
- OMB Control Number 1212–0044 Reduction or Waiver of Complete Withdrawal Liability. The expiration date for this information collection contained in 29 CFR part 4207 is May 31, 2026.
- OMB Control Number 1212–0017 Liability for Termination of Single-Employer Plans. The expiration date for this information collection contained in 29 CFR part 4062 is August 31, 2026.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Publication of this notice satisfies this requirement with respect to the above-listed information collections, as provided in 5 CFR 1320.5(b)(2)(ii).

Issued in Washington, DC.

Hilary Duke,

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

[FR Doc. 2023–26067 Filed 11–24–23; 8:45 am]

BILLING CODE 7709–02–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98987; File No. SR–BOX–2023–29]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Adopt Monthly Options Series

November 20, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 17, 2023, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules to adopt Monthly Options Series. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rules to accommodate the listing of option series that would expire at the close of business on the last business day of a calendar month (''Monthly Options Series''). This is a competitive filing that is based on a proposal recently submitted Cboe Exchange, Inc (''CBOE'').[5]

The Exchange proposes to amend its Rules to accommodate the listing of option series that would expire at the close of business on the last business day of a calendar month (''Monthly Options Series''). Pursuant to proposed IM–5050–13(1) and proposed IM–6090–4(i), the Exchange may list Monthly Options Series for up to five currently listed option classes that are either index options or options on exchange-traded funds (''ETFs'').[6] In addition, the Exchange may also list Monthly Options Series on any options classes that are selected by other securities exchanges that employ a similar program under their respective rules.[7] The Exchange may list 12 expirations for Monthly Options Series. Monthly Options Series need not be for consecutive months; however, the expiration date of a nonconsecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.[8] Other expirations in the same class are not counted as part of the maximum numbers of Monthly Options Series expirations for a class.[9] Monthly Options Series will be P.M.-settled.[10]

The strike price of each Monthly Options Series will be fixed at a price per share, with at least two, but no more than five, strike prices above and at least two, but no more than five, strike prices below the value of the underlying index or price of the underlying security at about the time that a Monthly Options Series is opened for trading on the Exchange. The Exchange will list strike prices for Monthly Options Series that are reasonably related to the current price of the underlying security or current index value of the underlying index to which such series relates at about the time such series of options is first opened for trading on the Exchange. The term ''reasonably related to the current price of the underlying security or index value of the underlying index'' means that the exercise price is within 30% of the current underlying security price or index value.[11] Additional Monthly Options Series of the same class may be open for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices will be within 30% above or below the closing price of the underlying index or security on the preceding day. The Exchange may also open additional strike prices of Monthly Options Series that are more than 30% above or below the current price of the underlying security, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market Makers trading for their own account will not be considered when determining customer interest under this provision. The opening of the new Monthly Options Series will not affect the series of options of the same class previously opened.[12] The interval between strike prices on Monthly Options Series will be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.[13]

By definition, Monthly Options Series can never expire in the same week as a standard expiration series (which expire on the third Friday of a month) in the same class expires. The same, however, is not the case with regards to Short Term Options Series or Quarterly Options Series. Therefore, to avoid any confusion in the marketplace, the Exchange proposes to amend IM–5050–6 and IM–6090–2 to provide the Exchange will not list a Short Term Options Series in a class on a date on which a Monthly Options Series or Quarterly Options Series expires.[14] Similarly, proposed IM–5050–13(2) and IM–6090–4(ii) provide that no Monthly

[5] *See* Securities Exchange Act Release No. 98915 (November 13, 2023) (SR–CBOE–2023–049) (Order Approving a Proposed Rule Change to Adopt Monthly Options Series).

[6] The Exchange proposes to amend Rule 5050(a) to provide that proposed IM–5050–13 will describe how the Exchange will fix a specific expiration date and exercise price for Monthly Options Series and that proposed IM–5050–13 will govern the procedures for opening Monthly Options Series, respectively. This is consistent with language in current Rule 5050(a) for other Short Term Option Series and Quarterly Options Series.

[7] The Exchange's proposal is based on a CBOE proposal and the Exchange believes that other options exchanges will adopt similar programs in the future.

[8] The Exchange notes this provision considers consecutive monthly listings. In other words, as other expirations (such as Quarterly Option Series) are not counted as part of the maximum, those expirations would not be considered when considering when the last expiration date would be if the maximum number were listed consecutively. For example, if it is January 2024 and the Exchange lists Quarterly Options Series in class ABC with expirations in March, June, September, December, and the following March, the Exchange could also list Monthly Options Series in class ABC with expirations in January, February, April, May, July, August, October, and November 2024 and January and February of 2025. This is because, if Quarterly Option Series, for example, were counted, the Exchange would otherwise never be able to list the maximum number of Monthly Options Series. This is consistent with the listing provisions for Quarterly Options Series, which permit give calendar quarter expirations. The need to list series with the same expiration in the current calendar year and the following calendar year (whether Monthly or Quarterly expiration) is to allow market participants to execute one-year strategies pursuant to which they may roll their exposures in the longer-dated options (*e.g.,* January 2025) prior to the expiration of the nearer-dated option (*e.g.,* January 2024).

[9] *See* proposed IM–5050–13(2) and proposed IM–6090–4(ii).

[10] *See* proposed IM–5050–13(3) and proposed IM–6090–4(iii).

[11] *See* proposed IM–5050–13(4) and proposed IM–6090–4(iv). The Exchange notes these proposed provisions are consistent with the initial series provision for the Quarterly Options Series program in IM–5050–4(d). While different than the initial strike listing provision for the Quarterly Options Series program in current IM–5050–4(c), the Exchange believes the proposed provision is appropriate, as it contemplates classes that may have strike intervals of $5 or greater. For consistency, the Exchange also proposes to amend IM–5050–4(c) to incorporate the same provision for initial series.

[12] *See* proposed IM–5050–13(5) and proposed IM–6090–4(v).

[13] *See* proposed IM–5050–13(6) and proposed IM–6090–4(vi); *see also* Rule 5050, IM–5050–1 (Strike Price Intervals), IM–5050–2 ($1 Strike Price Interval Program), IM–5050–3 ($2.50 Strike Price Program) and Rule 6090(c) (Procedures for Adding and Deleting Strike Prices).

[14] The Exchange also proposes to make a nonsubstantive change to IM–5050–6 and IM–6090–2 to change current references to ''monthly options series'' to ''standard expiration options series'' (*i.e.,* series that expire on the third Friday of a month), to eliminate potential confusion. The current references to ''monthly options series'' are intended to refer to those series that expire on the third Friday of a month, which are generally referred to in the industry as standard expirations.

Options Series may expire on a date that coincides with an expiration date of a Quarterly Options Series in the same index or ETF class. In other words, the Exchange will not list a Short Term Options Series on an index or ETF if a Monthly Options Series on that index or ETF were to expire on the same date, nor will the Exchange list a Monthly Options Series on an ETF or index if a Quarterly Options Series on that index or ETF were to expire on the same date to prevent the listing of series with concurrent expirations.[15]

With respect to Monthly Options Series added pursuant to proposed IM–5050–13(1) through (6) and proposed IM–6090–4(i) through (vi), the Exchange will, on a monthly basis, review series that are outside a range of five strikes above and five strikes below the current price of the underlying index or security, and delist series with no open interest in both the put and the call series having a: (i) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. Notwithstanding this delisting policy, customer requests to add strikes and/or maintain strikes in Monthly Options Series in series eligible for delisting will be granted. In connection with this delisting policy, if the Exchange identifies series for delisting, the Exchange will notify other options exchanges with similar delisting policies regarding eligible series for delisting and will work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed Monthly Options Series.[16]

The Exchange believes that Monthly Options Series will provide investors with another flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Exchange's and the Options Price Reporting Authority's (''OPRA's'') quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series. The Exchange also proposes to amend Rules 3120, 6040, and 6050 to provide that positions in Monthly Options Series will be aggregated with positions in options contracts on the same underlying security or index.[17] This is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Options Series and Quarterly Options Series). Therefore, positions in options within class of index or ETF options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options.

The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. The Exchange currently lists Quarterly Options Series in certain ETF classes, which expire at the close of business at the end of four calendar months (*i.e.,* the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange's surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option Series and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same index or ETF) and reporting requirements—would continue to apply.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[18] in general, and Section 6(b)(5) of the Act,[19] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the Exchange believes the introduction of Monthly Options Series will remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding hedging tools available to market participants. The Exchange believes the proposed monthly expirations will allow market participants to transact in the index and ETF options listed pursuant to the proposed rule change based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the Exchange believes the availability of Monthly Options Series would protect investors and the public interest by providing investors with more flexibility to closely tailor their investment and hedging decisions in these options, thus allowing them to better manage their risk exposure.

The Exchange believes the Quarterly Options Series Program has been successful to date and the proposed Monthly Options Series program simply expands the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur at months' ends in the same way the Quarterly

[15] The Exchange notes this would not prevent the Exchange from listing a P.M.-settled Monthly Options Series on an index with the same expiration date as an A.M.-settled Short Term Options Series on the same index, both of which may expire on a Friday. In other words, the Exchange may list a P.M-settled Monthly Options Series on an index concurrent with an A.M.-settled Short Term Options Series on that index and both of which expire on a Friday. The Exchange believes this concurrent listing would provide investors with yet another hedging mechanism and is reasonable given these series would not be identical (unlike if they were both P.M-settled). This could not occur with respect to ETFs, as all Short Term Options Series on ETFs are P.M.-settled.

[16] *See* proposed IM–5050–13(7) and proposed IM–6090–4(vii). Pursuant to Rule 3140, exercise limits for impacted index and ETF classes would be equal to the applicable position limits. For an Options Participant that has been granted an exemption to position limits pursuant Rule 3130(c) (Exemption to Position Limits), the number of contracts which can be exercised over a five (5) business day period shall equal the Options Participant's exempted position.

[17] *See* proposed IM–3120–5 (regarding positions in options contracts on the same underlying security), Rule 6040(d) (regarding position limits for Broad-Based Index Options), and Rule 6050(d) (regarding position limits for Industry Index Options). The Exchange notes the proposed rule change adds IM–3120–5 to state that positions in Short Term Option Series, Monthly Options Series, and Quarterly Options Series shall be aggregated with positions in options contracts on the same underlying security. This is currently true with respect to Short Term Option Series and Quarterly Options Series but was inadvertently omitted from Rule 3120.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

Options Series Program has expanded the landscape of hedging for quarter-end news. Monthly Options Series will also complement Short Term Options Series, which allow investors to hedge risk against events that occur throughout a month. The Exchange believes the availability of additional expirations should create greater trading and hedging opportunities for investors, as well as provide investors with the ability to tailor their investment objectives more effectively.

The Exchange notes the proposed terms of Monthly Options Series, including the limitation to five index and ETF option classes, are substantively the same as the current terms of Quarterly Options Series.[20] Quarterly Options Series expire on the last business day of a calendar quarter, which is the last business day of every third month. The proposed Monthly Options Series would fill the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes. As is the case with Quarterly Options Series, no Short Term Options Series may expire on the same day as a Monthly Options Series. Similarly, as proposed, no Monthly Options Series may expire on the same day as a Quarterly Options Series. The Exchange believes preventing listing series with concurrent expirations in a class will eliminate potential investors confusion and thus protect investors and the public interest. Given that Quarterly Options Series the Exchange currently lists are essentially Monthly Options Series that can expire at the end of only certain calendar months, the Exchange believes it is reasonable to list Monthly Options Series in accordance with the same terms, as it will promote just and equitable principles of trade. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Exchange's and OPRA's quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series.

The Exchange further believes the proposed rule change regarding the treatment of Monthly Options Series with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Monthly Options Series will be aggregated with options overlying the same ETF or index for purposes of compliance with position (and exercise) limits, which is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Options Series and Quarterly Options Series). Therefore, options positions within ETF or index option classes for which Monthly Options Series are listed, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options. The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. The Exchange currently trades Quarterly Options Series in certain ETF classes, which expire at the close of business at the end of four calendar months (*i.e.,* the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange's surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option Series and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same ETF or index) and reporting requirements would continue to apply.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by CBOE.

The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as any Monthly Options Series the Exchange lists for trading will be available in the same manner for all market participants who wish to trade such options. The Exchange notes the proposed terms of Monthly Options Series, including the limitation to five index and ETF option classes, are substantively the same as the current terms of Quarterly Options Series.[21] Quarterly Options Series expire on the last business day of a calendar quarter, which is the last business day of every third month, making the concept of Monthly Options Series in a limited number of index and ETF options not novel. The proposed Monthly Options Series will fill the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes. Monthly Options Series will trade on the Exchange in the same manner as other options in the same class. The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as nothing prevents other options exchanges from proposing similar rules. As discussed above, the proposed rule change would permit listing of Monthly Options Series in five index or ETF options, as well as any other classes that other exchanges may list under similar programs. To the extent that the availability of Monthly Options Series makes the Exchange a more attractive marketplace to market participants at other exchanges, market participants are free to elect to become market participants on the Exchange. The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition. Similar to Short Term Options Series and Quarterly Options Series, the Exchange believes the introduction of Monthly Options Series will not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants. The Exchange believes

[20] *Compare* proposed IM–5050–13 and proposed IM–6090–4 to IM–5050–4 and IM–6090–1, respectively.

[21] *See* IM–5050–4 and IM–6090–1.

Monthly Options Series will allow market participants to purchase options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. The Exchange does not believe the proposed rule change to provide that positions in Monthly Options Series will be aggregated with positions in options contracts on the same underlying index or security for purposes of determining compliance with position (and exercise) limits will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it will apply in the same manner to all market participants. The Exchange proposes to apply position (and exercise) limits to Monthly Options Series in the same manner it applies position limits to series with other expirations (Short Term Options Series and Quarterly Options Series). Therefore, positions in options in a class of ETF or index options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. Additionally, the Exchange does not believe this proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will address potential manipulative schemes and adverse market impacts surrounding the use of options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [24] and subparagraph (f)(6) of Rule 19b–4 thereunder.[25]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [26] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [27] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may establish Monthly Options Series at the same time as CBOE, which the Exchange believes is consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges. The Exchange notes that its proposal is substantially similar in all material respects to a proposal submitted by CBOE to implement the Monthly Options Series program, that was recently approved by the Commission.[28] The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BOX–2023–29 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–BOX–2023–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the 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 the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BOX–2023–29 and should be submitted on or before December 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

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[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] *See* supra, note 5, order approving CBOE's proposed rule change.

[29] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98988; File No. SR–IEX–2023–13]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Introduce a New Post Only Order Parameter Instruction

November 20, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 15, 2023, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] the Exchange is filing with the Commission a proposed rule change to introduce a new Post Only order parameter instruction. The Exchange has designated this proposed rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [6] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[7]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule filing is to amend IEX Rule 11.190 to introduce a new Post Only order parameter instruction.[8] As proposed, a Post Only parameter instruction would be available for a displayable, non-routable order priced at or above $1.00 per share (a ''Post Only order''). A Post Only order would not remove liquidity from the IEX Order Book [9] except in specific circumstances as described below. The Post Only order is designed to incentivize the posting of displayed liquidity on the Exchange and to offer IEX Members [10] greater determinism and flexibility in posting liquidity on the Exchange. IEX also proposes to introduce a new Trade Now [11] order instruction, which would allow certain resting non-displayed orders (described below) to convert into an executable order that removes liquidity against an incoming Post Only order that would otherwise lock the resting order (a transaction in which the Post Only order would be the maker of liquidity and the Trade Now order would be the taker of liquidity). The Trade Now instruction, when paired with Post Only orders, is designed to encourage more executions of marketable orders at IEX. In addition, IEX proposes to make conforming edits to several order type definitions contained in IEX Rule 11.190 to specify which order types may be submitted as a Post Only order, and which order types will include the Trade Now instruction, either by default or optionally.

IEX notes that every other national securities exchange that trades equities offers nearly identical post only order types [12] and most also offer trade now functionality [13] to their members. As proposed, IEX's Post Only order type is structured in a substantially similar manner, with minor differences (described below) limited to the orders for which the functionality is available rather than the manner in which is applied.[14]

Post Only Orders

As described in Proposed IEX Rule 11.190(b)(20), a Post Only order would be a displayed, non-routable limit [15] or Discretionary Limit [16] order that would not remove liquidity from the IEX Order Book other than in the following circumstances:

First, a Post Only order will remove contra-side liquidity from the IEX Order Book if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the IEX Order Book and subsequently provided liquidity, including the applicable fees charged or rebates provided (the ''Sum of Fees''). To determine at the time of a potential execution whether the Sum of Fees when removing liquidity equals or exceeds the value of such execution if the order instead posted to the IEX Order Book and subsequently provided liquidity, the Exchange will compare the price improvement (*i.e.,* available execution price to trade on entry versus the limit price of the order) to the difference between the sum of the fees charged for such execution and the rebate that would be provided if the order posted to the IEX Order Book and subsequently provided liquidity.

Post Only orders by default would be subject to display-price sliding as set forth in IEX Rule 11.190(h)(1), but the Member may provide an optional instruction to cancel any untraded quantity of a Post Only order that would otherwise be subject to display-price sliding. Thus, during Regular Market Hours, if the limit price of the Post Only order locked or crossed an order on the IEX Order Book, depending upon the Member's instructions, the Post Only order would either slide to a price one Minimum Price Variant (''MPV'') [17] less aggressive than the current Protected Quotation,[18] or be canceled back to the Member. This functionality is identical to that of several other equities exchanges.[19]

IEX is also proposing that Post Only orders must be at least a round or mixed lot sized order on entry and must be displayed. Because this proposal is designed to incentivize displayed liquidity in general and price discovery in particular, IEX believes that it is

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

[8] *See* Proposed IEX Rule 11.190(b)(20).

[9] *See* IEX Rule 1.160(p).

[10] *See* IEX Rule 1.160(s).

[11] *See* Proposed IEX Rule 11.190(b)(21).

[12] *See, e.g.,* Cboe BZX Exchange, Inc. (''BZX'') Rule 11.9(c)(6); MEMX Rule 11.6(l)(2); NASDAQ Stock Market LLC (''Nasdaq'') Rule 4702(b)(4); MIAX Pearl Rule 2614(c); New York Stock Exchange (''NYSE'') Rule 7.31(e)(2).

[13] *See, e.g.,* BZX Rule 11.9(c)(12); NYSE Rule 7.31(d)(2)(B); Nasdaq Rule 4703(m).

[14] *See infra* notes 20, 22.

[15] *See* IEX Rule 11.190(a)(1).

[16] *See* IEX Rule 11.190(b)(7).

[17] *See* IEX Rule 11.210.

[18] *See* IEX Rule 1.160(bb).

[19] *See, e.g.,* BZX Rule 11.9(c)(6); MIAX Pearl Rule 2614(c)(2)(A)(ii).

appropriate to limit Post Only orders to those that could become Protected Quotations. IEX notes that although other exchanges allow Post Only orders to be non-displayed or to be displayed odd lot sized orders, until 2022, NYSE also did not allow non-displayed or displayed odd lot sized orders to use its post only functionality.[20] Additionally, IEX is proposing to not allow reserve [21] orders be Post Only orders. IEX notes that although other exchanges allow Post Only orders to be reserve orders, until recently, NYSE also did not allow reserve orders to use its post only functionality.[22] IEX believes its proposal to not allow reserve orders to be Post Only orders is consistent with its proposal to not allow non-displayed orders to be Post Only orders, because reserve orders have both a displayed and non-displayed portion. IEX also notes that because it charges the same amount for adding or removing non-displayed liquidity, the economic benefits of a Post Only order would not apply to a non-displayed order submitted to IEX.

Further, Proposed IEX Rule 11.190(b)(20) specifies that Post Only orders must have a time-in-force (''TIF'') of DAY, GTX, SYS, or GTT because they will only trade during Regular Market Hours, and that they may not be an Intermarket Sweep Order, both because they are non-routable orders and because ISOs are meant to take liquidity resting on the Exchange and away markets while Post Only orders are designed to add displayed liquidity to IEX's Order Book.

Finally, the Post Only order parameter instruction would not be operative for orders to buy or sell a security priced below $1.00 per share. Thus, such orders that include the Post Only order parameter instruction would function in the same manner as regular displayed limit orders or D-Limit orders; they would remove contra-side liquidity from the IEX Order Book on entry without consideration of whether the Sum of Fees equals or exceeds the price improvement per share, and otherwise post to the IEX Order Book. IEX believes that this approach is appropriate in that IEX does not offer rebates for orders that add displayed liquidity priced below $1.00 so the economics for a Post Only order are less meaningful. IEX notes that this approach is similar to that of other exchanges with respect to securities priced below $1.00 per share.[23]

Trade Now Instruction

IEX also proposes to add IEX Rule 11.190(b)(21), to introduce the ''Trade Now'' order instruction. As proposed, Trade Now would be an instruction on an order resting on the IEX Order Book that, when locked by an incoming Post Only order that does not remove liquidity pursuant to Proposed IEX Rule 11.190(b)(20), causes such order to be converted to an executable order that removes liquidity against such incoming order. As proposed, non-displayed limit orders (including non-displayed portions of reserve [24] orders and non-displayed Discretionary Limit orders) would always include a Trade Now order instruction, while for Midpoint Peg,[25] Fixed Midpoint Peg,[26] Offset Peg,[27] and Market Peg [28] orders the Trade Now instruction would be optional. IEX makes this proposal because the above four pegged order types are all able to book at prices between the NBB and the NBO, which means they all could match with (or be locked by) an incoming Post Only order. As proposed, a resting pegged order with the optional Trade Now instruction would be the taker of liquidity and the Post Only order would be the maker of liquidity (unless the Sum of Fees calculation caused the Post Only order to take liquidity on entry). IEX also has pegged order types that book one MPV less aggressive than the Primary Quotation, and it is not proposing to allow these orders to have a Trade Now instruction because they will not be able to match with (or be locked by) an incoming Post Only order.[29] Similarly, IEX is not proposing to allow resting Retail Liquidity Provider orders to have a Trade Now feature, because they are not eligible to trade with a Post Only order.[30]

The Trade Now instruction would provide non-displayed orders resting on the IEX Order Book with a greater ability to receive an execution when that resting order is locked by an incoming Post Only order, rather than creating the possibility of the incoming Post Only order locking the resting non-displayed order. Thus, the proposed Trade Now instruction assists in the avoidance of an internally locked IEX Order Book (notwithstanding that such lock would not be displayed by the Exchange) by facilitating the execution of orders that would otherwise lock each other.

If an incoming Post Only order matches with a resting non-displayed order on entry with the Trade Now instruction, the Post Only order would be treated as a displayed order and would receive a rebate of $0.0004 per share. The order with the Trade Now instruction, having become an executable taking order, would be charged $0.0010 per share, which is the same fee IEX charges for both non-displayed liquidity-adding and taking orders. Thus, the order with the Trade Now instruction is able to get an execution with no change to the fees it would be charged, while the Post Only order would also get an execution with the rebate the Member expects to receive when submitting a displayed order.

Conforming Changes

As described above, only certain order types are eligible to be Post Only orders. Therefore, IEX proposes to amend IEX Rules 11.190(b)(1) (''Displayed Order'') and 11.190(b)(7) (''Discretionary Limit Order''), to specify that a displayed, non-routable, round or mixed lot limit or Discretionary Limit order may include a Post Only instruction, as defined in Proposed IEX Rule 11.190(b)(20).

Similarly, as described above, only certain order types are eligible to have a Take Now instruction. Therefore, IEX proposes to amend IEX Rules 11.190(a)(1), 11.190(b)(2), and 11.190(b)(7), to specify that non-displayed limit orders, non-displayed portions of reserve orders, and non-displayed Discretionary Limit orders will include a Trade Now instruction as defined in Proposed IEX Rule 11.190(b)(21). Because IEX proposes to allow Members to include a Trade Now instruction on pegged orders that could interact with a Post Only order, IEX is proposing to amend IEX Rules 11.190(b)(9), 11.190(b)(19), 11.190(b)(13), and 11.190(b)(18) to specify that a Member may include a Trade Now instruction with Midpoint Peg, Fixed Midpoint Peg, Offset Peg, and Market Peg orders, respectively.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[20] *See* Securities Exchange Act Release No. 95209 (July 7, 2022), 87 FR 41832, 41835 (July 13, 2022) (SR–NYSE–2022–25).

[21] *See* IEX Rule 11.190(b)(2).

[22] *See* Securities Exchange Act Release No. 98891 (November 8, 2023), 88 FR 78407, 78408 (November 15, 2023) (SR–NYSE–2023–40).

[23] *See, e.g.,* BZX Rule 11.9(c)(6); MIAX Pearl Rule 2614(c)(2)(i)(A).

[24] *See* IEX Rule 11.190(b)(2).

[25] *See* IEX Rule 11.190(b)(9).

[26] *See* IEX Rule 11.190(b)(19).

[27] *See* IEX Rule 11.190(b)(13).

[28] *See* IEX Rule 11.190(b)(18).

[29] *See* IEX Rules 11.190(b)(8) (Primary Peg order), 11.190(b)(10) (Discretionary Peg order), and 11.190(b)(16) (Corporate Discretionary Peg order).

[30] *See* IEX Rule 11.190(b)(14).

Section 6(b) of the Act,[31] in general, and furthers the objectives of Section 6(b)(5),[32] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it is designed to provide more flexibility and opportunities for Members to add displayed liquidity to the Exchange. As noted in the Purpose section, Post Only orders, particularly when coupled with Trade Now functionality for some non-displayed orders, would provide fee determinism for Members seeking to add liquidity to the Exchange. This in turn is designed to encourage the posting of more displayed liquidity on the Exchange, and to the extent that such incentive is successful in increasing the overall liquidity pool available at IEX, all market participants, including takers of liquidity, will benefit. Thus, IEX believes this proposal supports the purposes of the Act 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.

IEX also believes it is consistent with the Act to adjust the price of Post Only orders as needed to post to the Order Book in compliance with Rule 610(d) of Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation, or to execute against locking or crossing quotations in circumstances where economically beneficial to the Member entering the Post Only order. Post Only orders are thus designed to allow Members to achieve fee determinism, while also providing displayed liquidity to the market and thereby contribute to public price discovery in a manner that is consistent with the Act.

IEX also believes that the proposal to give Members the option of having Post Only orders be subject to display price sliding or cancel promotes price discovery and provision of greater liquidity by facilitating the display of an order at its chosen limit price. Because this flexibility will further encourage Members to submit Post Only orders to IEX, which will in turn increase the displayed liquidity on the Exchange, IEX believes that this proposal supports the purposes of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Additionally, IEX believes that its proposed approach to inclusion of the Trade Now instruction (as described in the Purpose section) is consistent with the purposes of the Act because it is designed to avoid internally locking the IEX Order Book by facilitating the execution of orders that would otherwise post, or remain posted, to the IEX Order Book at prices that would otherwise lock. Additionally, the Trade Now instruction would result in more executions of otherwise marketable orders, which benefits both parties to the transaction as well as the market as a whole by providing relevant price discovery. Thus, IEX believes this proposal supports the purposes of the Act 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.

In addition, as noted in the Purpose section, every aspect of IEX's proposal is already available on at least one other equities exchange, with the exception that IEX will not allow a non-displayed, reserve, or displayed odd lot order to be a Post Only order.[33] As discussed in the Purpose section, that functionality is identical to functionality that was offered by the New York Stock Exchange until 2022. IEX notes that these minor differences are limited to the orders for which the functionality is available rather than the manner in which is applied. Because these minor differences from other exchanges' functionality are not based on competitive considerations but rather simply to provide for reasonably predictable outcomes in a manner consistent with IEX's system design, IEX believes that this proposal supports the purposes of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

And IEX believes that the proposed conforming changes further the purposes of the Act because they provide greater clarity and consistency to the IEX Rule Book thereby reducing the potential for confusion by market participants.

Finally, IEX does not believe that the proposed changes raise any new or novel material issues that have not already been considered by the Commission in connection with existing order types offered by other national securities exchanges, which supports the purposes of the Act 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance IEX's competitiveness with other markets by further incentivizing the posting of displayed liquidity on the Exchange. As noted above, the Exchange believes the proposed rule changes would generally align order handling on IEX with trading functionality on other equity exchanges and thus would promote competition among exchanges by offering member organizations similar functionality and order handling options available on other exchanges. The Exchange also believes that, to the extent the proposed changes would increase opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhance market quality for all market participants. Moreover, competing exchanges have and can continue to adopt the same functionality contained in this proposal, subject to the SEC rule change process, as discussed in the Purpose and section.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. All Members would be eligible to submit Post Only orders and to include Trade Now instructions on eligible pegged orders in the same manner. Moreover, the proposal would provide potential benefits to all Members, as discussed in the Statutory Basis section, to the extent that allowing Post Only orders incentivizes the

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] *See supra* notes 20, 22.

provision of more displayed liquidity on IEX.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) [34] of the Act and Rule 19b–4(f)(6) [35] thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.[36]

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b–4 [37] because it would not significantly affect the protection of investors or the public interest. Rather, the proposed rule change neither significantly affects the protection of investors or the public interest, nor does it impose any burden on competition because it would merely combine the attributes of functionality currently offered by many other equities exchanges, as discussed in the Purpose section, and does not raise any new or novel material issues that have not already been considered by the Commission. Accordingly, IEX has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act [38] and paragraph (f)(6) of Rule 19b–4 thereunder.[39]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [40] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–IEX–2023–13 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–IEX–2023–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the 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 the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–IEX–2023–13 and should be submitted on or before December 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26006 Filed 11–24–23; 8:45 am]

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[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6)(iii).

[37] 17 CFR 240.19b–4(f)(6).

[38] 15 U.S.C. 78s(b)(3)(A).

[39] 17 CFR 240.19b–4(f)(6).

[40] 15 U.S.C. 78s(b)(2)(B).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98997; File No. SR–BOX–2023–27]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the Short Term Option Series Program in IM–5050–6

November 21, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2023, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by 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 BOX IM–5050–6 (Short Term Option Series Program). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IM–5050–6 (Short Term Option Series Program) to permit the listing of two Wednesday expirations for options on United States Oil Fund, LP (''USO''), United States Natural Gas Fund, LP (''UNG''), SPDR Gold Shares (''GLD''), iShares Silver Trust (''SLV''), and iShares 20+ Year Treasury Bond ETF (''TLT'') (collectively ''Exchange Traded Products'' or ''ETPs''). This is a competitive filing that is based on a proposal recently submitted by Nasdaq ISE, LLC (''Nasdaq ISE'') and approved by the Commission.[3]

Currently, as set forth in IM–5050–6, after an option class has been approved for listing and trading on the Exchange as a Short Term Option Series pursuant to BOX Rule 100(a)(66)[4] the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates''). The Exchange may have no more than a total of five Short Term Option Expiration Dates. Further, if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that Friday.

Additionally, the Exchange may open for trading series of options on the symbols provided in Table 1 of IM–5050–6 that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Short Term Option Daily Expirations''). For those symbols listed in Table 1, the Exchange may have no more than a total of two Short Term Option Daily Expirations for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time.

Proposal

At this time, the Exchange proposes to expand the Short Term Option Daily Expirations to permit the listing and trading of options on USO, UNG, GLD, SLV, and TLT expiring on Wednesdays. The Exchange proposes to permit two Short Term Option Expiration Dates beyond the current week for each Wednesday expiration at one time.[5] In order to effectuate the proposed changes, the Exchange would add USO, UNG, GLD, SLV, and TLT to Table 1 of IM–5050–6, which specifies each symbol that qualifies as a Short Term Option Daily Expiration.

The proposed Wednesday USO, UNG, GLD, SLV, and TLT expirations will be similar to the current Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations set forth in IM–5050–6, such that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week) series of options on USO, UNG, GLD, SLV, and TLT to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (''Wednesday USO Expirations,'' ''Wednesday UNG Expirations,'' ''Wednesday GLD Expirations,'' ''Wednesday SLV Expirations,'' and ''Wednesday TLT Expirations'') (collectively, ''Wednesday ETP Expirations'').[6] In the event Short Term Option Daily Expirations expire on a Wednesday and that Wednesday is the same day that a Quarterly Options Series expires, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Wednesday expirations in SPY, QQQ, and IWM similarly skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Options Series.

USO, UNG, GLD, SLV, and TLT Friday expirations would continue to have a total of five Short Term Option Expiration Dates provided those Friday expirations are not Fridays in which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates'').

Similar to Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations within IM–5050–6, the Exchange proposes that it may open for trading on any Tuesday or Wednesday that is a business day series of options on USO, UNG, GLD, SLV, and TLT that expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which Quarterly Options Series expire.

The interval between strike prices for the proposed Wednesday ETP Expirations will be the same as those for the current Short Term Option Series for Friday expirations applicable to the Short Term Option Series Program.[7] Specifically, the Wednesday ETP Expirations will have a strike interval of $0.50 or greater for strike prices below $100, $1 or greater for strike prices between $100 and $150, and $2.50 or greater for strike prices above $150.[8] As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Wednesday ETP Expirations series will be P.M.-settled.

Pursuant to BOX Rule 100(a)(66), with respect to the Short Term Option Series Program, a Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, *e.g.,* Tuesday of that week if the Wednesday is not a business day.

Currently, for each option class eligible for participation in the Short

[3] *See* Securities Exchange Act Release No. 98905 (November 13, 2023) (SR–ISE–2023–11) (Order Approving a Proposed Rule Change to Amend the Short Term Option Series Program to Permit the Listing of Two Wednesday Expirations for Options on Certain Exchange Traded Products).

[4] BOX Rule 100(a)(66) provides that a Short Term Options Series means a series in an option class that is approved for listing and trading on BOX in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

[5] Consistent with the current operation of the rule, the Exchange notes that if it adds a Wednesday expiration on a Tuesday, it could technically list three outstanding Wednesday expirations at one time. The Exchange will therefore clarify the rule text in IM–5050–6 to specify that it can list two Short Term Option Expiration Dates beyond the current week for each Monday, Tuesday, Wednesday, and Thursday expiration.

[6] While the relevant rule text in IM–5050–6 also indicates that the Exchange will not list such expirations on a Wednesday that is a business day in which monthly options series expire, practically speaking this would not occur.

[7] *See* IM–5050–6.

[8] *Id.*

Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[9] The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.[10] With the proposed changes, this thirty (30) series restriction would apply to Wednesday USO, UNG, GLD, SLV, and TLT Short Term Option Daily Expirations as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list Wednesday ETP Expirations.

With this proposal, Wednesday ETP Expirations would be treated similarly to existing Wednesday SPY, QQQ, and IWM Expirations. With respect to monthly option series, Short Term Option Daily Expirations will be permitted to expire in the same week in which monthly option series on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Wednesday ETP Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire. Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire because those options would be duplicative of each other.

The Exchange does not believe that any market disruptions will be encountered with the introduction of Wednesday ETP Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Wednesday ETP Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Wednesday for SPY, QQQ and IWM and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Wednesday for SPY, QQQ and IWM.

Implementation

The Exchange will issue a notice to Participants via Regulatory Notice with appropriate advanced notice announcing the implementation date of the proposed rule change. The Exchange notes that Nasdaq ISE applied a similar process to govern the implementation of its proposed rule change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Similar to Wednesday expirations in SPY, QQQ, and IWM, the proposal to permit Wednesday ETP Expirations, subject to the proposed limitation of two expirations beyond the current week, would protect investors and the public interest by providing the investing public and other market participants more choice and flexibility to closely tailor their investment and hedging decisions in these options and allow for a reduced premium cost of buying portfolio protection, thus allowing them to better manage their risk exposure.

The Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading in the current Short Term Option Series for Wednesday SPY, QQQ and IWM expirations. The Exchange also represents that it has the necessary system capacity to support the new expirations. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of these option expirations. As discussed above, the Exchange believes that its proposal is a modest expansion of weekly expiration dates for GLD, SLV, USO, UNG, and TLT given that it will be limited to two Wednesday expirations beyond the current week. Lastly, the Exchange believes its proposal will not be a strain on liquidity provides because of the multi-class nature of GLD, SLV, USO, UNG, and TLT and the available hedges in highly-correlated instruments, as described above.

The Exchange believes that the proposal is consistent with the Act as the proposal would overall add a small number of Wednesday ETP Expirations by limiting the addition of two Wednesday expirations beyond the current week. The addition of Wednesday ETP Expirations would remove impediments to and perfect the mechanism of a free and open market by encouraging Market Makers to continue to deploy capital more efficiently and improve market quality. The Exchange believes that the proposal will allow Participants to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT as these funds are most likely to be utilized by market participants to hedge the underlying asset classes.

Similar to Wednesday SPY, QQQ, and IWM expirations, the introduction of Wednesday ETP Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively, thus allowing them to better manage their risk exposure. Today, the Exchange lists Wednesday SPY, QQQ, and IWM Expirations.[13]

In particular, the Exchange believes the Short Term Option Series Program has been successful to date and that Wednesday ETP Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging.

There are no material differences in the treatment of Wednesday SPY, QQQ and IWM expirations compared to the proposed Wednesday ETP Expirations. Given the similarities between Wednesday SPY, QQQ and IWM expirations and the proposed Wednesday ETP Expirations, the

[9] *See id.*

[10] *See* IM–5050–6.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* IM–5050–6.

Exchange believes that applying the provisions in IM–5050–6 that currently apply to Wednesday SPY, QQQ and IWM expirations is justified. For example, the Exchange believes that allowing Wednesday ETP Expirations and monthly Exchange Traded Product expirations in the same week will benefit investors and minimize investor confusion by providing Wednesday ETP Expirations in a continuous and uniform manner.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Nasdaq ISE that was recently approved by the Commission.[14]

While the proposal will expand the Short Term Options Expirations to allow Wednesday ETP Expirations to be listed on BOX, the Exchange believes that this limited expansion for Wednesday expirations for options on USO, UNG, GLD, SLV, and TLT will not impose an undue burden on competition; rather, it will meet customer demand. The Exchange believes that Participants will continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT given multi-class nature of these products and the available hedges in highly-correlated instruments, as described above.

Similar to Wednesday SPY, QQQ and IWM expirations, the introduction of Wednesday ETP Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposal will impose any burden on inter- market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade Wednesday ETP Expirations. Further, the Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change is a competitive response to a filing submitted by Nasdaq ISE that was recently approved by the Commission.[21] The Exchange has stated that waiver of the 30-day operative delay would ensure fair competition among the exchanges by allowing the Exchange to permit the listing of two Wednesday expirations for options on ETPs.[22] The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BOX–2023–27 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–BOX–2023–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the 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

[14] *See supra* note 3.

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *See supra* note 3.

[22] *See* SR–CboeBZX–2022–37 (July 8, 2022).

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BOX–2023–27 and should be submitted on or before December 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2023–26092 Filed 11–24–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98991; File No. SR–CboeBZX–2023–092]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delineate the Application Fee From the Entry Fee, To Increase the Application Fee for Tier I and Tier II Securities Listed on the Exchange in Certain Circumstances, To Change the Assessment Date of the Entry Fee, and To Clarify That Both the Entry Fee and Application Fee Are Non-Refundable as Provided in Exchange Rule 14.13

November 20, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to delineate the Application Fee from the Entry Fee, to increase the Application Fee for Tier I and Tier II securities listed on the Exchange in certain circumstances, to change the assessment date of the Entry Fee, and to clarify that both the Entry Fee and Application Fee are non-refundable as provided in Exchange Rule 14.13. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules related to an application to list any class of securities (not otherwise identified in Rule 14.13) on the Exchange as a Tier I or Tier II security to specifically delineate the Application Fee [3] from the Entry Fee,[4] to increase the Application Fee for Tier I and Tier II Securities applying to list on the Exchange in certain circumstances, and to change the assessment date of the Entry Fee.[5] The Exchange is also proposing to clarify that both the Entry Fee and Application Fee are non-refundable. The Exchange is not proposing to change the total combined Entry Fee and Application Fee for either Tier I ($100,000) or Tier II ($50,000) securities, but rather to increase the Application Fee in situations that it's less likely that an applicant will list on the Exchange (as further described below) and to assess the Entry Fee at the point that the Exchange has completed the majority of the work associated with a potential listing.[6]

Currently, under Exchange Rule 14.13(b)(1)(A) and (B), a Company that submits an application to list a Tier I or Tier II security on the Exchange is assessed an Entry Fee totaling $100,000 or $50,000, respectively. The rules further stipulate that the Entry Fee will be assessed on the date of listing on the Exchange, except for $25,000 which represents the Application Fee, and which must be submitted with the Company's application.

The Exchange is now proposing to delineate the Application Fee from the Entry Fee under proposed Rules 14.13(b)(1) and (2), respectively. However, the Exchange is not proposing a change to the combined total of the Entry Fee and Application Fee for either Tier I or Tier II securities that list on the Exchange. The Application Fee would continue to be $25,000 for both Tier I and Tier II securities unless the Company is at any point during the Exchange's review of the application simultaneously engaged in the application process to list on another national securities exchange, in which case the application fee will be $50,000. In such circumstances, there is a higher likelihood that the Company may withdraw its application to list on the Exchange prior to the issuance of conditional approval, and thus prior to assessment of the remainder of the Entry Fee. Given this and because of the significant resources necessary to review an application to list on the Exchange, the Exchange believes that a higher Application Fee will more

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* proposed Rule 14.13(b)(1).

[4] The Entry Fee is currently set forth in Exchange Rule 14.13(b)(1)(A) and (B) for Tier I and Tier II securities, respectively. As described therein, the Entry Fee includes a non-refundable Application Fee that must be submitted with the Company's application to list on the Exchange.

[5] The Exchange initially filed the proposed fee change on September 29, 2023 (SR–CboeBZX–2023–077). On October 10, 2023, the Exchange withdrew that filing and submitted another proposed fee change (SR–CboeBZX–2023–082). On October 20, 2023, the Exchange withdrew that filing and submitted another proposed fee change (SR–CboeBZX–2023–086). On October 31, 2023, the Exchange withdrew that filing and [sic] another proposed fee change (SR–CboeBZX–2023–088). On November 8, 2023, the Exchange withdrew that filing and submitted this proposal.

[6] The Exchange notes that the proposed Fees will be applied prospectively to all applications submitted after the date of this proposal.

closely align with the time at which the Exchange incurs the cost of reviewing an application and will ensure that the Exchange is compensated for its time and resources even if an issuer withdraws its application prior to receiving conditional approval.

The Exchange's listing application for Tier I or Tier II securities requires a Company to disclose whether it is simultaneously engaged in the application process to list on another national securities exchange. If a Company were to indicate such, it would be assessed the $50,000 Application Fee at the time of application. If a Company is not simultaneously engaged in the application process to list on another national securities exchange at the time of application, but later submits such an application prior to receiving conditional approval to list on the Exchange, the Company would be required to notify the Exchange of such application and the additional $25,000 Application Fee would be assessed at that time. The Exchange is not proposing additional fees for Companies that decide not to list with the Exchange. Where a Company that is already engaged in the application process with another exchange, such a Company will be subject to the higher Application Fee upon application with the Exchange. Where a Company is already engaged in the listing process with the Exchange and is considering listing with another exchange, such a Company can have any level of engagement short of filing an application on that other exchange without subjecting itself to any additional fees. Such a Company could also terminate the application process with the Exchange and begin the listing process with another exchange and not be subject to any additional fees. As such, the Exchange believes this proposal is not imposing any meaningful burden on competition. Rather, the Exchange is merely trying to ensure that it is compensated for the resources that it expends in a situation where it is less likely that the full Entry Fee will be paid.

Based on the above proposed changes to Rule 14.13(b), the Exchange also proposes to renumber and update rule references throughout Rule 14.13(b) to conform to those changes. Additionally, the Exchange proposes to make conforming changes to proposed Rules 14.13(b)(2)(F) and (G) to state that neither the Entry Fee or Application Fee provided under proposed Rules 14.13(b)(1) and (2) will be applicable to certain securities.

The Exchange is also proposing that the Entry Fee be assessed for both Tier I and Tier II securities on the date the Exchange provides conditional approval [7] of the Company's application. The Exchange's review of an application for listing a Tier I or Tier II security requires significant Exchange resources, a majority of which are required prior to the issuance of conditional approval. Therefore, the Exchange believes the proposal to assess the Entry Fee (less the Application Fee) at the time conditional approval is issued is reasonable as it more closely aligns with the time that the largest costs are incurred by the Exchange. Further, it ensures that the Exchange is compensated for its time and resources even if an issuer determines not to list with the Exchange after receiving conditional approval.

Last, the Exchange proposes to delete the text of existing Rule 14.13(b)(1)(E), which provides that if the application is withdrawn or is not approved, the Entry Fee (less the non-refundable Application Fee) shall be refunded. As noted in current Exchange Rule 14.13(a), the Application Fee is, and will continue to be, non-refundable. While Rule 14.13(b)(1)(E) implies that an Entry Fee (less the Application Fee) may be refundable, it would not occur in practice as the Entry Fee is currently charged on the date of initial listing. Therefore, the Exchange proposes to delete the text of Rule 14.13(b)(1)(E) and to modify Rule 14.13(a) to clarify that both the Application Fee and Entry Fee are non-refundable.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4) [11] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange first notes that its corporate listing business operates in a highly-competitive market in which Companies can readily list on another national securities exchange if they deem fee levels or any other factor at a particular venue to be insufficient or excessive. Exchange Rule 14.13 reflects a competitive pricing structure designed to incentivize Companies to list new Tier I or Tier II securities, which the Exchange believes will enhance competition both among Companies and listing venues, to the benefit of investors.

The Exchange believes it is reasonable to delineate between the Application Fee and Entry Fee within the Exchange's rules. The separation of the two fees will clarify when each of the fees are assessed by the Exchange and the total amount that will be assessed. Furthermore, the Exchange believes the corresponding changes throughout Rule 14.13(b) to modify rule references and numbering will maintain a clear and understandable rulebook, to the benefit of all investors.

The Exchange believes its proposal to charge a higher Application Fee if the Company is at any point during the Exchange's review of the application simultaneously engaged in the application process to list on another national securities exchange, is reasonable. Specifically, in such circumstances, there is a higher likelihood that the Company will withdraw its application to list prior to the issuance of conditional approval, and thus prior to assessment of Entry Fee (less the Application Fee). Given this and because of the significant resources necessary to review an application to list on the Exchange, the Exchange believes that a higher Application Fee will more closely align with the time at which the Exchange incurs the cost of reviewing an application and will ensure that the Exchange is compensated for its time and resources even if an issuer

[7] Conditional approval is approval issued by the Exchange for a security to list on the Exchange subject to certain conditions being met.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(b)(4).

withdraws its application prior to receiving conditional approval. The Exchange is not proposing additional fees for Companies that decide not to list with the Exchange. Where a Company that is already engaged in the application process with another exchange, such a Company will be subject to the higher Application Fee upon application with the Exchange. Where a Company is already engaged in the listing process with the Exchange and is considering listing with another exchange, such a Company can have any level of engagement short of submitting an application on that other exchange without subjecting itself to any additional fees. Such a Company could also terminate the application process with the Exchange and begin the listing process with another exchange and not be subject to any additional fees. As such, the Exchange believes this proposal is not imposing any meaningful burden on competition. Rather, the Exchange is merely trying to ensure that it is compensated for the resources that it expends in a situation where it is less likely for the full Entry Fee to be paid. While such an arrangement could result in Companies that do not list with the Exchange paying a higher Application Fee, the Exchange does not believe the proposal will disincentivize Companies to submit applications to list on other national securities exchanges and thereby burden competition. Rather, the Exchange believes the proposal will reasonably compensate the Exchange for its review of the application and may incentivize Companies to choose not to engage in or terminate the application process on the Exchange when there is a higher likelihood that the Company will list on another national securities exchange.

While the Exchange is only proposing to charge a higher Application Fee in certain circumstances, the Exchange believes this is not unfairly discriminatory because it more closely aligns the fee assessment with the time at which Exchange costs are incurred for limited circumstances where the Exchange believes there is a higher likelihood that the application will be withdrawn prior to the issuance of conditional approval. The Exchange further notes that should a Company not withdraw its application and receive conditional approval to list a Tier I or Tier II security on the Exchange, it will pay no more than any other Company listing such a security.

The Exchange's proposal to assess the Entry Fee, less the Application Fee on the date the Exchange provides conditional approval is reasonable as it more closely aligns with the time that resource costs are incurred by the Exchange and ensures the Exchange is compensated for its costs incurred in reaching a conditional approval. There are several reasons for which a Company may not list a Tier I or Tier II that has already received conditional approval to list on the Exchange. For example, as discussed above, a Company may choose to list on another national securities exchange rather than the Exchange. Alternatively, a Company may not meet other regulatory requirements or the conditions provided in the conditional approval that would prevent them from listing on any national securities exchange, including the Exchange. While the Exchange recognizes that a Company may not list on the Exchange after receiving conditional approval for reasons outside of their control, the Exchange does not believe that the proposal is discriminatory among issuers as it simply aligns with the time that resource costs are incurred by the Exchange. The Exchange also believes that this amendment is not unfairly discriminatory as it will apply to all Companies that submit an application to list a Tier I or Tier II security on the Exchange equally.

The Exchange notes that Rule 14.13(b)(2)(C) provides for the Entry Fee of Exchange Traded Products (''ETPs'') listed on the Exchange. Unlike Tier I and Tier II securities listed on the Exchange, the Exchange only charges an Entry Fee to ETPs for which a proposed rule change pursuant to Section 19(b) of the Exchange Act (an ''Exchange Rule Filing'') is required to be filed with the Commission. Such fee is assessed at the time the Exchange Rule Filing is filed with the Commission. Similar to the proposed fee, the Entry Fee applicable to ETPs is assessed in close proximity to the time the Exchange incurs the cost to prepare and file an Exchange Rule Filing rather than on the date of initial listing. Given this, the Exchange does not believe the proposal unfairly discriminates issuers of Tier I or Tier II securities from issuers of ETPs on the Exchange.

Lastly, the Exchange's proposal to delete the text of Rule 14.13(b)(1)(E) and modify Rule 14.13(a) is reasonable because it will clarify that both the Application Fee and Entry Fee are non-refundable. Exchange Rule 14.13(a) currently provides that the Application Fee is non-refundable. While the Rule 14.13(b)(1)(E) implies that the Entry Fee may be refundable, it is never refundable in practice as it is currently assessed on the date of initial listing on the Exchange. Furthermore, the Exchange believes that the Application Fee and Entry Fee are reasonably designed to compensate the Exchange for the cost incurred by reviewing an application to list on the Exchange. Therefore, as such review is nearly complete at the time conditional approval is provided by the Exchange, it is reasonable that Entry Fee is non-refundable.

Given the foregoing, the Exchange believes the proposed fee amendments are consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed, and the value provided by each listing.

While the proposal does not change the combined amount of the Entry Fee and Application Fee for both Tier I and Tier II securities that list on the Exchange, certain Companies may pay a higher Application Fee. Nonetheless, the Exchange does not believe that the proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposal to assess a higher Application Fee in certain circumstances as described herein is reasonable because it more closely aligns the fee assessment with the time at which the Exchange incurs costs in only limited circumstances where the Exchange believes there is a higher likelihood that the application will be withdrawn prior to the issuance of conditional approval. As discussed above, the Exchange is not proposing additional fees for Companies that decide not to list with the Exchange. Where a Company that is already engaged in the application process with another exchange, such a Company will be subject to the higher Application Fee upon application with the Exchange. Where a Company is already engaged in the listing process with the Exchange and is considering listing with another exchange, such a Company can have any level of engagement short of filing an application on that other exchange without subjecting itself to any additional fees. Such a Company could also terminate the application process with the Exchange and begin the listing process with another exchange and not be subject to any additional fees. As such, this proposal is not imposing any meaningful burden on competition.

Rather, the Exchange is merely trying to ensure that it is compensated for the resources that it expends in a situation where it is less likely for the full Entry Fee to be paid. While such an arrangement could result in Companies that do not list with the Exchange paying a higher Application Fee, the Exchange does not believe the proposal will disincentivize Companies to submit applications to list on other national securities exchanges and thereby burden competition. Rather, the Exchange believes the proposal will reasonably compensate the Exchange for its review of the application and may incentivize Companies to choose not to engage in or terminate the application process on the Exchange when there is a higher likelihood that the Company will list on another national securities exchange.

In addition, as proposed Companies that don't list on the Exchange, either by choice or because it failed to meet the conditions set forth in the conditional approval or some other regulatory requirement, will be assessed the Entry Fee less the Application Fee at the time of conditional approval. Therefore, Companies that receive conditional approval, but do not list on the Exchange will pay a fee they would not be subject to under the current rule. The Exchange does not believe that this fee assessment will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it simply aligns the fee with the time that resource costs are incurred by the Exchange. Therefore, the Exchange believes the proposal is consistent with Section 6(b)(8) of the Act.

The Exchange believes that the proposed amendments do not encumber competition for listings with other listing venues, which are similarly free to set their fees. Rather, it reflects competition among listing venues and will further enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–092 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–CboeBZX–2023–092. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the 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 the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–092 and should be submitted on or before December 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26007 Filed 11–24–23; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98994; File No. SR–IEX–2023–12]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Pursuant to IEX Rule 15.110 To Amend IEX's Fee Schedule

November 20, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 7, 2023, Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to amend its Fee Schedule,[6] pursuant to IEX Rule 15.110(a) and (c) (the ''Fee Schedule''), to revise the fees applicable to transactions that add or remove non-displayed liquidity from the same

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* the IEX Fee Schedule at *https://www.iexexchange.io/resources/trading/fee-schedule* for the complete list of fee code combinations and their corresponding fees.

Member,[7] and to make conforming changes to the ''Fee Code Modifiers'' and ''Fee Code Combinations and Associated Fees'' sections of the Fee Schedule. Changes to the Fee Schedule pursuant to this proposal are effective upon filing,[8] and the Exchange plans to implement the changes on January 1, 2024.

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to revise the fees applicable to transactions that add or remove resting non-displayed liquidity from the same Member (the ''internalization fee''). Currently such executions are free. As proposed, they would be subject to existing fees applicable to adding or removing non-displayed liquidity by different Members. IEX also proposes to revise the Fee Schedule to delete Fee Code Modifier ''S'' that applies when a Member executes against resting liquidity added by such Member and to make conforming changes to the ''Fee Code Combinations and Associated Fees'' section of the Fee Schedule. Changes to the Fee Schedule pursuant to this proposal are effective upon filing,[9] and the Exchange plans to implement the changes on January 1, 2024.

As proposed, IEX will remove Fee Code Modifier S and the seven (7) Fee Code Combinations that contain Fee Code Modifier S from the IEX Fee Schedule. As described below, two (2) of the seven (7) Fee Code Combinations (MIS and TIS) currently result in a free execution for both the adding and removing orders of an execution, and as proposed will be replaced with existing Fee Code Combinations that do not include Fee Code Modifier S and thereby be subject to the regular fees for adding or removing non-displayed liquidity specified in such Fee Code Combinations. The remaining five (5) Fee Code Combinations would be replaced with existing Fee Code Combinations that do not include Fee Code Modifier S but would not result in a fee change.

- Fee Code Combination MIS, which applies when a Member adds resting non-displayed liquidity that executes against such Member's removing interest and is currently free, would be deleted; such executions would be subject to Fee Code Combination MI, which results in a fee of $0.0010 per share for executions priced at or above $1.00 per share or 0.10% of the total dollar value of the transaction for executions priced below $1.00 per share.
- Fee Code Combination TIS, which applies when a Member removes resting non-displayed liquidity added by such Member and is currently free, would be deleted; such executions would be subject to Fee Code Combination TI, which results in a fee of $0.0010 per share for executions priced at or above $1.00 per share or 0.10% of the total dollar amount of the transaction for executions priced below $1.00 per share.
- Fee Code Combination MLS, which applies when a Member's order adds displayed liquidity that executes against such Member's removing interest, would be deleted; such executions would be subject to Fee Code Combination ML and would continue to result in a rebate of $0.0004 per share for executions priced at or above $1.00 per share or no fee (*i.e.,* free) for executions priced below $1.00 per share.
- Fee Code Combination TLS, which applies when a Member removes displayed liquidity added by such Member, would be deleted; such executions would be subject to Fee Code TL, which would continue to result in a fee of $0.0010 per share for executions priced at or above $1.00 per share or 0.09% of the total dollar value of the transaction for executions priced below $1.00 per share.
- Fee Code Combinations TLSR and TISR, which apply when a Retail[10] order removes displayed or non-displayed liquidity, respectively, from orders entered by the same Member, would be deleted; such executions would be subject to Fee Code Combinations TLR and TIR, respectively, and would continue to result in a free execution, like all other executions of Retail orders.
- Fee Code Combination MISA, which applies when a Retail Liquidity Provider[11] order adds non-displayed liquidity that executes against a Retail order entered by the same Member, would be deleted; such executions would be subject to Fee Code Combination MIA, which would continue to result in a free execution, like all other executions of Retail Liquidity Provider orders.

Thus, the only fees that would change under this proposal are for the fees currently charged for orders that add or remove non-displayed liquidity submitted by the same Member, which would now be charged the same $0.0010 fee per share that is charged for all other orders that add or remove non-displayed liquidity.[12]

The internalization fee was initially adopted when IEX launched as a national securities exchange and was designed to incentivize Members (and their customers) to send orders to IEX that might otherwise be internalized off exchange with the overall goals of, among other things, enhancing order interaction on the Exchange with the resultant benefit of exchange transparency, regulation, and oversight. While the internalization fee initially applied to executions that added or removed displayed and non-displayed interest from the same Member, it currently only applies to executions that add or remove non-displayed interest from the same Member.[13] The Exchange believes that the internalization fee was initially an appropriate means to incentivize order entry on IEX, but that in the current market structure environment there are myriad factors that impact order routing decisions and the internalization fee has not operated as a meaningful incentive. Consequently, IEX believes that impacted orders should be subject to the

[7] *See* IEX Rule 1.160(s).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] *See* IEX Rule 11.190(b)(15).

[11] *See* IEX Rule 11.190(b)(14).

[12] As noted above, for executions priced below $1.00 per share, the fee would be 0.10% of the total dollar amount value of the transaction. Also, as noted above, executions of Retail orders and Retail Liquidity Provider orders will continue to be free of charge.

[13] *See* Securities Exchange Act Release No. 91443 (March 30, 2021), 86 FR 17654 (April 5, 2021) (SR–IEX–2021–05), which revised the application of the internalization fee, so that it only provided a free execution when a Member added or removed non-displayed interest from the same Member.

same fee structure as other IEX executions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(4) [15] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable fees among IEX Members and persons using its facilities. Additionally, IEX believes that the proposed changes to the Fee Schedule are consistent with the investor protection objectives of Section 6(b)(5) [16] of the Act, in particular, in that they are designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, brokers, or dealers.

The Exchange believes that the proposed changes are reasonable, fair and equitable, non-discriminatory, and consistent with the Act. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange further believes that the proposed fee change is consistent with the Act's requirement that the Exchange provide for an equitable allocation of fees that is also not unfairly discriminatory. As proposed, the fees for adding and removing non-displayed liquidity will apply in an equal and nondiscriminatory manner to all Members. All Members are eligible to enter non-displayed orders and orders that remove non-displayed liquidity, and the proposed fee structure will apply to all Members in the same manner.

IEX notes that other exchanges do not offer free executions for the execution of orders entered by the same Member. Consequently, IEX does not believe that its proposed fee structure for adding and removing non-displayed liquidity entered by the same Member raises any new or novel issues that the Commission has not already considered in the context of other exchanges' fees.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

In addition, the Exchange believes that it is reasonable and consistent with the Act to delete Fee Code Modifier S and the Fee Code Combinations and Associated Fees that include Fee Code Modifier S, as described in the Purpose section, to reflect the proposed fee changes and to provide information to Members on the relevant charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed fees will impose any burden on intermarket competition that is 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 easily direct their orders to competing venues, including off-exchange venues, if its fees are viewed as non-competitive. As proposed, IEX fees for executions that add or remove non-displayed liquidity will continue to be below fees charged by competing exchanges.[17] Moreover, subject to the SEC rule filing process, other exchanges could adopt similar fees.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees will apply to all Members in the same manner, as discussed in the Statutory Basis section. Accordingly, the Exchange does not believe that these changes will have any impact on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[17] *See e.g.,* Cboe BZX Equities Fee Schedule (up to $0.0030 fee per share to remove non-displayed liquidity), available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/;* MIAX Pearl Equities Exchange Fee Schedule (up to $0.00295 fee per share for non-displayed liquidity removing executions), available at *https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_11012023.pdf;* MEMX Fee Schedule (up to $0.0030 fee per share for non-displayed liquidity removing executions), available at *https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/;* Nasdaq Equity 7 Section 118(a) (up to $0.0030 fee per share for any non-displayed liquidity removing executions), available at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-equity-7;* New York Stock Exchange Price List 2023 (up to $0.0030 per share for non-displayed liquidity removing executions), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [18] of the Act and subparagraph (f)(2) of Rule 19b–4 [19] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–IEX–2023–12 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–IEX–2023–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(2).

[20] 15 U.S.C. 78s(b)(2)(B).

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 the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–IEX–2023–12 and should be submitted on or before December 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26004 Filed 11–24–23; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20102 and #20103; Arkansas Disaster Number AR–20004]

Administrative Declaration of a Disaster for the State of Arkansas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Arkansas dated 11/17/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 06/25/2023 through 06/26/2023.

DATES: Issued on 11/17/2023.

Physical Loan Application Deadline Date: 01/16/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 08/19/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Lonoke, Poinsett.

Contiguous Counties: Arkansas.

Arkansas, Craighead, Crittenden, Cross, Faulkner, Jackson, Jefferson, Mississippi, Prairie, Pulaski, White

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 20102B and for economic injury is 201030.

The State which received an EIDL Declaration is Arkansas.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–26011 Filed 11–24–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20058 and #20059; Kansas Disaster Number KS–20000]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Kansas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA–4747–DR), dated 10/26/2023.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 07/14/2023 through 07/21/2023.

DATES: Issued on 10/26/2023.

Physical Loan Application Deadline Date: 12/26/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 07/26/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/26/2023, disaster loan applications for Private Non-Profit organizations that provide essential services of a governmental nature may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Allen, Barton, Clark, Comanche, Edwards, Finney, Ford, Greeley, Johnson, Kearny, Pawnee, Rawlins, Rice, Russell, Stafford, Thomas, Wallace, Wichita, Woodson, Wyandotte

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375

	Percent
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 200586 and for economic injury is 200590.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–26010 Filed 11–24–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20092 and #20093; Arkansas Disaster Number AR–2000]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Arkansas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–4748–DR), dated 11/14/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 06/25/2023 through 06/26/2023.

DATES: Issued on 11/14/2023.

Physical Loan Application Deadline Date: 01/16/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 08/14/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/14/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Arkansas, Faulkner, Lonoke, Poinsett

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 20092B and for economic injury is 200930.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–26015 Filed 11–24–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18110 and #18111; Colorado Disaster Number CO–00143]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Colorado

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Colorado (FEMA–4731–DR), dated 08/25/2023.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/08/2023 through 06/23/2023.

DATES: Issued on 11/01/2023.

Physical Loan Application Deadline Date: Filing Period for the county listed below ends 01/02/2024.

Economic Injury (EIDL) Loan Application Deadline Date: Filing Period for the county listed below ends 08/01/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of COLORADO, dated 08/25/2023, is hereby amended to include Jefferson County. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 to request an application. Applications for physical damages may be filed until 01/02/2024 and applications for economic injury may be file until 08/01/2024. All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–26014 Filed 11–24–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18102 and #18103; ALASKA Disaster Number AK–00062]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4730–DR), dated 08/23/2023.

Incident: Flooding.

Incident Period: 05/12/2023 through 06/03/2023.

DATES: Issued on 10/30/2023.

Physical Loan Application Deadline Date: Filing Period for the REAA's listed below ends 12/29/2023.

Economic Injury (EIDL) Loan Application Deadline Date: Filing Period for the REAA's listed below ends 07/30/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small

Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Alaska, dated 08/23/2023, is hereby amended to include the Iditarod Area REAA and Yukon-Koyukuk REAA. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 to request an application. Applications for physical damages may be filed until 12/29/2023 and applications for economic injury may be file until 07/30/2024. All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–26009 Filed 11–24–23; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the Utah Inland Port Authority (WB23–58—11/1/23) for permission to use select data from the Board's annual 2021 masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB23–58.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2023–26055 Filed 11–24–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed project, to connect State Route (SR) 99 to Interstate 5 (I–5) in an east-west alignment, in unincorporated Sacramento County and a portion of the City of Elk Grove. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 25, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Thaleena Bhattal Acting Branch Chief, Caltrans Office of Environmental Management, M–1 California Department of Transportation—District 3, 703 B Street, Marysville, CA 95901. Office Hours: 8:00 a.m.–5:00 p.m., Pacific Standard Time, telephone: (530) 821–8301 or email at *thaleena.bhattal@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The City of Elk Grove and Capital SouthEast Connector Joint Powers Authority (Connector JPA), in cooperation with the California Department of Transportation proposes to connect State Route (SR) 99 to Interstate 5 (I–5) in an east-west alignment. The project will replace an existing portion of Kammerer Road with a four-lane thoroughfare, construct a new four-lane expressway section to I–5 The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA)/Finding of No Significant Impact (FONSI), approved on October 3, 2023, and in other documents in the Caltrans' project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality Regulations
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*
3. Federal-Aid Highway Act of 1970, 23 U.S.C. 109
4. MAP–21, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141)
5. Clean Air Act Amendments of 1990 (CAAA)
6. Clean Water Act of 1977 and 1987
7. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 & 1987)
8. Federal Land Policy and Management Act of 1976 (Paleontological Resources)
9. Noise Control Act of 1972
10. Safe Drinking Water Act of 1944, as amended
11. Endangered Species Act of 1973
12. Executive Order 11990, Protection of Wetlands
13. Executive Order 13112, Invasive Species
14. Executive Order 13186, Migratory Birds
15. Fish and Wildlife Coordination Act of 1934, as amended
16. Migratory Bird Treaty Act
17. Water Bank Act Wetlands Mitigation Banks, ISTEA 1991, Sections 1006–1007
18. Wildflowers, Surface Transportation and Uniform Relocation Act of 1987 Section 130
19. Coastal Zone Management Act of 1972
20. Coastal Zone Management Act Reauthorization Amendments of 1990
21. Executive Order 11988, Floodplain Management
22. Department of Transportation (DOT) Executive Order 5650.2—Floodplain Management and Protection (April 23, 1979)
23. Rivers and Harbors Appropriation Act of 1899, Sections 9 and 10
24. Title VI of the Civil Rights Act of 1964, as amended
25. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1))

Antonio Johnson,

Director, Planning and Environment, and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2023–26028 Filed 11–24–23; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project on State Route 99 at Caldwell Avenue in Tulare County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 25, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Trais Norris, Senior Environmental Planner, Caltrans, 2015 E. Shields Avenue, Fresno, CA 93720, (559) 320–6045 or *trais.norris@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Construct two roundabouts at the southbound ramp and northbound ramp intersections. The profile of the existing Avenue 280 overcrossing structure would be raised, and the Mid-Valley overhead structure would also be replaced. Caldwell Avenue would be widened to a 4-lane configuration at the vicinity of the roundabouts. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment for the project, approved on June 14, 2019, in the Finding of No Significant Impact (FONSI) issued on June 14, 2019, and in other documents in the project records. The EA, FONSI and other project records are available by contacting Caltrans at the address provided above. The Caltrans EA and FONSI can be viewed and downloaded from the project website at *https://dot.ca.gov/caltrans-near-me/district-6/district-6-projects/d6-sr099-caldwell-interchange,* or viewed at Caltrans, 2015 Shield Avenue, Fresno, CA, 93726.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act of 1969
2. Clean Air Act, 42 U.S.C. 7401–7671
3. Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531–1544
4. National Historic Preservation Act of 1966 (NHPA)
5. Clean Water Act, 33 U.S.C. 1251–1387 (Sections 319, 401, and 404)

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1))

Antonio Johnson,

Director of Planning, Environmental and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2023–26023 Filed 11–24–23; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0058; FMCSA–2018–0136; FMCSA–2018–0138; FMCSA–2018–0139; FMCSA–2019–0109; FMCSA–2019–0110]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 16 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on December 26, 2023. The exemptions expire on December 26, 2025. Comments must be received on or before December 27, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2017–0058, Docket No. FMCSA–2018–0136, Docket No. FMCSA–2018–0138, Docket No. FMCSA–2018–0139, Docket No. FMCSA–2019–0109, or Docket No. FMCSA–2019–0110 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2017–0058, FMCSA–2018–0136, FMCSA–2018–0138, FMCSA–2018–0139, FMCSA–2019–0109, or FMCSA–2019–0110) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the

''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2017–0058, Docket No. FMCSA–2018–0136, Docket No. FMCSA–2018–0138, Docket No. FMCSA–2018–0139, Docket No. FMCSA–2019–0109, or Docket No. FMCSA–2019–0110) indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2017–0058, FMCSA–2018–0136, FMCSA–2018–0138,

FMCSA–2018–0139, FMCSA–2019–0109, or FMCSA–2019–0110) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2017–0058, FMCSA–2018–0136, FMCSA–2018–0138, FMCSA–2018–0139, FMCSA–2019–0109, or FMCSA–2019–0110) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

The 16 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 16 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 16 drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of December and are discussed below. As of December 26, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 16 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Denis Ayers (MD)
Joseph Bence (OH)
Daryl Broker (MN)
Justin Brooks (WA)
Christa Butner (NC)

William Darnell (AZ)
Travis Davisson (IA)
Steven Gandee (PA)
Derek Hawkins (NH)
James Johnson (MN)
Keith Kenyon (WI)
John Martikainen (CT)
Willis Ryan (GA)
John Silvers (NY)
Jeremy Williams (CA)
Joseph Williams (MD)

The drivers were included in docket numbers FMCSA–2017–0058, FMCSA–2018–0136, FMCSA–2018–0138, FMCSA–2018–0139, FMCSA–2019–0109, or FMCSA–2019–0110. Their exemptions are applicable as of December 26, 2023 and will expire on December 26, 2025.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5T; and (2) report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 16 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41 (b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–26045 Filed 11–24–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Capital Metro Orange Line Project in Austin, Texas

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Rescind notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Capital Metropolitan Transportation Authority (Capital Metro), Austin Transit Partnership (ATP), and the City of Austin (the City), is issuing this notice to advise the public that the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the proposed Orange Line light rail transit (LRT) project as part of Project Connect in Austin, Texas is rescinded.

FOR FURTHER INFORMATION CONTACT: For FTA: Mr. Terence Plaskon, Federal Transit Administration, Region VI, 819 Taylor Street, Fort Worth, TX 76102, at (817) 978–0573 or *terence.plaskon@dot.gov*. For Capital Metro: Mr. Jacob Calhoun, Capital Metro, 2910 E. Fifth Street, Austin, TX 78702, at (512) 369–6501 or *jacob.calhoun@capmetro.org*.

SUPPLEMENTARY INFORMATION: On May 24, 2021 (86 FR 27941), FTA and Capital Metro issued a NOI to prepare an EIS for the Orange Line LRT project. The project is part of Capital Metro's 2018 Project Connect Long-Term Vision Plan (Project Connect), as amended in 2020. Project Connect presents a regional vision for high-capacity transit investments that would add mobility options for the Central Texas region. The project would have constructed an approximately 20-mile LRT line from the Tech Ridge Park & Ride on the northern end of the corridor, through downtown Austin, to just north of Slaughter Lane on the southern end of the corridor.

As planning and preliminary engineering progressed, it became evident that due to higher than projected cost estimates from inflationary pressure, escalating real estate costs, and scope advancement, the approach and phasing for implementation of the LRT system would need to be refined to make the project economically feasible. Therefore, ATP, an independent local government corporation formed by the City and Capital Metro to design, construct, and implement Project Connect, undertook a public planning process to define an economically feasible and expandable LRT system that would meet regional transportation goals and objectives of Project Connect. After a robust community engagement process, on June 6, 2023, a proposed Austin Light Rail Phase 1 project was unanimously approved by Capital Metro, ATP, and the City to advance into the next phase of implementation. This proposed project includes combining segments of the Orange and Blue LRT projects into one LRT project. Based on the foregoing, FTA is rescinding the May 24, 2021, NOI for the Orange Line LRT project.

Comments and questions concerning this notice should be directed to FTA at the address provided above.

Gail Lyssy,

Regional Administrator, FTA Region VI.

[FR Doc. 2023–26024 Filed 11–24–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Capital Metro Blue Line Project in Austin, Texas

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Rescind notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Capital Metropolitan Transportation Authority (Capital Metro), Austin Transit Partnership (ATP), and the City of Austin (the City), is issuing this notice to advise the public that the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the proposed Blue Line light rail transit (LRT) project as part of Project Connect in Austin, Texas is rescinded.

FOR FURTHER INFORMATION CONTACT: For FTA: Mr. Terence Plaskon, Federal Transit Administration, Region VI, 819 Taylor Street, Fort Worth, TX 76102, at (817) 978–0573 or *terence.plaskon@dot.gov*. For Capital Metro: Mr. Jacob

Calhoun, Capital Metro, 2910 E. Fifth Street, Austin, TX 78702, at (512) 369–6501 or *jacob.calhoun@capmetro.org.*

SUPPLEMENTARY INFORMATION: On May 24, 2021 (86 FR 27942), FTA and Capital Metro issued a NOI to prepare an EIS for the Blue Line LRT project. The project is part of Capital Metro's 2018 Project Connect Long-Term Vision Plan (Project Connect), as amended in 2020. Project Connect presents a regional vision for high-capacity transit investments that would add mobility options for the Central Texas region. The project would have constructed an approximately 8.2-mile LRT line from Republic Square in downtown Austin to Austin-Bergstrom International Airport (AUS).

As planning and preliminary engineering progressed, it became evident that due to higher than projected cost estimates from inflationary pressure, escalating real estate costs, and scope advancement, the approach and phasing for implementation of the LRT system would need to be refined to make the project economically feasible. Therefore, ATP, an independent local government corporation formed by the City and Capital Metro to design, construct, and implement Project Connect, undertook a public planning process to define an economically feasible and expandable LRT system that would meet regional transportation goals and objectives of Project Connect. After a robust community engagement process, on June 6, 2023, a proposed Austin Light Rail Phase 1 project was unanimously approved by Capital Metro, ATP, and the City to advance into the next phase of implementation. This proposed project includes combining segments of the Orange and Blue LRT projects into one LRT project. Based on the foregoing, FTA is rescinding the May 24, 2021, NOI for the Blue Line LRT project.

Comments and questions concerning this notice should be directed to FTA at the address provided above.

Gail Lyssy,

Regional Administrator, FTA Region VI.

[FR Doc. 2023–26026 Filed 11–24–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

[DOT–OST–2023–0157]

Department of Transportation Advisory Committee on Human Trafficking: Notice of Public Meeting

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces an in-person meeting of the Department of Transportation Advisory Committee on Human Trafficking.

DATES: The meeting will be held on December 13, 2023, from 10 a.m. to 4 p.m. EST.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Any person requiring accessibility accommodations should contact the Official listed in the next section.

FOR FURTHER INFORMATION CONTACT: Maha Alkhateeb, Office of International Transportation and Trade, U.S. Department of Transportation, at *trafficking@dot.gov* or (202) 366–4398. Also visit the ACHT website at *https://www.transportation.gov/stophumantrafficking/acht.*

SUPPLEMENTARY INFORMATION:

I. Background

ACHT was re-chartered on July 29, 2022, using the Department's authorities under the *Bipartisan Infrastructure Law* (BIL) (Pub. L. 117–58). The ACHT was initially established as mandated by Sec. 5(a) of the 2018 *Combating Human Trafficking in Commercial Vehicles Act* (Pub. L. 115–99). Sec. 23020 of the BIL requires the Secretary of Transportation, acting through the ACHT and in coordination with the Attorney General, to submit a triennial counter-trafficking report with recommendations for countering human trafficking, an assessment of best practices by transportation stakeholders, and human trafficking violations involving commercial motor vehicles.

II. Agenda

At the December 13, 2023 meeting, the agenda will cover the following topics:

- Welcome and Introductions
- Survivor Remarks
- Subcommittee Updates
- Public Participation

A final agenda that includes a virtual participation link will be posted on the ACHT internet website at *https://www.transportation.gov/stophumantrafficking/acht* at least one week in advance of the meeting.

III. Public Participation

The hybrid meeting will be open to the public in-person and virtually. Members of the public who wish to attend are asked to register, including name, title, affiliation, and whether they plan to attend in-person or virtually, to *trafficking@dot.gov* by December 5, 2023. Individuals requesting accessibility accommodations, such as sign language, interpretation, or other ancillary aids, may do so via email at: *trafficking@dot.gov* by December 5, 2023.

There will be 30 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the Office of the Secretary may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5 p.m. EST on December 5, 2023, for inclusion in the meeting records and for circulation to ACHT members. Written comments timely submitted from those participants not selected to speak will be accepted and considered as part of the meeting record.

Persons who wish to submit written comments for consideration by ACHT during the meeting must submit them no later than 5 p.m. EST on December 5, 2023, to ensure transmission to ACHT prior to the meeting. Comments received after that date and time will be distributed to the members but may not be reviewed prior to the meeting.

Copies of the meeting minutes will be available on the ACHT internet website at *https://www.transportation.gov/stophumantrafficking/acht.*

Issued in Washington, DC, on November 17, 2023.

Carol Annette Petsonk,

Assistant Secretary, Aviation and International Affairs, U.S. Department of Transportation.

[FR Doc. 2023–26066 Filed 11–24–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the U.S. Department of the Treasury's Federal Advisory Committee on Insurance (FACI) will meet via videoconference on Wednesday, December 13, 2023, from 1 p.m.–3:30 p.m. Eastern Time. The meeting is open to the public. The FACI provides non-binding recommendation and advice to the Federal Insurance Office (FIO) in the U.S. Department of Treasury.

DATES: The meeting will be held via videoconference on Wednesday, December 13, 2023, from 1:00 p.m.–3:30 p.m. Eastern Time.

ADDRESSES: The meeting will be held via videoconference and is open to the public. The public can attend remotely via live webcast: *www.yorkcast.com/treasury/events/2023/12/13/faci.* The webcast will also be available through the FACI's website: *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/federal-advisory-committee-on-insurance-faci.* Please refer to the FACI website for up-to-date information on this meeting. Requests for reasonable accommodations under section 504 of the Rehabilitation Act should be directed to Snider Page, Office of Civil Rights and Equal Employment Opportunity, Department of the Treasury at (202) 622–0341, or *snider.page@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: John Gudgel, Senior Insurance Policy Analyst, Federal Insurance Office, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622–1748 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. 1009(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the FACI are invited to submit written statements by either of the following methods:

Electronic Statements

• Send electronic comments to *faci@treasury.gov.*

Paper Statements

• Send paper statements in triplicate to the Federal Advisory Committee on Insurance, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220.

In general, the Department of the Treasury will make submitted comments available upon request without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. Requests for public comments can be submitted via email to *faci@treasury.gov.* The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This will be the fourth FACI meeting of 2023. In this meeting, the FACI will discuss topics related to climate-related financial risk and the insurance sector, and will also discuss cyber insurance developments and international insurance issues. The FACI will also receive status updates from each of its subcommittees and from FIO on its activities, as well as consider any new business.

Dated: November 20, 2023.

Stephanie Schmelz,

Deputy Director, Federal Insurance Office.

[FR Doc. 2023–26025 Filed 11–24–23; 8:45 am]

BILLING CODE 4810–AK–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: December 4, 2023, 12:00 p.m. to 3:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 995 6422 1765, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJ0oce2qrDotHNEDNYl_EsnEU6knje_9p_nd.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Industry Advisory Subcommittee (the ''Subcommittee'') will conduct a meeting to continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—UCR Industry Advisory Subcommittee Chair

The Industry Advisory Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Industry Advisory Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda—UCR Industry Advisory Subcommittee Chair

For Discussion and Possible Subcommittee Action

The proposed Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

➢Subcommittee action only to be taken in designated areas on agenda.

IV. Review and Approval of Minutes from the January 17, 2023 Meeting—UCR Industry Advisory Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the January 17, 2023 Industry Advisory Subcommittee meeting via teleconference will be reviewed. The UCR Industry Advisory Subcommittee will consider action to approve.

V. 2024 Priorities and Project Development for the Subcommittee—UCR Industry Advisory Subcommittee Chair

The UCR Industry Advisory Subcommittee Chair will lead a discussion on the 2024 calendar year priorities and project development for the Subcommittee.

VI. Other Items—UCR Industry Advisory Subcommittee Chair

The UCR Industry Advisory Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

VII. Adjournment—UCR Industry Advisory Subcommittee Chair

The UCR Industry Advisory Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, November 27, 2023 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2023–26175 Filed 11–22–23; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0934]

Agency Information Collection Activity: Department of Veterans Affairs Servicing Purchase (VASP) Program

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 26, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0934'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0934'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 3732 and 38 CFR 36.4320, Refunding of Loans in Default.

Title: Department of Veterans Affairs Servicing Purchase (VASP) Program.

OMB Control Number: 2900–0934.

Type of Review: Extension of a currently approved collection.

Abstract: VA is initiating an expanded program using existing Refund provisions. This option will assist Veterans with VA-guaranteed loans who have defaulted on their mortgage loan and are facing foreclosure. Under this program, VA will exercise its statutory option to purchase the loan from the servicer and VA will hold the loan in VA's own loan portfolio. The servicer will prepare a modification of the loan to increase affordability for the Veteran. Servicers who participate in the program are required to document their efforts to assist the Veteran through a waterfall of existing loss mitigation options and provide that documentation to VA. Information collection is necessary to ensure that Veterans and servicers comply with VA program requirements under VASP that are not already covered by existing, approved information collections for loan servicing and loan refunding.

Affected Public: Individuals and households.

Estimated Annual Burden: 68,231 hours.

Estimated Average Burden per Respondent: 195 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 41,988.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–26083 Filed 11–24–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Monday,

No. 226 November 27, 2023

Part II

Federal Reserve System

12 CFR Parts 217, 238, and 252

Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 217, 238, and 252

[Docket No. R–1673]

RIN 7100–AF56

Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is adopting risk-based capital requirements for depository institution holding companies that are significantly engaged in insurance activities. This risk-based capital framework, termed the Building Block Approach, adjusts and aggregates existing legal entity capital requirements to determine enterprise-wide capital requirements. The final rule also contains a risk-based capital requirement excluding insurance activities, in compliance with section 171 of The Dodd-Frank Wall Street Reform and Consumer Protection Act. The Board also is adopting a reporting form FR Q–1 related to the Building Block Approach. The capital requirements and associated reporting form meet statutory mandates and will help to prevent the economic and consumer impacts resulting from the failure of organizations engaged in banking and insurance.

DATES: This rule is effective on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Lara Lylozian, Deputy Associate Director and Chief Accountant, (202) 475–6656; Matt Walker, Manager, Insurance Supervision & Regulation, (202) 872–4971; or John Muska, Lead Insurance Policy Analyst, (202) 384–7278; Division of Supervision and Regulation; or Dafina Stewart, Assistant General Counsel, (202) 452–2677; Andrew Hartlage, Special Counsel, (202) 452–6483; Jonah Kind, Senior Counsel, (202) 452–2045; or Jasmin Keskinen, Attorney, (202) 475–6650, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Board of Governors of the Federal Reserve System (Board) is adopting a rule that establishes minimum risk-based capital requirements for certain depository institution holding companies significantly engaged in insurance activities (insurance depository institution holding companies). The rule establishes an enterprise-wide risk-based capital framework, termed the ''building block'' approach (BBA), that incorporates legal entity capital requirements such as the requirements prescribed by state insurance regulators, taking into account differences between the business of insurance and banking.

This final rule follows the issuance of two documents for comment by the Board. The first was the 2016 advance notice of proposed rulemaking (ANPR), in which the Board described the concept of the BBA as a capital framework and sought input on all aspects of its development at an early stage.[1] The Board considered this feedback and invited comment on a detailed BBA proposal in the notice of proposed rulemaking (NPR or proposal) issued in September 2019.[2] The NPR would have established risk-based capital requirements for insurance depository institution holding companies. As discussed in that proposal, insurance depository institution holding companies include depository institution holding companies that are insurance underwriting companies and depository institution holding companies that hold a significant percentage of total assets in insurance underwriting subsidiaries. In addition to the enterprise-wide capital requirement for insurance depository institution holding companies based on the BBA framework, the proposal would have applied a minimum risk-based capital requirement to the enterprise using the flexibility afforded under amendments enacted in 2014 to section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to exclude certain state- and foreign-regulated insurance operations (section 171 calculation).[3] The proposal included a buffer requirement that would have limited an insurance depository institution holding company's capital distributions and discretionary bonus payments if it did not hold sufficient capital relative to enterprise-wide risk, including risk from insurance activities. The proposed rule would have relied on the Board's authority under section 10 of the Home Owners' Loan Act (HOLA)[4] and section 171 of the Dodd-Frank Act.[5]

The Board is responsible for protecting the safety and soundness of certain banking organizations. This responsibility includes establishing minimum requirements for the capital of holding companies of groups that conduct both depository and insurance operations.[6] In the United States and other jurisdictions, the current risk-based capital assessment methodologies have been designed specifically for either insurance or banking.

In view of the above, the Board is adopting aggregation-based capital requirements for insurance depository institution holding companies. These capital requirements aggregate the required capital from insurance activities, as determined based on insurance capital rules set by the states or foreign jurisdictions, and banking

[1] Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities, 81 FR 38631 (June 14, 2016).

[2] Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities, 84 FR 57240 (October 24, 2019).

[3] Public Law 111–203, 124 Stat. 1376, 1435–38 (2010), as amended by Public Law 113–279, 128 Stat. 3017 (2014).

[4] 12 U.S.C. 1467a.

[5] 12 U.S.C. 5371.

[6] *Id.*

activities, as determined based on banking capital rules. These requirements fulfill the Board's goal of designing an appropriate capital standard for insurance depository institution holding companies. Prior to this rule, savings and loan holding companies (SLHCs) with significant insurance operations have been excluded from the Board's banking capital rule pending this rulemaking, while bank holding companies (BHCs) with significant insurance operations have been required to comply with the Board's banking capital rule.

In addition to the NPR, the Board invited comment on a draft reporting form ''Capital Requirements for Board-Regulated Institutions Significantly Engaged in Insurance Activities'' (form FR Q–1) and associated instructions, which would gather data related to the BBA, and published a white paper describing how the BBA translated between the banking and insurance capital frameworks. The Board also launched a quantitative impact study (QIS) alongside the NPR using the draft reporting form. The comments received on the NPR and on the reporting form and instructions, as well as the QIS results, have informed this final rule and are discussed in the following sections. The reporting form and instructions are being finalized along with this final rule with certain changes in response to the comments.

A. Background

In response to the 2007–09 financial crisis, Congress enacted the Dodd-Frank Act, which, among other purposes, was enacted to ensure appropriate supervision of depository institution holding companies without regard to charter type of their insured depository institution subsidiaries and to streamline the supervision of such holding companies. In furtherance of these purposes, Title III of the Dodd-Frank Act expanded the Board's supervisory role by transferring to the Board all supervisory functions related to SLHCs and their non-depository subsidiaries.

As a result, the Board became the Federal supervisory authority for all depository institution holding companies, including insurance depository institution holding companies.[7] Concurrent with the expansion of the Board's supervisory role, section 616 of the Dodd-Frank Act amended HOLA to provide the Board express authority to adopt regulations or orders that set capital requirements for SLHCs.[8]

Any capital requirements the Board may establish for SLHCs are subject to minimum standards under the Dodd-Frank Act. Specifically, section 171 of the Dodd-Frank Act requires the Board to establish minimum risk-based and leverage capital requirements on a consolidated basis for depository institution holding companies. These requirements must be not less than the capital requirements established by the Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act,[9] nor quantitatively lower than the capital requirements that applied to these institutions when the Dodd-Frank Act was enacted.

Section 171 of the Dodd-Frank Act was amended in 2014 (2014 Amendment) to provide the Board flexibility when developing consolidated capital requirements for insurance depository institution holding companies.[10] The 2014 Amendment permits the Board, in establishing minimum risk-based and leverage capital requirements on a consolidated basis, to exclude companies engaged in the business of insurance and regulated by a state insurance regulator, as well as certain companies engaged in the business of insurance and regulated by a foreign insurance regulator.

Section 171 of the Dodd-Frank Act also provides that the Board may not require, under its authority pursuant to section 171 of the Dodd-Frank Act or HOLA, a supervised firm that is also a state-regulated insurer and files financial statements with a state insurance regulator or the National Association of Insurance Commissioners (NAIC) utilizing only Statutory Accounting Principles (SAP) to prepare such financial statements in accordance with U.S. generally accepted accounting principles (GAAP).[11] The Board notes that, unlike GAAP, SAP does not include an accounting consolidation concept. As discussed in detail in subsequent sections of this **SUPPLEMENTARY INFORMATION**, the BBA is thus an aggregation-based approach, designed to comprehensively capture risk, including all material risks, at the level of the entire enterprise or group.

The Board is adopting the BBA in this final rule in order to set risk-based capital requirements for BHCs and SLHCs that are significantly engaged in insurance activities.

B. Description of the Building Block Approach

As adopted in this final rule, the BBA aggregates the available capital and required capital positions of certain entities determined to be building block parents in order to determine the capital position of top-tier supervised insurance depository institution holding companies (supervised insurance organizations or SIOs). The BBA expresses such a capital position as a BBA ratio, which is the ratio of the aggregated available capital to the aggregated required capital of the enterprise.[12] The SIO must maintain a BBA ratio of at least 250 percent and a capital conservation buffer of 150 percent, resulting in a total requirement of 400 percent.

The BBA groups legal entities together into building blocks to calculate the BBA ratio. These building blocks are developed by grouping entities in the supervised insurance organization that are covered under the same regulatory capital framework. By grouping related legal entities in this manner, the BBA maintains the regulatory framework developed for the particular business activity and reduces regulatory burden. Without grouping in this type of capital construct, a large SIO would need to perform a capital calculation for each of hundreds of legal entities. Typically, the building blocks follow other existing legal-entity capital regulations. For instance, a typical U.S. legal entity that offers life insurance is assessed together with most of its subsidiaries using its existing regulatory capital framework, NAIC Risk-Based Capital (RBC). Depository institutions and their subsidiaries are assessed using Federal banking capital rules. The BBA does, however, sometimes deviate from

[7] Public Law 111–203, title III, section 301, 124 Stat. 1520 (2010).

[8] Dodd-Frank Act 616(b); HOLA sec. 10(g)(1). Under Title I of the Dodd-Frank Act, the Board also supervises any nonbank financial companies designated by the Financial Stability Oversight Council (FSOC) for supervision by the Board. Under section 113 of the Dodd-Frank Act, the FSOC may designate a nonbank financial company, including an insurance company, to be supervised by the Board. Currently, no firms are subject to the Board's supervision pursuant to this provision.

[9] 2 U.S.C. 1831o. The floor for capital requirements established pursuant to section 171 of the Dodd-Frank Act, referred to as the ''generally applicable'' requirements, is defined to include the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

[10] Public Law 113–279, 128 Stat. 3017 (2014).

[11] 12 U.S.C. 5371(c)(3)(A).

[12] When aggregating required capital for the denominator, the BBA follows NAIC Risk-Based Capital in using the Authorized Control Level (ACL) risk-based capital. This is the amount of capital below which a state insurance regulator would be authorized to take control of the company.

existing regulatory groupings to ensure risks are appropriately captured. For example, certain financial companies owned by insurance companies are not directly subject to capital regulation. For these companies, the parent's regime assesses a simplified capital charge that may not appropriately reflect the risk.

The BBA separately assesses, applies a capital regime to, and aggregates these companies if they are material and engage in financial activities and their risks would not otherwise be appropriately measured.[13]

The BBA makes certain adjustments to the required and available capital of entities when preparing the building blocks for aggregation. Some of these adjustments avoid double counting capital or risk, others increase comparability among SIOs, while others are intended to align with certain aspects of the banking capital requirements to reduce the potential for arbitrage. One such adjustment is requiring all capital instruments to meet certain criteria and subjecting certain types of capital instruments to limits. These criteria and limits substantively match those applied to other depository institution holding companies.

The BBA aggregates the adjusted capital positions of the building blocks to calculate an SIO's capital position. To enable aggregation of the output of different capital frameworks, the BBA includes a translation mechanism called scaling. Scaling converts a capital position from one capital framework to its equivalent in another capital framework. The BBA then sums the scaled, adjusted capital position of each building block to calculate an SIO's capital position. This aggregated capital position is compared to the minimum requirement and capital conservation buffer discussed above.

C. Summary of Comments Received on the NPR and Form FR Q–1

The Board received 18 substantive comment letters on the proposal and several recommendations from the Board's Insurance Policy Advisory Committee. Comments were received from insurers supervised by the Board, insurers not supervised by the Board, insurance trade groups, a U.S. Senator, and the NAIC.

Most commenters supported the BBA's general framework, which aggregates existing capital requirements to determine an enterprise-wide capital requirement. Commenters strongly preferred applying this framework, rather than other frameworks like the banking capital rules or the Insurance Capital Standard, to depository institution holding companies that are significantly engaged in insurance activities. The Insurance Capital Standard is being developed by the International Association of Insurance Supervisors. Indeed, certain commenters argued that the BBA should further leverage existing insurance capital requirements. Although commenters were supportive of the framework, some commenters expressed concerns with the level of detail that would be required in form FR Q–1 due to the proposed requirement to report assets and liabilities of inventory companies.

Specific comments are discussed below in the sections that follow. Some of the main issues that were raised by commenters include:

Section 171 Calculation—Most commenters argued that the section 171 calculation was flawed and should not be adopted. Commenters argued the BBA would still comply with section 171 of the Dodd-Frank Act without this calculation.

Calibration—Most commenters supported setting the BBA's requirement equal to other banking capital requirements based on the indicated results from the scaling white paper, rather than including an upward adjustment designed to account for uncertainty. These commenters contended that the upward adjustment would have resulted in excess conservatism.

Qualifying Capital Instruments and Limits—Most commenters argued that the Board's proposed capital instrument qualification criteria were too narrow and that senior debt should qualify as capital, although several commenters and the Board's Insurance Policy Advisory Committee disagreed. Some commenters and the Board's Insurance Policy Advisory Committee also argued for increasing the proposed limits on less loss-absorbing tiers of capital instruments. Some commenters also argued that surplus notes should qualify as tier 1 capital and if they are tier 2, then no limits should apply.

Insurance Adjustments—Commenters expressed diverging opinions on the proposed adjustments to reduce differences among states in insurance capital regulation. Along with the NPR, the Board also invited comments about related work on the International Association of Insurance Supervisors' Insurance Capital Standard. In the NPR, the Board asked for the comparative strengths and weaknesses of both approaches. The Board appreciates the comments received on this work and will take these comments into consideration in the ongoing International Association of Insurance Supervisors deliberations.

D. Main Changes in the Final Rule and Form FR Q–1

The final rule differs from the proposal in several ways. One change relates to the capital conservation buffer. The final rule includes a 150 percent capital conservation buffer, rather than the 235 percent buffer proposed in the NPR. This smaller capital conservation buffer better aligns the BBA's stringency with the Board's banking capital rule. With this change, the BBA's total capital requirement equals the total requirement applied to most other banking organizations, as estimated based on the parameters derived in the Board's scaling white paper.

The final rule includes an additional tier of capital instruments, additional tier 1 capital, that is eligible as available capital. The proposal only included two tiers of capital because no SIO had issued additional tier 1 capital. Commenters requested its addition in order to allow SIOs flexibility in their capital structures. In order to provide such flexibility, and be consistent with the Board's banking capital rule, the final rule includes this additional capital tier. The additional tier 1 capital limit has been set at 100 percent of the building block capital requirement for the top-tier parent. Any amount of additional tier 1 capital above this amount would be eligible for inclusion as tier 2 capital, subject to limitations on the inclusion of tier 2 capital instruments.

The final rule also increases a proposed limit to 150 percent on the amount of tier 2 capital instruments that could have been counted toward the building block capital requirement of a top-tier parent holding company in an SIO. Under the proposal, the BBA would have limited tier 2 capital instruments to be no more than 62.5 percent of the building block capital requirement for the top-tier parent. Commenters expressed concern that the conservative nature of statutory accounting distorts the ratio of tier 2 capital instruments to common equity tier 1 capital which causes the 62.5 percent to be overly conservative.

The proposal included an adjustment that would have removed the effects of legacy treatment or transitional measures under a capital framework in determining capital requirements. Some commenters expressed concerns with

[13] For example, it would typically be inappropriate to assess the risk of a material financial subsidiary engaging primarily in derivative transactions by application of a risk charge applied to its net equity.

the burden associated with adjusting capital resources to eliminate the impact of transitional provisions or legacy treatment when there are changes in an underlying capital regime. Some commenters were particularly concerned with having to restate legacy business under the NAIC Principles Based Reserving Standard (PBR) for life insurance reserves. PBR was adopted only prospectively by the NAIC and states. The final rule maintains the legacy treatment and transitional requirements for consistency in measurement, but provides a simple factor-based approximation rather than a full PBR calculation to the legacy reserves. This approach will allow for consistency for the measurement of life insurance reserves while minimizing burden.

In addition to the changes discussed above, the final rule simplifies the insurance adjustments, increases the limits on certain capital instruments, and eliminates an exception of certain asset managers from being material financial entities, and reduces the burden of the proposed form FR Q–1.

The Board is also making changes to the reporting form FR Q–1 as part of this final rule. The final form FR Q–1 is less burdensome than in the proposal. In particular, SIOs will not need to report the assets and liabilities of all subsidiaries. Numerous companies said providing this information would be difficult. Additionally, the annual due date for form FR Q–1's has been moved from March 15 to March 31 to allow companies additional time to complete the reporting template after their statutory filings are due.

II. Effective Date and Scope

A. Scope

The proposal would have applied to SLHCs significantly engaged in insurance activities. Under the proposal, a firm would have been subject to the BBA if the top-tier SLHC were an insurance underwriting company or the top-tier SLHC, together with its subsidiaries, if 25 percent of its total consolidated assets were in insurance underwriting subsidiaries (other than assets associated with insurance underwriting for credit risk related to bank lending). For purposes of this threshold, a supervised firm would have calculated its total consolidated assets in accordance with U.S. GAAP, or, if the firm does not calculate its total consolidated assets under U.S. GAAP for any regulatory purpose (including compliance with applicable securities laws), the company would have been permitted to estimate its total consolidated assets, subject to review and adjustment by the Board. The proposal also would have permitted the Board to determine to apply the BBA to another Board-regulated institution.[14]

As consolidated supervisor of the top-tier depository institution holding company of an insurance depository institution holding company, the Board proposed to include, within the scope of the BBA calculation, all owned or controlled subsidiaries of this top-tier parent. The NPR sought comments about whether the BBA should apply to BHCs. The proposal would have excluded BHCs; however, the NPR noted the Board would consider subjecting BHCs significantly engaged in insurance activities to the BBA in the final rule in light of the enactment of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).[15] This Act allowed Federal savings associations with total consolidated assets of up to $20 billion, as reported to the Office of the Comptroller of the Currency (OCC) as of year-end 2017, to elect to operate as covered savings associations.[16]

Four commenters addressed the scope of the BBA in their comments. One commenter supported applying the BBA to BHCs significantly engaged in insurance activities. Two commenters asked for clarifications related to 25 percent asset test. These commenters noted that some SIOs do not calculate consolidated assets and contended that the Board legally cannot require GAAP financial statements from certain insurers. They asked that the asset test be aligned with 12 CFR part 246 (Board Regulation TT), which concerns the assessment of fees from certain Board-regulated companies based on their total assets and contains a provision for estimating total assets in the absence of GAAP statements. One commenter recommended that the BBA include additional flexibility to exclude certain companies within an SIO from the BBA and instead treating a subsidiary company as if it were the top tier. This commenter was concerned that the Board may lack the legal authority to select a mid-tier holding company as the top-tier holding company for purposes of the BBA when the insurance company is controlled by a company significantly engaged in non-insurance commercial activities. Another commenter suggested explicitly excluding certain non-operating holding companies from the BBA.

Based on the comments received, as well the Board's policy to achieve regulatory consistency across both types of depository institution holding companies, the final rule adopts the proposed scope of the BBA framework with a change to include BHCs significantly engaged in insurance activities. The final rule does not alter the proposed 25 percent asset test but does address the comments received. The final rule will instead allow SIOs that do not calculate consolidated GAAP assets to provide an estimate of consolidated total assets. The calculation would be subject to review and adjustment by the Board.

The final rule does not amend the Board's authority to modify the scope of the BBA, as the reservations of authority in the final rule and elsewhere in the banking capital rule are sufficient to allow the Board to exclude from the BBA a top-tier holding company that is a controlling depository institution holding company under this rule. While possible, this likely will not occur frequently due to statutory mandates to ensure that depository institution holding companies can serve as a source of strength to their depository institutions, as well as other policy considerations. The final rule does streamline the reservation of authority to clarify the Board's authority to require an SIO to make certain decisions involved in the BBA calculation, such as the identification of the top-tier building block parents, building block parents, and Material Financial Entities (MFEs).

B. Effective Date

The NPR did not propose an effective date for the BBA framework. Several commenters requested delaying the BBA's effective date significantly beyond its finalization. One suggested having at least a two-year transition period from the effective date, or a longer transition period if the finalized total capital requirement were above 400 percent. This commenter also suggested providing a further opportunity for public comment regarding any changes related to the proposed form FR Q–1, which could impact the effective date because form FR Q–1 is needed to effectuate the BBA's requirements. Another

[14] The preamble to the proposal indicated that this type of determination may be appropriate with respect to, for example, an intermediate holding company, if its top-tier parent company were primarily engaged in non-financial commercial activity.

[15] Public Law 115–174, 132 Stat. 1296 (2018).

[16] EGRRCPA section 206. With limited exceptions, a covered savings association has the same rights and privileges, and is subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations, as a national bank that has its main office in the same location as the home office of the covered savings association. The Board generally treats a company that controls a covered savings association as a bank holding company.

commenter suggested that the first filing date of the associated form FR Q–1 should be two years after the publication date of the final rulemaking.

One commenter suggested using a five-year monitoring period, like that used by the International Association of Insurance Supervisors (IAIS) for its Insurance Capital Standard, before making the BBA effective. Other commenters argued that there is a need to delay certain of the proposed requirements of form FR Q–1. The proposed form FR Q–1 attestation section of the cover page would have required reporting firms to attest that effective controls were in place throughout the reporting period. Because form FR Q–1 was proposed as an annual report, commenters asserted that at least a one-year delay would be needed between the final rule becoming effective and the first form FR Q–1 attestation requirement to avoid it applying retroactively.

Under the final rule, companies must comply with most of the BBA beginning on January 1, 2024. Beginning at that time, companies are expected to hold capital sufficient to comply with the BBA's minimum requirement.

Companies must first report on their capital adequacy under the BBA capital requirement as of December 31, 2024. As described above, the comments received on form FR Q–1 primarily related to reporting of legal entities, filing date, and reporting of results. The Board received only non-substantive clarification requests through the QIS process on form FR Q–1.

Given that only small technical changes were made to the proposed reporting form based on these comments and requests for clarification, the Board elected not to seek further comments on form FR Q–1. Additionally, the January 1, 2024, effective date of this rules allows firms time to ensure that effective internal controls are in place for the first reporting date. As such, the first form FR Q–1 submissions, which will be due in March 2025, must include the attestation section of the cover page.

Firms that are not initially subject to the BBA, but subsequently become subject to the BBA during January through June in a year, will be required to begin submitting the form FR Q–1 in March of the calendar year following the year they become subject to the BBA, except for the attestation section of the cover page, which must be submitted beginning with the firm's second form FR Q–1. Firms that are not initially subject to the BBA, but subsequently become subject to the BBA during July through December in a year, will be required to begin submitting the form FR Q–1 in March of the second calendar year following the year they become subject to the BBA, except for the attestation section of the cover page, which must be submitted beginning with the firm's second form FR Q–1.

The final rule also clarifies the timing of the application of the buffer. In the absence of any enterprise-wide group income calculation, the BBA links the amount of eligible distributions under the capital conservation buffer with changes to building block available capital.

Calculating the change in building block available capital requires two years of BBA data, meaning that firms would not be able calculate their permissible distributions before completing their second form FR Q–1. Consequently, the BBA's buffer requirements are effective starting with the submission of a firm's second form FR Q–1.[17] In the year proceeding the second form FR Q–1 submission, the Board expects firms to consider the pending requirements and to set their distribution policies to avoid needing a large and sudden change in payouts at the effective date.

III. Dodd-Frank Act Capital Calculation

The proposal would have applied a separate minimum risk-based capital requirement calculation to insurance depository institution holding companies, which would have used the flexibility afforded by the 2014 Amendment to exclude certain state- and foreign-regulated insurance operations and to exempt top-tier insurance underwriting companies from the risk-based capital requirement. The proposed section 171 calculation would have applied the Board's existing minimum risk-based capital requirements to a top-tier insurance SLHC on a consolidated basis when this company is not an insurance underwriting company. In the case of an insurance SLHC that is an insurance underwriting company, the proposal would have applied the requirements to any subsidiary SLHC of an insurance SLHC, where the subsidiary SLHC is not itself an insurance underwriting company, provided that the subsidiary SLHC is the farthest upstream non-insurer SLHC (*i.e.,* the subsidiary SLHC's assets and liabilities are not consolidated with those of a holding company that controls the subsidiary for purposes of determining the parent holding company's capital requirements and capital ratios under the Board's banking capital rule) (an insurance SLHC mid-tier holding company).

The proposed section 171 calculation would have been implemented by amending the definition of "covered savings and loan holding company" for the purposes of the Board's banking capital rule.[18] The proposal would have resulted in an insurance SLHC becoming a covered SLHC subject to the requirements of the Board's banking capital rule unless it was a legacy unitary SLHC[19] that derived 50 percent or more of its total consolidated assets or 50 percent or more of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature. However, the proposal would not have required top-tier SLHCs that are engaged in insurance underwriting and regulated by a state insurance regulator, or certain foreign insurance regulators, to comply with the generally applicable risk-based capital requirements.[20] Instead, those requirements would have applied to any insurance SLHC mid-tier holding companies.

As noted above, commenters opposed this calculation and argued that the BBA would comply with section 171 of the Dodd-Frank Act without this additional calculation. Commenters contended that the proposal without the section 171 calculation meets the Board's statutory requirements under section 171 of the Dodd-Frank Act, as amended by the 2014 Amendment, to establish minimum risk-based capital requirements for these companies. Commenters argued that the section 171 calculation would introduce burdens and costs that do not meaningfully advance the Board's supervisory objectives. Some commenters also contended that the 2014 Amendment indicates that Congress did not intend for the Board to implement the section 171 calculation. Commenters argued that the section 171 calculation duplicates certain requirements of the BBA and inappropriately treats firms differently according to legal form.

The Board considered the comments and has decided to include the section

[17] *See* 12 CFR 217.306.

[18] 12 CFR 217.2.

[19] This term refers to a SLHC that meets the requirements of section 10(c)(9)(C) of HOLA (12 U.S.C. 1467a(c)(9)(C).

[20] In accordance with section 171 of the Dodd-Frank Act, a foreign insurance regulator that falls under this provision is one that "is a member of the [IAIS] or other comparable foreign insurance regulatory authority as determined by the Board of Governors following consultation with the State insurance regulators, including the lead State insurance commissioner (or similar State official) of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the [NAIC]."

171 calculation in the final rule. Section 171 of the Dodd-Frank Act generally requires that the minimum risk-based capital requirements established by the Board for depository institution holding companies apply on a consolidated basis. The Board believes that including the section 171 calculation accords with the plain language meaning of section 171 of the Dodd-Frank Act, considering also the use of terms in section 171 elsewhere in the Federal banking laws, and the legislative history of section 171 and the 2014 Amendment. Moreover, the Board believes that the treatments for insurance activities under the section 171 calculation is an appropriate exercise of the discretion given to the Board by Congress in the 2014 Amendment.

The proposed section 171 calculation would have allowed an insurance SLHC subject to the generally applicable risk-based capital requirements (*i.e.,* that is not a top-tier insurance underwriting company) to elect not to consolidate the assets and liabilities of all of its subsidiary state-regulated insurers and certain foreign-regulated insurers. The proposal would have provided two alternative approaches if this election is made. Under the first alternative, the holding company could have elected to deduct the aggregate amount of its outstanding equity investment in its subsidiary state-regulated and certain foreign-regulated insurers, including retained earnings, from its common equity tier 1 capital elements. Under the second alternative, the holding company could have included the amount of its investment in its risk-weighted assets and assigned to the investment a 400 percent risk weight, consistent with the risk weight applicable under the simple risk-weight approach in § 217.52 of the Board's banking capital rule to an equity exposure that is not publicly traded.[21]

A commenter expressed concerns regarding the proposed equity-deduction treatment, contending that it would be unduly punitive. The commenter also urged the Board to permit firms to risk-weight a company's net equity investment in insurance operations consistently with NAIC RBC's treatment of equity investments in affiliates. The commenter also suggested that the Board permit firms to satisfy the section 171 calculation through use of the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement and measuring compliance with the applicability thresholds of that statement after applying the election not to consolidate the assets and liabilities of subsidiary state-regulated insurers and certain foreign-regulated insurers.

In the final rule, firms that elect not to consolidate the assets and liabilities of all of its subsidiary state-regulated insurers and certain foreign-regulated insurers have the option to choose between the proposed treatments. This optional provision should provide firms with greater flexibility to apply an appropriate treatment in view of a firm's individual structural and other business circumstances. In the final rule, a firm that makes such an election and chooses to risk-weight its net equity investment in the deconsolidated subsidiaries must apply a risk weight of 400 percent, consistent with the proposal. The Board believes that this treatment is appropriate considering the risk weights applied to non-publicly traded equity exposures. Finally, a firm may not comply with the section 171 calculation through use of the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement.[22] This policy statement states expressly that the statement applies only to holding companies that are ''not engaged in significant nonbanking activities either directly or through a nonbank subsidiary''; [23] the section 171 calculation applies only to companies that are members of a holding company organization that is significantly engaged in insurance activities, a nonbank activity.

IV. Minimum Capital Requirement and Capital Conservation Buffer

The proposal was designed to produce an enterprise-wide risk-based capital requirement that is not less stringent than the results derived from the Board's banking capital rule. To enable aggregation of available capital and capital requirements across different building blocks, the proposal included a mechanism (scaling) that would have translated a capital position under one capital framework to its equivalent in another capital framework.[24] At the enterprise level, the proposal would have applied a minimum risk-based capital requirement that leverages the minimum requirement from the Board's banking capital rule, expressed as its equivalent value in terms of the BBA ratio based on the Board's published scaling white paper. In addition to this equivalent value, the proposal would have also included a margin of conservatism to provide a heightened degree of confidence that the BBA's requirement would be compliant with section 171 of the Dodd-Frank Act, which requires the BBA to be ''not less than'' the Board's banking capital requirements. In addition to complying with section 171 of the Dodd-Frank Act, calibrating the BBA to the same stringency level as the banking capital requirements minimizes the incentive for depository institution holding companies to acquire or sell insurance operations due to disparate capital requirements.

The proposal would have established a minimum BBA ratio of 250 percent and a capital conservation buffer of 235 percent. Together, these would have created a 485 percent total requirement. Insurers that breach this total requirement would have faced limits on capital distributions such as dividend payments and on discretionary bonus payments. The proposed minimum ratio, 250 percent, would have aligned with the midpoint between two prominent, existing state insurance supervisory intervention points, the ''company action level'' and ''trend test level'' under state insurance RBC requirements. To determine the appropriate threshold for a capital conservation buffer under the BBA, the Board took a similar approach to how it determined the minimum requirement. The full amount of the buffer under the Board's banking capital rule, 2.5 percent, translates to approximately 235 percent under the NAIC RBC framework. This translated buffer threshold would have been applied in the BBA.

Commenters criticized the proposed margin for conservatism and indicated that proposed minimum capital requirements and total capital requirements are significantly higher than the banking capital requirements. Some of these comments distinguished between including margins for conservatism in the minimum and total capital requirements. Consequently, while most commenters opposed including the margins in the total requirement, only some opposed uplifting the minimum requirement. Commenters justified this nuance because section 171 of the Dodd-Frank Act applies to only the minimum requirement. Legally, any margin included in the minimum requirement could be offset by a smaller capital conservation buffer. This would reduce

[21] 12 CFR 217.52(b)(6).

[22] 12 CFR part 225, appendix C.

[23] *Id.* section 1.

[24] Two building blocks under two different capital frameworks cannot typically be added together if, as is frequently the case, each framework has a different scale for its ratios and thresholds. As discussed below in section VII, the BBA proposes to scale and equate capital positions in different frameworks through analyzing historical defaults under those frameworks.

the BBA's total requirement from 485 percent to 400 percent.[25] Commenters argued that the margin could competitively disadvantage SIOs as compared to other insurers or alternatively create externalities for companies not subject to the rule by changing industry-wide perceptions of capital adequacy.

Several commenters also argued that other aspects of the BBA are excessively conservative. These commenters criticized the BBA for the lack of diversification credit between entities in the group, treatment of captive reinsurance transactions, and criteria for including capital instruments in available capital. Several commenters argued the BBA's capital requirements should be reduced in order to offset these conservative aspects of the framework.

Some commenters suggested fundamental changes to the calibration of the BBA. A few commenters argued that the BBA's requirements should not equal those applied to other banking organizations. Two commenters suggested instead tailoring the BBA's requirements to the loss experience of insurers. Two other commenters argued for eliminating the capital conservation buffer, either because insurance does not create systemic risk or because subsidiary depository institutions already are subject to a buffer requirement. Finally, one commenter argued that any capital requirements in excess of state insurance capital requirements would be unlawful and inappropriate. In the alternative, this commenter argued that an SIO buffer should depend on the size of its depository institution.

Commenters also raised concerns about the impact of breaching the BBA requirements and how they would interact with the NAIC RBC requirements. First, two commenters disagreed with limiting policyholder dividends when the BBA's total requirement is breached. Second, some commenters questioned how the BBA's requirements would interact with NAIC RBC, which is calibrated differently. An additional commenter requested clarification of the impact of not meeting the total capital requirement.

[25] The proposal's capital requirement included an approximately 85 percent increase over the best-estimate translation to account for the uncertainty. That is, the best-estimate translation of an 8 percent total capital ratio is a BBA ratio of near 165 percent. This was uplifted to a 250 percent proposed requirement in the proposal. Removing this 85 percent uplift from the buffer reduces the proposed 485 percent total BBA ratio requirement to 400 percent. A 400 percent BBA ratio requirement aligns with the best-estimate translation of a 10.5 percent total capital ratio.

Based on the comments received, the Board has decided to modify the proposed calibration of the BBA. Most significantly, the Board has removed the margin from the proposed capital conservation buffer, dropping the BBA's total requirement from 485 percent to 400 percent.

Like the proposal, the final rule attempts to calibrate the BBA to the same level of stringency as the Board's banking capital rules. The BBA takes into account the different risks involved in insurance activities, on the one hand, and banking activities, on the other, through its aggregation process, rather than through an altered calibration or by eliminating the capital conservation buffer. While some commenters suggested that the BBA's calibration should be tailored to insurance, no commenter explained either how or why engaging in insurance activities should change the stringency of capital requirements that apply to a bank holding company or SLHC.[26]

To ensure safety and soundness of the SIOs, the BBA's minimum capital requirement includes a margin. This margin ensures, to a high degree of confidence, that the BBA's minimum requirement is not less than the banking capital requirements. The margin's size corresponds to the upper bound of a 95 percent confidence interval on the BBA's calibration from the scaling regressions.[27] Sensitivity tests of the calibration using different assumptions also informed the analysis.[28] Consequently, the final rule does not include a margin for the capital conservation buffer. As a result, the BBA's total requirement equals the total requirement applicable to most other banking organizations.

The minimum capital ratio of 250 percent has not been reduced in the

[26] A commenter contended that the proposal was inconsistent with the McCarran-Ferguson Act, 15 U.S.C. 1011 *et seq.* The Board believes that section 5 of the Bank Holding Company Act, section 10(g) of the Home Owners' Loan Act, and section 171 of the Dodd-Frank Act provide authority for the Board to establish capital requirements for companies significantly engaged in insurance activities that have elected also to engage in the business of banking by operating a subsidiary bank or savings association. In particular, the 2014 Amendment expressly contemplates that the Board would establish minimum capital requirements for such companies.

[27] The Board used Monte Carlo simulation to translate the standard errors displayed in Table 2 of the white paper to a confidence interval for the calibration. In 95 percent of simulations, 8 percent total capitalization Risk Weighted Assets ratio translated to between 80 percent ACL RBC and 251 percent ACL RBC.

[28] Table 3 of the white paper parameterizes the scalars using alternative assumptions. These parameters can be used to translate 8 percent and 10.5 percent risk-weighted assets to NAIC RBC using the scaling formulas derived in Appendix 1.

final rule in response to the comments about the proposal's alleged conservatism in its treatment of certain capital instruments, application of the banking rules to unregulated entities, lack of diversification credit, or treatment of prescribed and permitted practices. While some of these differences may make the BBA more conservative than NAIC RBC, the differences provide for a consistent level of conservatism between the BBA and the banking capital rule and consistency between SIOs. For example, the Board's capital rule applies to holding companies on a consolidated basis, including any unregulated entities. The BBA treatment of some non- depository institution, non-insurer subsidiaries of insurance BHCs and insurance SLHCs as MFEs and application of the banking capital rule to them does not justify reducing the BBA's calibration to below the banking capital rule.

Additionally, even if the BBA were intended to match the stringency of NAIC RBC rather than the banking capital rule, many of the referenced details still would not justify reducing the BBA's requirements. Senior debt does not qualify as capital for the issuer in either the BBA or NAIC RBC. If senior debt is downstreamed to a subsidiary as equity, it qualifies as capital for the subsidiary in both.[29] By design, NAIC RBC excludes the parent and other affiliated companies. The impact of these exclusions varies. If an unregulated entity is relatively well capitalized, including it would be *less* conservative than NAIC RBC. Similarly, prescribed and permitted practices could either increase or decrease surplus.

No changes were made regarding the interaction of the BBA and NAIC RBC or the operation of the capital conservation buffer. The BBA and NAIC RBC create separate requirements. SIOs must comply with all applicable legal requirements. The final rule, like the proposal, treats policyholder dividends as capital distributions. Policyholder dividends are how mutual insurers distribute earnings to their owners. These capital distributions are analogous to shareholder dividends for stock companies. Prudent management requires limiting these payments when capital is low.

[29] Senior debt may qualify as capital for the issuer in the NAIC's Group Capital Calculation (GCC). The BBA is, however, designed to match the stringency of requirements for other depository institution holding companies, not the GCC. The BBA and GCC also have different purposes. The GCC will be used as a tool by state insurance regulators, rather than a requirement. No GCC ratio would necessarily produce a similar intervention to a breach of the BBA's minimum requirement.

V. Determination of Building Blocks and Related Issues

A. Inventory

The proposed BBA calculation started by creating an inventory of the legal entities in a SIO, which generally would have been all legal entities under the depository institution holding company. This inventory would have served as the foundation for the BBA's aggregation.

As the proposal did elsewhere, it leveraged existing regulations to define the inventory. Under the proposal, a SIO's inventory would have included all entities that appear on organizational structure data reported to the Board or state insurance regulators.[30]

In rare cases, the inventory would have included a special purpose entity not included in the organizational structure data provided to the Board or filed with the state insurance regulators. The organizational data provided are generally based on control of a subsidiary, and therefore may not include all entities that the Board intends to include in the scope of the BBA in order to avoid missing risks. The burden of including such entities in the inventory would have been limited, as only special purpose entities with which an SIO enters into a derivative or reinsurance contract would have been included.

Under the proposed form FR Q–1, SIOs would have needed to report certain basic information (*e.g.,* total assets) for all inventory companies. Two commenters suggested significantly reducing the reporting burden. The commenters asserted that SIOs could not easily calculate the total assets of subsidiaries multiple levels down their organization chart. To avoid this burden, these commenters argued for excluding immaterial, non-operating entities from the inventory.

One other commenter opposed including in the inventory any company that is not included in existing regulatory reporting. The commenter noted that determining whether a company needed to be included in the inventory would require estimating the company's expected losses, which would be difficult.

In response to the comments, the final form FR Q–1 requires less information than the proposal. Specifically, the final form FR Q–1 does not require reporting the assets and liabilities of inventory companies whose parents represent less than one percent of the group's assets. Based on QIS data, this form FR Q–1 change reduces the BBA's burden similarly to the inventory change suggested by two commenters.

In light of this change to the reporting form FR Q–1, the final rule does not alter the scope of the inventory in determining the scope in the BBA. For each inventory company, the final rule still requires checking whether the company should become a building block parent, but it would not require the asset and liability information from all inventory companies. The tests for becoming a building block parent, which are examined in the next section, focus on whether the BBA appropriately captures the company's risks. The final rule applies these tests broadly to avoid excluding material risks.

B. Identifying Capital Frameworks for Each Inventory Company

After the creation of the inventory, the proposal would have identified each inventory company's applicable capital framework, which would have been used to partition the inventory companies into building blocks. For insurance companies, the applicable capital framework would have been their current regulatory framework, except in rare cases.[31] For all other companies, the applicable capital framework would have been the Board's capital rule or, the capital rule applied by the Federal Deposit Insurance Corporation (FDIC), or the capital rule applied by the Office of the Comptroller of the Currency (OCC).

Commenters generally did not oppose the rules for assigning companies to capital frameworks, but several QIS participants expressed confusion that the proposal would not actually have applied the ''applicable capital framework'' in all instances.[32] For instance, the applicable capital framework for non-insurance subsidiaries of insurers would have been the Board's capital rule. However, most such companies would have remained in their insurance parent's building block. This insurance parent would continue to assess the inventory companies' risks using its insurance capital framework, unless they are an MFE.

To address this comment, the final rule replaces the term ''applicable capital framework'' with ''indicated capital framework.'' This revised terminology better describes the BBA's usage. The indicated capital framework is the capital framework that would apply to a company if it were determined to be a building block parent.

C. Identification of Building Block Parents

After identifying an applicable capital framework for each inventory company, the proposal would have identified building block parents (BBPs). Under the proposal, a building block parent could have been one of several different types of companies. The first would have been the top-tier depository institution holding company. In the absence of any other identified building block parents, the top-tier depository institution holding company's building block would have contained all of the top-tier depository institution holding company's subsidiaries. A second type of building block parent would have been a mid-tier holding company that is a ''depository institution holding company'' under U.S. law. The proposed treatment of these companies as building block parents would have allowed for the calculation of a separate BBA ratio at the level of these companies in the enterprise and helped to ensure that these companies remain appropriately capitalized.

The proposal would have identified additional building block parents based on grouping rules that would have generally relied on existing capital regulations. Relying on these frameworks materially reduces burden and the potential for unintended consequences. Additionally, the proposal would have identified certain other financial entities that are material to the group as building block parents. The proposal deemed these entities as MFEs, which are described below.

The proposal would have determined which entities are building block parents by considering whether the capital framework applicable to each inventory company or MFE is the same as that of the next-upstream company that is directly subject to a capital framework.

Generally, the proposal would have had companies subject to the same capital framework remain in the same building block, except for one case. This exceptional case would have been where a company's applicable capital

[30] The inventory would have contained any entity required to be reported under the Board's FR Y–6 or Y–10 reports or considered an affiliate under Statutory Statement of Accounting Principle (SSAP) 25 and reported on Schedule Y of the insurer's statutory annual report.

[31] Examples of rare cases would have included title insurers and non-scalar compatible insurers.

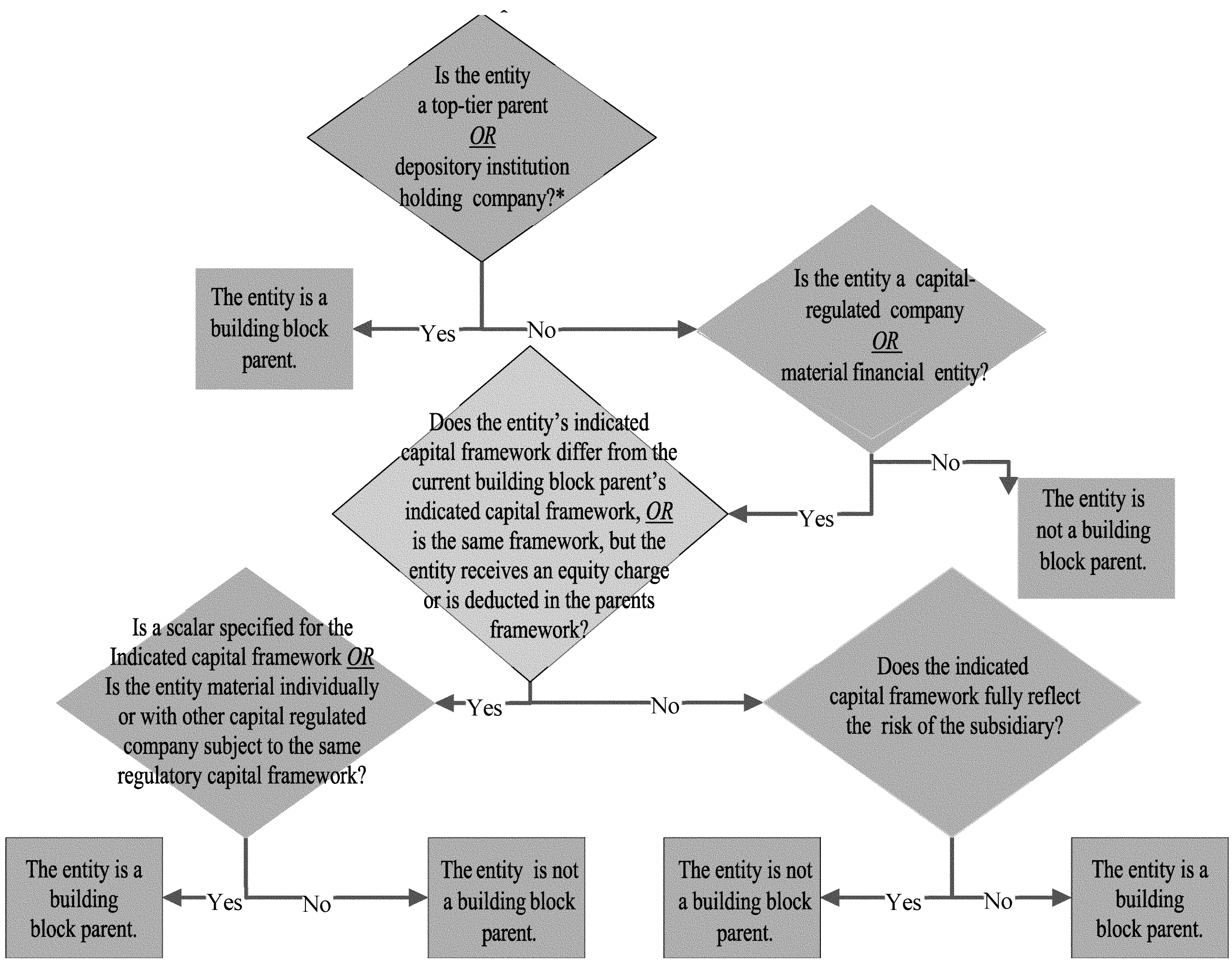
[32] Some commenters criticized the proposed application of the banking capital rule to companies other than banks. The root disagreement from these commenters appeared to be with the scoping and grouping rules rather than the identification of the banking capital rule as the indicated capital framework for companies not engaged in insurance. The commenters preferred to either exclude the companies from the BBA or analyze these companies together with their parents rather than specifying an alternative capital framework for analysis.

framework treats the company's subsidiaries in a way that does not substantially reflect the subsidiary's risk. For instance, there could be situations in which NAIC RBC may not fully reflect the risks in certain subsidiaries (typically, certain foreign subsidiaries) that assume risk from affiliates.[33] In such cases, the subsidiary (which could be a capital-regulated company or MFEs) would have been identified as a building block parent so that its risks could more appropriately be reflected in the BBA.

The proposal would have taken into account the risks of companies that are not building block parents indirectly through a building block parent's capital calculation using its regulatory requirements. This could have been through consolidation by a building block parent or accounting for the inventory company as an investment by the building block parent.

Figure 1 illustrates the how the rules for identifying building block parents would have worked under the proposal.

Figure 1. Building Block Parent Identification



D. Material Financial Entity

A key step in the proposal's identification of building block parents would have been assessing whether a financial entity is an MFE. If an entity was determined to be a MFE in the proposal, it would have become a building block parent and assessed under either the banking capital rule or NAIC RBC. The proposal would have defined a financial entity as material if the top-tier depository institution holding company's total exposure to it exceeds 1 percent of the top-tier depository institution holding company's consolidated assets. While a parent company's exposure to a subsidiary most commonly arises from potential losses on the parent company's investment, the exposure could also result from guarantees and other sources. In addition to this quantitative materiality definition, the proposed rule would have included a qualitative definition to capture entities that are otherwise significant when assessing capital. The proposal would have excluded certain entities, including some asset managers, from the MFE definition. The proposal would have also contained an option of electing to treat certain pass-through entities as MFEs or including their risks in the capital calculation of other building block parents.

[33] The BBA proposes to apply NAIC RBC to such subsidiaries. However, under state laws, the application of NAIC RBC on the parent would not normally operate to include the available and required capital from applying NAIC RBC to the subsidiary. However, when the subsidiary is identified as a building block parent in the BBA, the subsidiary's available and required capital under NAIC RBC would be reflected by the parent after aggregation.

Typically, such a company would be one that serves as a pass-through or risk management intermediary for other companies under the insurance depository institution holding company.[34] If an insurance depository institution holding company were to make this election, the risks posed by this company would nonetheless have been reflected in the BBA. As proposed, the BBA would have required the insurance depository institution holding company to allocate the risks that the company faces to the other companies in the enterprise with which the company engages in transactions.

Commenters expressed diverging views on the concept of MFEs. Several commenters criticized some results of identifying MFEs as building block parents. These commenters noted the burden and complexity of applying the banking capital rule to non-banking companies. One commenter noted that this would be particularly problematic in the case of investment subsidiaries, as it would create burden and result in a misalignment with how an entity is treated in its parent's capital regime. This commenter believed these entities should be assessed along with the insurance company.

Other commenters either explicitly agreed with the proposal or suggested only minor revisions. Commenters suggested that the threshold of 1 percent of total assets should be higher. One commenter argued that using total assets as the base measure for materiality is inconsistent with state-based insurance regulations, where surplus is most often used. Additionally, a commenter asserted that using total assets could penalize property and casualty (P&C) insurers relative to life insurers because P&C insurers are generally less leveraged. Another commenter suggested clarifying aspects of the definition of materiality, particularly with regards to captive insurers who may not use NAIC Statutory Accounting Practices. One commenter suggested considering size, off-balance sheet exposures, and activities involving derivatives or securitizations within the materiality definition.

Consistent with the proposal, the final rule continues to designate MFEs as building block parents when certain conditions are met. The Board intends the BBA to capture all material risks within the group. Designating MFEs as building block parents is essential to ensuring that these risks are appropriately reflected. Without this designation, SIOs could easily evade and manipulate BBA results by transferring risks from regulated entities to unregulated entities that would only be captured in the BBA through inclusion in their parent's capital requirement based on an equity risk factor applied to their net equity, which could result in a very small capital requirement if the entity is thinly capitalized. Based on the QIS results, identifying MFEs as building block parents will result in only minimal burden, but could have a significant impact in reducing the potential for regulatory arbitrage. All SIOs collectively identified only a very small number of MFEs in the QIS.

The final rule does, however, modify the definition of materiality in response to the comments. The final rule uses a threshold of 5 percent of equity of the top-tier depository institution's holding company rather than 1 percent of its assets. Because the BBA assesses capitalization, capital represents a better benchmark for materiality than assets, and 5 percent better aligns with the thresholds used in other contexts (*e.g.,* accounting). By assessing the materiality of exposure from all sources (*e.g.,* investments and guarantees), the BBA's assessment of materiality incorporates the factors suggested by one commenter (*e.g.,* off-balance sheet exposures).

The Board does not agree that designating an investment subsidiary as an MFE is problematic, as the proposal contained an exclusion that would have allowed pass-through treatment of the risk of the entity rather than treating it as an MFE. In addition, QIS results indicated this exclusion will operate as intended. The final rule does not change this treatment.

Based on the QIS, the final rule also makes a small change to address inventory companies that have no upstream entity and that are not a top-tier SLHC (*e.g.,* a mutual insurance company controlled through common management). The NPR did not contemplate these types of companies. The final rule clarifies that if a company is an MFE or a company subject to capital regulation, then it must be considered a building block parent. These companies are exempted from the typical tests comparing their indicated capital framework to their upstream building block parent's indicated capital framework.

E. Treatment of Asset Managers

The proposal would have excluded certain asset managers from the MFE definition. Asset managers owned by insurers would have been assessed as they currently are in their insurance parent's risk-based capital calculation based on NAIC RBC. Asset managers owned by companies assessed using the Board's banking capital rule would have been consolidated by their parent company. Commenters were divided on this exclusion from the MFE definition. Several commenters supported the exclusion and noted that the Board's banking capital rule would not necessarily be more appropriate than the treatment of these subsidiaries under NAIC RBC. One commenter supported expanding the exclusion to also cover any activity that could be undertaken by a financial subsidiary. This commenter argued that other financial subsidiaries and asset managers should have the same treatment. This commenter also noted that the NPR specifically excluded financial subsidiaries of banks from the MFE definition through a different exclusion. Another commenter suggested further assessing the risks presented by different types of asset managers and varying the treatment of asset managers accordingly. Conversely, several other commenters did not support the exclusion. The commenters noted that due to the proposed exclusion, the treatment of material asset managers would have depended on the organizational structure of the SIO, and they argued that the BBA should seek to neutralize this discrepancy.

Commenters also disagreed on the best framework for assessing asset managers. Two commenters supported application of the banking capital rule to these companies. Other commenters supported broader application of NAIC RBC to asset managers. One commenter suggested an alternative approach based on GAAP for a subset of asset managers.

The final rule eliminates the exclusion of asset managers from the MFE definition so that all asset managers would be treated consistently under the Board's banking capital rule. Consistent with the proposal, financial subsidiaries of banks are excluded from MFE definition because Federal banking law requires deduction of these values from a bank's capital.[35]

VI. Adjustments

A. Capital Instruments

The proposal would have required certain adjustments at the level of determining building block available capital that would have included deducting any capital instrument issued by a company within the building block,

[34] Frequently a pass-through company enters into transactions with affiliates (*e.g.,* operating insurers) and enters into back-to-back transactions with third parties to manage risks on a portfolio basis.

[35] See 12 U.S.C. 24a(c).

that fails one or more of the eleven criteria for tier 2 capital under the Board's banking capital rule.[36]

For consistency with the Board's banking capital rule, senior debt would not have been considered as available capital. As noted above, many commenters expressed a view that senior debt should be included as qualifying capital, as it is structurally subordinated to policyholder liabilities and is similar to surplus notes in that regard. The Board's Insurance Policy Advisory Committee disagreed with these respondents and recommended the Board adopt the proposed capital instrument qualification without modification.

The proposal would have allowed surplus notes to be eligible for inclusion in tier 2 available capital under the BBA, provided that the notes meet the criteria. Recognizing that not all surplus notes previously issued would have addressed all of the tier 2 qualifying capital criteria, the proposal also including a legacy provision that allows surplus notes to qualify if issued by a top-tier depository institution holding company or its subsidiary to a non-affiliate prior to November 1, 2019. Commenters indicated that surplus notes should be included as tier 1 qualifying capital and if they only qualified as tier 2 capital, the proposed 62.5 percent limitation on the amount of tier 2 capital that can be counted toward an SIO's capital requirement should be higher.

The proposal also would have limited, at the level of building block available capital for the top-tier parent, tier 2 capital instruments to be no more than 62.5 percent of the building block capital requirement for that top-tier parent. Commenters observed that statutory accounting is more conservative than GAAP, and this conservatism reduces the value of common equity tier 1 capital, but not the value of tier 2 capital instruments. This, in commenters' view, distorts the ratio of tier 2 capital instruments to common equity tier 1 capital, which the NPR would have used to limit tier 2 capital instruments.

The Board considered the comments and decided to maintain consistency with the Board's banking capital rule for both surplus notes and senior debt. This would require insurers to issue surplus notes meeting all of the Board's criteria consistent with the banking capital rule to qualify as tier 1 capital. For surplus notes that only qualify as tier 2 capital instruments, the Board did change the tier 2 limit as noted above. This also results in senior debt not being considered as qualifying capital. The Board recognizes the structural subordination argument; however, this argument applies to the insurance subsidiaries and not the regulated holding company, which does not benefit from structural subordination. The Board also recognizes that there are some similarities between surplus notes and senior debt, but unlike surplus notes, a default is triggered for non-payment of senior debt, which would impact the entire group.

Although the Board has decided to maintain consistency with the banking capital criteria, considering the impact of the conservatism of statutory accounting as expressed by the commenters, the final rule increases the tier 2 capital instrument limit to 150 percent of the building block capital requirement for the top-tier parent. In addition, in order to provide capital flexibility to firms, the Board added an additional tier 1 capital component as discussed above.

B. Adjustments for Comparability

The proposal included a series of adjustments to improve comparability among U.S. insurance entities. These adjustments including reversing permitted and prescribed practices, disallowing legacy treatment and transitional measures in the application of new capital regulation for insurers, and reversing certain transactions (*e.g.,* captives) in order to ensure consistency between SIOs. While many aspects of insurance regulation have been harmonized across states, other aspects can differ significantly across companies and states.

The proposal would have used a consistent approach by assessing all U.S. insurers using NAIC RBC. Because NAIC RBC focuses on legal entities, it can be impacted by intercompany transactions. Some life insurers have used affiliated reinsurance transactions to alter their NAIC RBC ratios through the use of captives. These transactions move risks into captive reinsurance companies, which are generally not subject to the same accounting, disclosure, and capital requirements as NAIC RBC. The proposal would have neutralized much of the impact of these transactions through its grouping rules, which would have resulted in these affiliated reinsurance companies being analyzed using the same capital framework applicable to the ceding insurer.

The proposal would have gone further to provide consistent treatment by mandating the use of the accounting principles promulgated by the NAIC. States can and do deviate from the framework. States can either mandate that regulated companies do or do not recognize certain financial transactions or can require a measurement basis other than that promulgated by the NAIC (''prescribed practices'') or allow differences in recognition or measurement for a specific transaction (''permitted practices''). These practices can decrease the capital requirements for insurers. For instance, one of the contributing factors in the use of life insurance captives was that some states allowed a permitted practice whereby life insurers could transfer certain life insurance business to a captive that would use a different accounting. This was due to the belief that some of the life insurance reserving requirements in NAIC RBC were overly conservative, and the captives were able to apply recognition and measurement concepts that were viewed as more appropriate. In moving the business to a captive, the life insurance entities could receive significant capital relief.[37]

The proposed rule included adjustments to address permitted practices, prescribed practices, or other practices, including legal, regulatory, or accounting, that departs from a capital framework as promulgated for application in a jurisdiction. The proposed rule would have adjusted capital requirements (the denominator in the BBA ratio) to reverse state permitted and prescribed practices (and, where relevant, any approved variations applied by solvency regulators other than U.S. state and territory insurance supervisors). The proposed adjustment was meant to provide for a consistent representation of financial information across all companies in the jurisdiction.

The proposal also would have removed all legacy treatment and transitional measures associated with changes in a capital regime, unless the measures were approved by the Board.[38] Transitional provisions and legacy treatment are utilized to make adoption of significant changes less burdensome for insurers, but can result in differences in application between insurers. An example of this, described above, is the change to PBR by the NAIC and states. Many states required insurers to apply

[36] The criteria are listed in § 217.608(a) of this rule. In the banking capital rule, they are codified at 12 CFR 217.20(d).

[37] Matthew Walker and Li Cheng, CFA, FRM, FSA, Page 2, Standard and Poor's Rating Services, Peaking =Inside the Black Boxes: Why North American Life Insurers are Using Captives and Why it Matters, May 12, 2015.

[38] Because the Board has approved all transitional measures within the banking capital rule, this adjustment would have only affected insurance transitional measures.

PBR prospectively to new business beginning in 2020. This was optional in most states beginning in 2017. Due to the long-term nature of insurance liabilities, the measurement basis of most insurance liabilities by volume will continue to be the previous rules for many years. The proposal would have accelerated the transition by removing transitional measures not approved by the Board, which would have required applying PBR to legacy business (*i.e.,* all business prior to 2020).

Commenters expressed divergent views that generally split into two high-level positions. One group of commenters argued against the proposed adjustments to increase consistency. Another group of commenters supported the adjustments but suggested simplifying certain aspects of the proposal to reduce burden.

Most commenters argued against making any of the suggested insurance adjustments. Several commenters argued that state prescribed and permitted accounting practices aren't motivated by arbitrage. For example, a company may not update its accounting practices after previously ambiguous rules are clarified differently. One commenter linked these practices to a broader issue of supervisory or jurisdictional discretion, which also exists in other frameworks such as Europe's Solvency II, and argued that these should all be recognized by the BBA. Several commenters argued that state prescribed and permitted practices can more faithfully represent idiosyncratic situations than the broad, default accounting rules. In these situations, the commenters argued that the proposed adjustments may *decrease* comparability. Similarly, commenters asserted that retroactively applying PBR could harm comparability because of differences in assumptions and interpretations. Several commenters also argued that these adjustments could confuse external stakeholders and management by causing the BBA to diverge from operating company RBC ratios. Commenters also stated that applying PBR retroactively would be burdensome. A large number of commenters argued that the Board should defer to the states on this topic. One of these commenters argued that failing to do so jeopardizes financial stability. Other commenters argued for further study, either of existing permitted and practices or state regulations, which one commenter believed would indicate that these adjustments are not needed.

Several commenters supported the proposed adjustments with suggested modifications to reduce burden. These commenters asserted that individual state's permitted and prescribed practices can be justified, but they do harm comparability in aggregate. By volume, most state permitted and prescribed practices do not address idiosyncratic issues. Instead, they specify different substantive treatments on common issues. These commenters argued that the treatment of business should not depend on the state of the insurer or the cession of business to an affiliated reinsurance company.

The commenters, however, did suggest simplifying and clarifying the proposed insurance adjustments. Commenters wanted clarity on the scope of the adjustment on transitional measures and suggested that it may have unintended consequences by reversing transition measures related to the current expected credit losses methodology for estimating allowances for credit losses or requiring the restatement of insurance business using old mortality tables. With regard to PBR, commenters requested clarity on which types and years of business would require revaluation. Many commenters suggested simplifying or narrowing the scope of PBR revaluation. Approaches suggested included an approximation of a full PBR calculation by applying factors to current reserves, allowing the use of GAAP reserves instead, and allowing companies without captives or material exposures to opt out. Because PBR will apply prospectively, commenters suggested that these simplifications would better balance costs and benefits. One commenter also suggested retaining flexibility to maintain any given permitted or prescribed practice.

The final rule simplifies but does not eliminate the proposed adjustments that increase comparability. Comparing institutions helps the Board identify unsafe and unsound conditions and could also benefit other users of the BBA. These adjustments effectively harmonize the approaches of different states to the approach set collectively through the NAIC. This aligns with other parts of the BBA. The BBA uses NAIC RBC, not the approach of any particular state, as the common capital framework. These adjustments convert individual company financial statements to that basis and justify not requiring any scaling between states. The final rule also includes the flexibility to allow any particular accounting practices if merited through the broad reservations of authority.

In place of the proposal's reversal of transitional measures that have not otherwise been approved by the Board, the final rule adopts the factor-based simplification for PBR suggested by some commenters. The final rule specifies factors that will be applied to current statutory reserves for certain types of insurance business that are subject to legacy treatment under the NAIC rule, to approximate PBR reserves.[39] This narrower treatment of transitional measures eliminates any unintended effects on domestic insurance business. While the Board may eventually decide to reverse certain transitional measures in foreign insurance systems, these issues are currently not material to the Board's supervised population.

C. Title Insurance Issues

The proposal would have assessed title insurers using the banking capital framework because title insurers currently lack risk-based capital rules. To capture the risk of title insurance businesses, an additional 300 percent risk weight would have been applied to title insurance reserves. Additionally, title plants, which are collections of data and records related to the titles of real property, would have been deducted from available capital like other intangible assets in the banking capital framework.

The Board received two comment letters on the treatment of title insurance. These commenters did not oppose using the banking capital rule to assess title insurance business. However, they suggested modifying the treatment of title insurance reserves and title plant assets. They argued that title insurance reserves should qualify as tier 2 capital, that the 300 percent risk weight for title insurance reserves was too high, and that title plant assets should not be deducted from capital.

VII. Title Insurance Reserves

Commenters advocated including title insurance reserves in tier 2 capital and not applying a risk weight for two reasons. First, they argued this would be more consistent with the banking capital rule because title insurance reserves are analogous to banks' provisions for credit losses. Banks may count these allowances as tier 2 capital, subject to a limit of 1.25 percent of risk

[39] A 40 percent factor is applied to all term life insurance business accounted for using an approach based on the Valuation of Life Insurance Policies Model Regulation (Regulation XXX). A 90 percent factor is applied to all secondary-guaranteed universal life insurance products accounted for using Actuarial Guideline XXXVIII—The Application of the Valuation of Life Insurance Policies Model (AXXX).

weighted assets. Second, commenters argued this would encourage conservative reserving.

The commenters also argued that the proposed 300 percent risk weight for title insurance reserves was inappropriately high. They claimed title insurance reserves are less risky than publicly traded equities based on a comparison of industry-wide title insurance reserves and returns of equity indices. They also argued that title insurance policies and underwriting standards have evolved since the financial crisis to make the industry less risky.

Based on an analysis of the comment letter and data, the final rule maintains the proposed treatment of title insurance reserves. Insurance reserves are substantively and significantly different than banks' allowances. Allowances are a contra-asset that reflect expected future reductions in asset cashflows; title insurance reserves are a liability which represents expected future cash outflows. The reserves on other insurance products are a better analogy. Insurance capital frameworks unanimously classify insurance reserves as liabilities rather than capital.

Indeed, many insurance capital frameworks, including NAIC RBC, explicitly use very conservative reserving methodologies to safeguard even more funds as liabilities. Commenters argued that this treatment incentivizes underestimating reserves; however, there are actuarial standards of practice that are followed by the vast majority of actuaries when developing reserves estimates. Additionally, applying a factor to a liability value is consistent with many other insurance capital regimes. Independent of the BBA, reserves impact earnings, taxes, executive compensation, and strategic business decisions. Some members of management can have a short-term incentive to reduce reserves to increase earnings, but internal controls help to protect against this risk. Fear about these controls failing, which would result in some reserves becoming capital, does not just justify treating reserves like capital.

The final rule maintains the 300 percent factor for title insurance reserves. During the financial crisis, the four largest title insurers' reserves varied significantly more than equity indices. While the financial crisis hit title insurers particularly hard, the percentage losses on these reserves also exceeded the equity losses in *any* period, including the Great Depression.

One of the four largest title insurers became insolvent. Another's reserves more than doubled. A third's reserves increased by more than 50 percent. The industry-wide data from commenters underestimate the potential volatility for individual companies. Data since 2011 on all title insurers show that 10 percent reserve increases are somewhat common even when industry-wide reserves are relatively stable.

VIII. Title Plant Assets

Commenters also argued that title plant assets, which are collections of data and records related to the titles of real property, should not be deducted from capital and should instead receive a risk weight of 100 percent. They stated that title plant ownership interests are readily transferable. Insurers and agents often transfer ownership interests in title plants, which can be done without selling a business. The commenters believed these transactions could be completed even under adverse financial conditions.

The final rule deducts title plant assets from capital. During a stress event, title plant assets would likely not be capable of generating significant resources. The most likely buyers for an asset which helps underwrite title insurance would be a title insurer. But if one large title insurer needs capital, others are likely to require capital as well. Even if a potentially willing and able buyer were found, the transaction could face other difficulties, including antitrust scrutiny. The title insurance industry is highly concentrated. An attempted merger of two large title insurers in 2019 was abandoned after the Federal Trade Commission opposition on antitrust grounds.[40]

IX. Scaling

Scaling was considered in the proposal because regulatory capital frameworks differ in their outputs. While these outputs all assess capital, some use radically different terminology and scales. Banking capital frameworks focus on of risk weighted asset ratios, with requirements set at levels well below 100 percent. Insurance capital frameworks, in contrast, are set based on multiples of state requirements and target ratios well above 100 percent. Aggregating these different metrics requires translating (that is, ''scaling'') them.

Because of scaling's importance to the BBA, the Board published a white paper[41] on it. The white paper explored scaling and assessed different potential scaling methods. On the basis of the white paper's assessment, the proposal would have based scaling between the Board's banking capital rules and NAIC RBC based on historical default probabilities. The proposed method used these default rates as a benchmark for translation. The white paper's analysis indicated this results in the most accurate translation of any method. Accurate translations facilitate aggregation and ultimately the assessment of an institution's safety and soundness.

The proposal did not propose scalars for other jurisdictional regimes at this time primarily due to a lack of consistent default information. Instead, the proposal included a provisional scaling method that would have applied in the absence of specified scalars. This method assumed the equivalence of available capital calculations and regulatory intervention points after an adjustment for country risk.

Commenters largely agreed with the Board's analysis. Several commenters explicitly supported the Board's proposed approach. These commenters said the approach was thoughtful, rigorous, and practical. No commenter explicitly disagreed with using it to translate between NAIC RBC and the Federal banking capital rule. One commenter, did, however raise concerns that the proposed approach was ''bank centric'' and overly dependent on default data from P&C insurance groups, which may differ from data from other types of insurers.

The main criticism of the Board's overall scaling proposal was that it supplies scalars only between two capital frameworks as described above. Several commenters asked the Board to specify scalars for other frameworks rather than relying on this provisional scaling method. They argued that this would reduce uncertainty and aid international negotiations. Because of the lack of default data on other frameworks, these commenters also encouraged the Board to develop practical alternatives to relying on default data. In addition to the comments on developing scalars for other jurisdictions, the Board also received comments on the provisional scaling method. One commenter argued that this country risk adjustment disfavors international frameworks relative to the U.S. framework. Another commenter disagreed with some of the discussion in the white paper of the provisional methodology and argued

[40] *See, https://www.sec.gov/edgar/searchedgar/companysearch* (Fidelity National Financial, Inc. Form 8–K Termination of Material Definitive Agreement, Filed September 11, 2019 Fidelity National Financial, Inc. Form 8–K).

[41] Comparing Capital Requirements in Different Regulatory Frameworks, September 2019, *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20190906a1.pdf.*

that it did not adequately consider the possibility of interpolating a scaling methodology from a single assumed equivalency point or the possibility of using multiyear analysis to mitigate volatility. Another commenter thought the proposed provisional scaling method was not as sophisticated as what the NAIC is considering as part of its group capital calculation. Those methods rely on an alternative assumption related to the different insurance industries being equally well capitalized.

After reviewing these comments, the Board is finalizing scalars between NAIC RBC and the Board's banking capital rule as proposed. As explained in the white paper, historical insolvency rates are a fair benchmark for solvency ratios from different frameworks, and the Board's testing did not indicate a bias toward either banks or insurers. Extensive data exists on banks, P&C insurers, and life insurers. This data did not support treating the life and P&C capital frameworks differently.[42]

The Board considered and attempted to survey all potential scaling methods in the published white paper. The Board's analysis revealed a trade-off in scaling methods between the reasonableness of their assumptions and the amount of data they required. Without data, scaling requires using untested assumptions. No comment disputed this trade-off.

Because more accurate scaling requires data and data is limited on many frameworks, the Board could either vary its approach based on the data available or exclusively use a framework that would rely on data that is more likely to be available but would not provide scaling results to sufficient degree of accuracy. The final rule, like the proposal, avoids setting a uniform approach to scaling. This does create some uncertainty about how foreign insurance frameworks would be treated, but it also allows more accurate translations domestically. To reduce the uncertainty, the Board will continue working with the NAIC domestically, and at the IAIS internationally, on scaling, including parameterizing scalars within the BBA as appropriate.

The final rule also adopts the provisional scaling methodology as proposed for material foreign insurance entities. Other approaches may produce more accurate translations, but they also require more data. A provisional scaling method must always output a valid translation. Without this, a SIO would not be able to compute its BBA ratio in the absence of a further Board rulemaking or order. The proposed methodology requires the least amount of data.

Additionally, the NAIC is currently using an unscaled approach in its development of the GCC, which, like the provisional approach, would leverage the capital requirements in jurisdictions with risk-based regimes, though it does not include a country risk adjustment. The final rule maintains this adjustment as country risk affects the insurers operating in those jurisdictions.

With regard to the technical points made, the Board believes these were accurately discussed in the white paper. One commenter noted that changes to NAIC RBC could impact scalars and asked about the timeframe for updates to the scalars and their effect time. The Board will monitor changes to NAIC RBC and plans to update scalars as necessary rather than on a predetermined schedule.

Proposed updates to the scalars will be released for public comment prior to adoption.

X. Aggregation

The proposal would have aggregated the adjusted and scaled output from the building block parents. At each level of aggregation, the scaled and adjusted results from subsidiary building block parents would have replaced the default treatment for these risks in the indicated capital framework of the upstream building block parent. For example, an insurance company that owns a depository institution would have held this depository institution on its balance sheet based on GAAP equity and applied a factor to this value to calculate the capital required on the investment. When calculating available capital, the proposal would have replaced the GAAP equity with the bank's scaled capital, as calculated under the proposed BBA. Similarly, scaled and adjusted output from the bank capital framework would have replaced the insurance capital framework's treatment of the bank subsidiary.

The proposal would have used proportional consolidation to address the partial ownership of building block parents. When aggregating the risks of a downstream building block parent, the upstream building block parent would have only included a fraction of the downstream parent that is proportional to its ownership. In the proposal, this proportion would have been based on the fraction of the capital resources of the downstream building block parent owned by the upstream building block parent.

The Board received one comment regarding this aspect of the proposal. The commenter suggested using the proportion of equity in place of the proportion of capital to allocate ownership of an inventory company among multiple building block parents.

As suggested by the commenter, the final rule uses equity ownership percentages to incorporate partially owned building block parents. This fraction is calculated for other purposes and would simplify the rule without materially impacting the calculation of the BBA ratio.[43] The final rule otherwise adopts the proposed method of aggregation under the BBA.

XI. Reporting

To implement the BBA, the Board proposed a new reporting form. This reporting form, form FR Q–1 would have collected information needed to carry out the BBA calculations.[44] Form FR Q–1 would have facilitated monitoring the capital position of companies subject to the BBA.

The Board published a proposed version of form FR Q–1 for comment along with the NPR. This proposed reporting form served as the basis for a voluntary QIS from SIOs. Several comment letters addressed form FR Q–1. Additionally, QIS participants provided feedback based on their experience completing the form.

Several issues raised in the context of form FR Q–1 overlap with other aspects of the BBA and are discussed elsewhere in this Supplementary Information section. As discussed above in section II related to the BBA's effective date, several comments requested deferring the first filing of form FR Q–1's attestation cover page to avoid requiring controls related to the BBA to be in place before the BBA becomes effective. The final rule defers the first filing of the attestation cover page until the submission of the second form FR Q–1. As discussed in section V.A related to the BBA's inventory, commenters suggested the Board restrict the definition of an inventory company to reduce form FR Q–1's burden. Instead, the adopted version of form FR Q–1

[42] When parameterized separately, life and P&C insurance frameworks generated nearly identical scalars. A t-test regarding the differences in these parameters resulted in a p-value close to 50 percent. See page 18 of the White Paper for further information.

[43] A top-tier depository institution holding company's BBA ratio would be impacted by this change only if (1) a subsidiary building block parent issued capital outside of the group, (2) the subsidiary building block parent issued both equity and non-equity capital instruments, and (3) the group's ownership percentage of the non-equity capital instruments differed from its ownership of equity capital instruments.

[44] The adopted form FR Q–1 and instructions are available at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

limits the inventory companies that are required to provide asset information to achieve a similar effect.

Commenters also raised issues regarding form FR Q–1's proposed March 15 yearly deadline, the amount of form FR Q–1 information that would be made public, and how much of the information related to form FR Q–1 would need to be audited.

A. Submission Date

The proposal would have had a March 15 annual submission deadline for form FR Q–1. This date was selected to closely follow the March 1 date on which state insurance legal entities must submit their annual statements to state insurance regulators. Because the BBA relies on information in these reports, form FR Q–1's deadline should occur after it. A date shortly after this deadline was proposed because timely information facilitates better supervision.

Commenters requested extending the submission deadline for form FR Q–1. These commenters cited the burden of an additional reporting form tied to the year-end. They suggested that form FR Q–1 be submitted further back in the queue of these reports. June 1 was the most common requested filing date, which would coincide with the date insurers must submit audited financial statements. Commenters noted the additional accuracy with these audited statements. Two other commenters suggested slightly earlier dates.

In response to the comments, the final rule includes a March 31 due date for form FR Q–1. This allows SIOs an extra two weeks to complete the report in recognition of the report's reliance on U.S. statutory financial statements that are filed with the states, and the existing burden on reporting staff during this period of time. The final rule does not, however, extend the deadline as much as suggested by commenters. Doing so would significantly disrupt the Board's supervision schedule and mean that the most recent BBA information available would be between 5 and 17 months out of date. Conversely, for other banking organizations, significantly more detailed consolidated financial information is reported quarterly, around a month after the close of a quarter.

B. Public Disclosure

Under the proposal, the vast majority of the information reported to the Board through the proposed reporting form FR Q–1 would not have been made public. The information that the Board proposed to make public would have consisted of the building block available capital, building block capital requirement, and BBA ratio for the top-tier parent of an insurance depository institution holding company's enterprise. This sought to protect some of the non-public information contained within form FR Q–1 while still providing the public some transparency into the capitalization of the firm, which could be used as the basis for supervisory actions. The proposed disclosure was significantly less extensive than the disclosure required for other financial institutions because of the Board's limited role in regulating supervised insurance institutions and the potential competitive effects of requiring disclosure from only a small subset of the sector.

Commenters expressed diverging opinions on the disclosure proposal. One commenter supported the proposal. Three other commenters argued that all aspects of the BBA should be confidential. They argued that disclosing the BBA ratio could cause competitive disadvantages because the NAIC does not intend to make public the results of their group capital calculation.

The final rule adopts the proposed disclosure standard. The Board will publish each SIO's overall results along with their numerator and denominator. Although publishing detailed information on a supervised institution, some of which is contained in form FR Q–1, could cause competitive harm, publishing this overall BBA ratio and the numerator and denominator would not. No trade secret information can be derived from disclosing this high-level datum related to the overall enterprise's capitalization. Outside of revealing confidential information, the BBA ratio could place an SIO at a competitive disadvantage if the ratio itself could be used against the company. A very poor BBA ratio could be marketed against a company, but a very poor BBA ratio likely could not be kept a secret regardless because it results in supervisory consequences. For example, companies that breach the BBA's minimum requirements will face limitations on capital distributions that would be difficult to conceal. Additionally, it is likely that for any SIO with a low BBA ratio, there would be publicly available information indicating that some of the underlying building blocks are thinly capitalized through either the published banking capital ratios or the U.S. statutory filings. The net impact of the disclosure then relates to the exact amount of the BBA ratio, particularly when it is above the minimum. No commenter provided any plausible avenue for how this could be used to harm an SIO.

C. Audit Requirements

The NPR was not clear about how much of the information entered into form FR Q–1 would need to be subject to an independent audit. However, it included a requirement that all BBA controls would be subject to an internal audit annually. The proposal would have mandated that building block parents calculate their available and required capital under their indicated capital framework, but it did not specify whether the source financial statements should be audited. The bank rules referenced by the BBA do not clearly resolve the issue. There is no universal financial statement audit requirement, although FDIC regulations do require audited financial statements from depository institutions over a certain asset threshold, and this audit can be satisfied by an audit of the depository institution holding company.[45] Section 238.5 of the Board's Regulation MM also requires audited financial statements for SLHCs with greater than $500 million in consolidated assets.[46]

Commenters argued that an independent audit of financial statements for each building block parent should not be required by the BBA or form FR Q–1 instructions. They argued this would be burdensome, without creating corresponding benefits. In relation to the proposed internal audit requirement, one commenter argued that the requirement would be overly burdensome and unnecessary on account of the requirement for a senior officer to attest to the accuracy of form FR Q–1 and existence of appropriate controls.

The final rule and form FR Q–1 instructions remove the proposed internal audit requirement and clarify the Board's expectations for independent audits of building block parent financial statements. While the final rule does not require Internal audit coverage of form FR Q–1 each year, the Senior Officer in signing form FR Q–1 must attest that related internal controls of the firm are considered adequate by Internal audit.

As noted above, the proposal did not include an explicit audit requirement for the underlying building blocks or for the enterprise, and the Board has not adopted one in the final rule. However, the safety and soundness considerations that justify the audit requirements of 12 CFR 238.5 and in FDIC annual audit

[45] 12 CFR 363.1.

[46] 12 CFR 238.5.

rules[47] apply to SIOs as well. Typically, the financial statements of large companies, particularly those with $500 million or more in consolidated assets, should be subject to an audit performed by a qualified independent public accountant. This is particularly true of large building block parents, whose financial statements would typically be relied upon for this calculation and when making business decisions. As with the financial statements of depository institutions under the FDIC rule, this audit expectation could be fulfilled through an audit of a holding company's financial statements if the holding company consolidates the entity. In addition, U.S. statutory accounting requirements (rules) have audit requirements for most insurance legal entities. Between the banking requirements and the U.S. statutory requirements, it is expected that most of the building block parents will have audits.

The Board will monitor implementation of the BBA and determine if there are audit gaps. If gaps are discovered, the Board would consider implementing an audit requirement by independent public accountants of financial statements of building block parents with total assets of $500 million.

XII. Economic Impact Analysis of the BBA

The Board analyzed the potential costs and benefits of the proposed minimum risk-based capital requirements for supervised insurance holding companies. Setting the BBA at the similar stringency level as bank capital requirements minimizes the incentive for BHCs to acquire or sell insurance operations due to disparate capital requirements, while maintaining the safety and soundness of supervised firms. The Board analyzed whether the proposed level of the BBA requirements might drive currently supervised firms to shed their depository institutions or meaningful deter other insurers from acquiring thrifts, given that the BBA's total capital requirement would be higher than any current state requirements. Data from the BBA QIS, as of year-end 2018, indicated that none of the currently supervised insurance institutions would have needed to raise capital to comply with the rule. This was confirmed to still be the case as of year-end 2021 based on analysis of these firms' Statutory Insurance Annual Statements and data on depository institutions and intermediate holding companies.

This same data was used to assess the distribution of Risk Based Capital ratios relative to the BBA requirements for the universe of insurers with over $1 billion in assets. Nearly nine in ten insurers could meet the 400 percent total requirement without raising capital and only 1 percent of insurers were below the proposed 250 percent minimum. This demonstrates that the vast majority of insurers would not be deterred by the BBA from acquiring thrifts by the BBA while appropriately excluding the least capitalized insurers from doing so.

Parallel to the capital required by the BBA calculation, insurance depository institution holding company would also have to demonstrate capital adequacy on a fully consolidated basis as prescribed by section 171 of the Dodd-Frank Act. An SIO may comply with this requirement on a fully consolidated basis using the bank capital requirements. Alternatively, an SIO may utilize the flexibility afforded by the 2014 Amendment to exclude certain state- and foreign-regulated insurance operations and to exempt top-tier insurance underwriting companies from the risk-based capital requirement. The final rule allows SIOs to utilize one of two different calculations that consider the section 171 calculation scope exceptions: full deduction from capital of investment in subsidiaries or risk weighting of these investments at 400 percent, consistent with the current treatment of bank's equity exposures. The Board's analysis confirms that for most mutual insurance companies, the parallel requirement would not be relevant. A significant percentage of publicly traded companies would likely fail to meet the requirement based on the deduction option, though most could satisfy the risk-weight option. Overall, the parallel requirement would not have material impact due to the different options for achieving compliance.

The BBA framework is designed to protect subsidiary insured depository institutions from risks in the broader enterprise. The Board analyzed the experience of insurance depository institution holding companies during a significant stress period, the 2007–09 financial crisis, to shed light on the potential benefits of an enterprise-wide risk-based capital requirements. Prior to the financial crisis, more than twenty holding companies would have been subject to enterprise-wide capital requirements, had such a rule been in place, due to their significant engagement in insurance activities. These combined assets of these firms were over $3.3 trillion, according to data from forms FR Y–9C and OTS 1313 (Thrift Financial Reports).

Depository institution subsidiaries tended to be a source of strength for these insurers when some of them suffered significant capital impairment at their non-banking subsidiaries. No depository institution affiliates of insurers were resolved by the FDIC during the 2007–09 financial crisis. Banking-insurance combinations also enabled some insurers to access emergency relief programs available to banks. Three of these insurers received public assistance aimed at bolstering their solvency, while six participated in Federal Reserve liquidity facilities and seven increased their reliance on public liquidity backstops. These included the largest three pre-crisis insurance depository institution holding companies and in aggregate accounted for about two-thirds of the total assets of this group.

Unlike regulations in place during the 2007–09 financial crisis, the BBA provides a clear regulatory capital framework for insurers that try to acquire depository institutions for the purposes of accessing emergency facilities. Had it been in place, the BBA could have either forced the insurers to raise capital before completing the transactions or prevented such transactions due to a lack of consolidated capital. In such a context, the BBA could help protect taxpayer funds by ensuring the safety and soundness of insurers accessing emergency facilities via a depository institution acquisition, since the insurer would need to meet the BBA minimum requirement in order to do so. As such, the consolidated BBA may lessen moral hazard associated with the implicit government backstop seen in the financial crisis.

When the Federal Reserve assumed responsibility for supervision of insurance SLHCs in mid-2011 there were 28 such firms. Fairly rapidly, a majority of these firms left the Federal Reserve's regulatory purview, either by converting their depository subsidiaries to trust banks or by divesting from their thrifts entirely. These divestments could be troubling if it implied that potentially synergistic mergers have been discouraged. While it is difficult to precisely ascribe these dissolutions to any particular factors, the Board's analysis relied on financial comparisons and textual evidence to illuminate the likely causes.

A quantitative comparison was conducted, using data collected by the Office of Thrift Supervision leading up to the time of the handover of supervisory responsibility to the Board,

[47] See 12 CFR part 363.

between those firms keeping their depository institution subsidiaries and those that either converted their depository subsidiaries to trust banks or divested from their thrifts entirely. The firms that kept their thrift subsidiaries tended to have banking as a larger share of their overall business operations and to be more profitable. The firms that de-thrifted tended to be riskier as measured by leverage and the volatility of earnings.

Reviewing the record of banking-insurance combinations highlights three drivers of de-thrifting that are tangential to the BBA capital rule. First, most divestments preceded the development of the BBA. While some insurers did cite regulatory concerns as a factor in their decisions, they highlighted potential stress tests or distribution restrictions rather than capital standards. Second, the economies of scale envisioned from cross-selling banking and insurance products failed to materialize. Finally, the small size of the thrifts at most insurance SLHCs suggest an additional headwind. Economies of scale from technological advances and the loosening of branching restrictions have long raised competitive difficulties for small depository institutions that are unrelated to any specific requirements of the BBA. It is clear from the analysis that the development of the BBA was not the driver of insurers divesting or switching charters. Further, the primary aim of the rule, protecting insured depository subsidiaries from risks in the broader enterprise, fits with the pattern of the riskiest firms divesting their banks while those who maintain them have banking as a major business line, are well capitalized, and operate at low risk levels.

The BBA capital rule is more stringent than state level insurance regulation in that it entails swifter regulatory intervention should capital deteriorate. The Board quantified this comparative stringency using data collected through the QIS for the firms in the Board's supervisory portfolio. Intervention probabilities over a three-year horizon were estimated based on how BBA ratios, projected back over the prior two decades, have compared against the required capital plus the buffer. Relative to a firm's respective state-level requirement, threshold breach probabilities were on average about four percentage points higher under the BBA, though this varied form near zero to over 10 percent. This demonstrates that the BBA capital rule is consistently more conservative than state-level requirements, enhancing protection of the insured depository subsidiaries.

Regulatory interventions, to the extent they reduce the ability to do business or require additional compliance resources, can impose costs on firms. In practice, firms with higher intervention probabilities based on their current financials may raise their capital levels to forestall the need for regulatory intervention.

In addition to somewhat higher capital requirements, supervised insurance holding companies would also see two notable differences in how their capital levels are determined relative to state-level regulations, both of which are intended to enhance the quality of capital.

First, captive reinsurers are consolidated under the same accounting standards as U.S. operating insurance entities rather than being permitted to back some policy reserves with lower-quality assets. Such a treatment could put insurers covered by the BBA at a competitive disadvantage by necessitating higher premiums on certain products. The effect on currently supervised firms would be small given their limited use of captive reinsurance. The Board's calculations suggest about one-fifth of life insurers by assets industry-wide would not have sufficient capital to meet the BBA capital conservation buffer without the relief provided by captives, potentially deterring their interest in acquiring a depository institution. Because this form of capital relief derives from a corporate structure choice rather than actual risk differences, it would be counter to the principle that the same activity should get the same regulatory treatment.

Second, the share of insurer capital that can be accounted for by surplus notes is capped.

While the NAIC considers these instruments as capital, they are a form of unsecured subordinated debt with fixed payment schedules. In principle, heavy users of surplus notes would be disincentivized from acquiring a depository institution given the need to raise more costly forms of capital. The impact in practice is expected to be minimal given the stipulation under the BBA legacy treatment of existing surplus notes as a qualifying capital instrument.

Further, the Board's analysis found that the incremental difference in the share of firms industry-wide who would not meet the BBA's regulatory thresholds is not meaningfully different with the use of surplus notes capped.

XIII. Administrative Law Matters

A. Paperwork Reduction Act

In connection with the final rule, the Board is implementing ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number is 7100–NEW. The Board reviewed the final rule under the authority delegated to the Board by OMB.

In order to implement the final rule, the Board is implementing the FR Q–1 reporting form, which contains reporting requirements subject to the PRA. The reporting form has been implemented pursuant to section 171 of the Dodd-Frank Act and section 10 of HOLA for insurance depository institution holding companies. The Board received no comments specifically related to the PRA. The Board did receive two comments, as described above, relating to the difficulties of providing certain information for all subsidiaries. The Board lowered the reporting burden by adding a materiality threshold that will eliminate some of the reporting on immaterial inventory companies.

Implementation of the Following Information Collection

Collection title: Capital Requirements for Board-regulated Institutions Significantly Engaged in Insurance Activities.

Collection identifier: FR Q–1.

OMB control number: 7100–NEW.

General description of report: Section 171 of the Dodd-Frank Act requires, and section 10 of the HOLA authorizes, the Board to implement risk-based capital requirements for depository institution holding companies, including those that are significantly engaged in insurance activities.

Frequency: Annual.

Affected Public: Businesses or other for-profit.

Respondents: Insurance depository institution holding companies.

Estimated number of respondents: 5.

Estimated average hours per response: 175.50 for initial setup and 43.88 for ongoing compliance.

Estimated annual burden hours: 1,097 (878 for initial setup and 219 for ongoing compliance).

Current Actions: Pursuant to section 171 of the Dodd-Frank Act and section 10 of HOLA, the Board has adopted the application of risk-based capital requirements to certain depository institution holding companies. The Board has adopted an aggregation-based approach, the Building Block Approach, that would aggregate capital resources and capital requirements across the different legal entities under an insurance depository institution holding company to calculate consolidated, enterprise-wide qualifying and required capital. The BBA utilizes, to the greatest extent possible, capital frameworks already in place for the entities in the enterprise of a depository institution holding company significantly engaged in insurance activities and is tailored to the supervised firm's business model, capital structure, and risk profile. The new reporting form (FR Q–1) requires a depository institution holding company to produce certain information required for the application of the BBA. The reporting form and instructions are available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review.*

The Board made several changes to form FR Q–1 and the FR Q–1 instructions that correspond with changes to the final rule. The changes include the addition of a new column for additional tier 1 capital, revising the tier 2 limit, the materiality calculation for reporting requirement on inventory companies, a simplification on how building blocks are aggregated, and the inclusion of a request for confidentiality check box. One additional change was made to include a column to list the Legal Entity Identifier for inventory companies, which allows for more consistent identification of legal entities. The changes in the aggregate are a reduction in the burden from the proposed FR Q–1. Form FR Q–1 is effective January 1, 2024.

B. Regulatory Flexibility Act

An initial regulatory flexibility analysis was included in the proposal in accordance with section 603(a) of the Regulatory Flexibility Act (RFA).[48] In the initial regulatory flexibility analysis, the Board requested comment on the effect of the proposed rule on small entities and on any significant alternatives that would reduce regulatory burden on small entities. The Board did not receive any comments on the initial regulatory flexibility analysis. The RFA requires an agency to prepare a final regulatory flexibility analysis unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Based on its analysis, and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.[49] In accordance with section 171 of the Dodd-Frank Act and section 10 of HOLA, the Board is adopting subpart J to 12 CFR part 217 (Regulation Q) to establish risk-based capital requirements for insurance depository institution holding companies.[50] An insurance depository institution holding company's aggregate capital requirements generally are the sum of the capital requirements applicable to the top tier parent and certain subsidiaries of the insurance depository institution holding company, where the capital requirements for regulated financial subsidiaries are based on the regulatory capital rules of the subsidiaries' functional regulators—whether a state Department of Insurance or a foreign insurance regulator for insurance subsidiaries, or a Federal banking regulator for insured depository institutions (IDIs). The BBA then builds upon and aggregates capital resources and requirements across groups of legal entities in the insurance depository institution holding company's enterprise (insurance, non-insurance financial, non-financial, and holding company), subject to adjustments.

Under Small Business Administration (SBA) regulations, the finance and insurance sector includes direct life insurance carriers, direct title insurance carriers, and direct P&C insurance carriers, which generally are considered ''small'' for the purposes of the RFA if a life insurance carrier or title insurance carrier has average annual receipts of $47 million or less or if a P&C insurance carrier has less than 1,500 employees.[51]

Life insurance companies and title insurance companies that are subject to the rule all substantially exceed the $47 million average annual receipt threshold at which they would be considered a ''small entity'' under SBA regulations. P&C insurance companies subject to the rule exceed the less than 1,500 employee threshold below which a P&C entity is considered a ''small entity'' under SBA regulations.

Because the rule does not apply to any life insurance carrier or title insurance carrier with average annual receipts of less than $47 million, or P&C carrier with less than 1,500 employees, it will not apply to a substantial number of small entities for purposes of the RFA. Accordingly, the Board does not expect the rule to have a significant economic impact on a substantial number of small entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[52] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board sought to present the proposal in a simple and straightforward manner and did not receive any comments on the use of plain language.

List of Subjects

12 CFR Part 217

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Investments, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 238

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 252

Administrative practice and procedure, Banks, banking, Credit, Federal Reserve System, Holding companies, Investments, Qualified financial contracts, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends chapter II of title 12 of the Code of Federal Regulations as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, 5371 note, and sec. 4012, Pub. L. 116–136, 134 Stat. 281.

Subpart A—General Provisions

■ 2. In § 217.1:

[48] 5 U.S.C. 601 *et seq.*

[49] 5 U.S.C. 605(b).

[50] See 12 U.S.C. 1467a and 5371.

[51] 13 CFR 121.201. Consistent with the SBA's General Principles of Affiliation, the Board includes the assets of all domestic and foreign affiliates toward the applicable size threshold when determining whether to classify a particular entity as a small entity. See 13 CFR 121.103.

[52] 12 U.S.C. 4809.

■ a. Revise paragraph (c)(1); and

■ b. Add paragraph (g).

The revision and addition read as follows:

§ 217.1 Purpose, applicability, reservations of authority, and timing.

* * * * *

(c) * * *

(1)(i) *Applicability in general.* This part applies on a consolidated basis to every Board-regulated institution that is:

(A) A state member bank;

(B) A bank holding company domiciled in the United States that is not subject to 12 CFR part 225, appendix C, provided that the Board may by order apply any or all of this part to any bank holding company, based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition; or

(C) A covered savings and loan holding company domiciled in the United States, other than a savings and loan holding company that meets the requirements of 12 CFR part 225, appendix C, as if the savings and loan holding company were a bank holding company and the savings association were a bank. For purposes of compliance with the capital adequacy requirements and calculations in this part, savings and loan holding companies that do not file form FR Y–9C or form FR Q–1 should follow the instructions to the FR Y–9C.

(ii) *Mid-tier holding companies of insurance depository institution holding companies.* In the case of a bank holding company, or a covered savings and loan holding company, that does not calculate minimum risk-based capital requirements under subpart B of this part by operation of § 217.10(f)(1), this part applies to a depository institution holding company that is a subsidiary of such bank holding company or covered savings and loan holding company, provided that:

(A) The subsidiary depository institution holding company is an insurance mid-tier holding company; and

(B) The subsidiary depository institution holding company's assets and liabilities are not consolidated with those of a depository institution holding company that controls the subsidiary for purposes of determining the parent depository institution holding company's capital requirements and capital ratios under subparts B through F of this part.

* * * * *

(g) *Depository institution holding companies and treatment of subsidiary state-regulated insurers, regulated foreign subsidiaries, and regulated foreign affiliates*—(1) *In general.* In complying with the capital adequacy requirements of this part (except for the requirements and calculations of subpart J of this part), including any determination of applicability under § 217.100 or § 217.201, an insurance bank holding company, insurance savings and loan holding company, or insurance mid-tier holding company may elect not to consolidate the assets and liabilities of its subsidiary state-regulated insurers, regulated foreign subsidiaries, and regulated foreign affiliates. Such an institution that makes this election must either:

(i) Deduct from the sum of its common equity tier 1 capital elements the aggregate amount of its outstanding equity investment, including retained earnings, in such subsidiaries and affiliates; or

(ii) Include in the risk-weighted assets of the Board-regulated institution the aggregate amount of its outstanding equity investment, including retained earnings, in such subsidiaries and affiliates and assign to these assets a 400 percent risk weight.

(2) *Method of election.* (i) An insurance bank holding company, insurance savings and loan holding company, or insurance mid-tier holding company may make the election described in paragraph (g)(1) of this section by indicating that it has made this election on the applicable regulatory report, filed by the insurance bank holding company, insurance savings and loan holding company, or insurance mid-tier holding company for the first reporting period in which it is an insurance bank holding company, insurance savings and loan holding company, or insurance mid-tier holding company. The electing Board-regulated institution must indicate on the applicable regulatory report whether it elects to deduct from the sum of its common equity tier 1 capital elements in accordance with paragraph (g)(1)(i) of this section or whether it elects to include an amount in its risk-weighted assets in accordance with paragraph (g)(1)(ii) of this section.

(ii) An insurance bank holding company, insurance savings and loan holding company, or insurance mid-tier holding company that has not made an effective election pursuant to paragraph (g)(2)(i) of this section, or that seeks to change its election (or its choice of treatment under paragraph (g)(1) of this section) due to a change in control, business combination, or other legitimate business purpose, may do so only with the prior approval of the Board, effective as of the first reporting period after the period in which the Board approves the election, or such other date specified in the approval.

■ 3. In § 217.2:

■ a. Revise the definition of ''Covered savings and loan holding company''; and

■ b. Add the definitions of ''Insurance bank holding company,'' ''Insurance mid-tier holding company'', ''Insurance savings and loan holding company'', ''Regulated foreign subsidiary and regulated foreign affiliate'', and ''State-regulated insurer'' in alphabetical order.

The revision and additions read as follows:

§ 217.2 Definitions.

* * * * *

Covered savings and loan holding company means a top-tier savings and loan holding company other than an institution that—

(1) Meets the requirements of section 10(c)(9)(C) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(9)(C)); and

(2) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

* * * * *

Insurance bank holding company means:

(1)(i) A bank holding company that is an insurance underwriting company; or

(ii) A bank holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance underwriting for credit risk).

(2) For purposes of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board.

Insurance mid-tier holding company means a bank holding company, or savings and loan holding company, domiciled in the United States that:

(1) Is a subsidiary of:

(i) An insurance bank holding company to which subpart J of this part applies; or

(ii) An insurance savings and loan holding company to which subpart J of this part applies; and

(2) Is not an insurance underwriting company that is subject to state law capital requirements.

Insurance savings and loan holding company means:

(1)(i) A top-tier savings and loan holding company that is an insurance underwriting company; or

(ii) A top-tier savings and loan holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance underwriting for credit risk).

(2) For purposes of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board.

* * * * *

Regulated foreign subsidiary and regulated foreign affiliate means a person described in section 171(a)(6) of the Dodd-Frank Act (12 U.S.C. 5371(a)(6)) and any subsidiary of such a person other than a state-regulated insurer.

* * * * *

State-regulated insurer means a person regulated by a state insurance regulator as defined in section 1002(22) of the Dodd-Frank Act (12 U.S.C. 5481(22)), and any subsidiary of such a person, other than a regulated foreign subsidiary and regulated foreign affiliate.

* * * * *

Subpart B—Capital Ratio Requirements and Buffers

■ 4. In § 217.10, add paragraph (f) to read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(f) *Insurance depository institution holding companies.* Notwithstanding paragraphs (a) through (d) of this section:

(1) An insurance bank holding company that is a state-regulated insurer, or an insurance savings and loan holding company that is a state-regulated insurer, is not required to meet the minimum capital ratio requirements in paragraphs (a)(1)(i) through (iii) of this section if the company is subject to subpart J of this part; and

(2) A Board-regulated institution that is an insurance bank holding company, insurance savings and loan holding company, or insurance mid-tier holding company is not required to meet the minimum capital ratio requirements in paragraphs (a)(1)(iv) and (v) of this section.

■ 5. In § 217.11, add paragraph (e) to read as follows:

§ 217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

* * * * *

(e) *Insurance depository institution holding companies.* Notwithstanding any other provision of this section:

(1) A Board-regulated institution that is an insurance bank holding company that is subject to subpart J of this part calculates its capital conservation buffer in accordance with § 217.604;

(2) A Board-regulated institution that is an insurance savings and loan holding company that is subject to subpart J of this part calculates its capital conservation buffer in accordance with § 217.604; and

(3) A Board-regulated institution that is an insurance mid-tier holding company is not subject to the provisions of this section.

Subpart G—Transitional Provisions

■ 6. Add § 217.306 to read as follows:

§ 217.306 Building Block Approach (BBA) capital conservation buffer transition.

(a) Notwithstanding any provision of this part and subject to paragraph (b) of this section, an insurance bank holding company, or insurance savings and loan holding company, that, on January 1, 2023, was not subject to this part is not subject to any restrictions on distributions or discretionary bonus payments under §§ 217.11 and 217.604.

(b) This section ceases to be effective after March 31, 2026.

■ 7. Add subpart J to read as follows:

Subpart J—Risk-Based Capital Requirements for Board-Regulated Institutions Significantly Engaged in Insurance Activities

§ 217.601 Purpose, applicability, and reservations of authority.

(a) *Purpose.* This subpart establishes a framework for assessing overall risk-based capital for Board-regulated institutions that are significantly engaged in insurance activities. The framework in this subpart is used to measure available capital resources and capital requirements across a Board-regulated institution and its subsidiaries that are subject to diverse capital frameworks, aggregate available capital resources and capital requirements and calculate a ratio that reflects the overall capital adequacy of the Board-regulated institution.

(b) *Applicability.* This subpart applies to every Board-regulated institution that is:

(1) A top-tier depository institution holding company that is an insurance underwriting company; or

(2) A top-tier depository institution holding company, that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in insurance underwriting companies (other than assets associated with insurance underwriting for credit risk). For purposes of this paragraph (b)(2), the Board-regulated institution must calculate its total consolidated assets in accordance with GAAP, or if the Board-regulated institution does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board; or

(3) Depository institution holding company in a supervised insurance organization; or

(4) An institution that is otherwise made subject to this subpart by the Board.

(c) *Exclusion of certain depository institution holding companies.* Notwithstanding paragraph (b) of this section, this subpart does not apply to a top-tier depository institution holding company that—

(1) Exclusively files financial statements in accordance with Statutory Accounting Principles (SAP);

(2) Is not subject to a state insurance capital requirement; and

(3) Has no subsidiary depository institution holding company that—

(i) Is subject to a capital requirement; or

(ii) Does not exclusively file financial statements in accordance with SAP.

(d) *Reservation of authority*—(1) *Regulatory capital resources.* (i) If the Board determines that a particular company capital element has characteristics or terms that diminish its ability to absorb losses, or otherwise present safety and soundness concerns, the Board may require the supervised insurance organization to exclude all or a portion of such element from building block available capital for a depository institution holding company in the supervised insurance organization.

(ii) Notwithstanding any provision of § 217.608, the Board may find that a capital resource may be included in the building block available capital of a depository institution holding company on a permanent or temporary basis consistent with the loss absorption capacity of the capital resource and in accordance with § 217.608(g).

(2) *Required capital amounts.* If the Board determines that the building block capital requirement for any depository institution holding company is not commensurate with the risks of the depository institution holding company, the Board may adjust the building block capital requirement and building block available capital for the supervised insurance organization.

(3) *Structural requirements.* In order to achieve the appropriate application of this subpart, the Board may require a supervised insurance organization to take any of the following actions with respect to the application of this subpart, if the Board determines that such action would better reflect the risk profile of an inventory company or the supervised insurance organization:

(i) Identify components under this subpart differently than as done by the supervised insurance organization. This could include a different identification of a top-tier depository institution holding company, an inventory company, a material financial entity, or a building block parent, then that made by the supervised insurance organization; or

(ii) Set a building block parent's allocation share of a downstream building block parent equal to 100 percent.

(4) *Other reservation of authority.* With respect to any treatment required under this subpart, the Board may require a different treatment, provided that such alternative treatment is commensurate with the supervised insurance organization's risk and consistent with safety and soundness.

(e) *Notice and response procedures.* In making any determinations under paragraph (d) of this section, the Board will apply notice and response procedures in the same manner as the notice and response procedures in § 263.202 of this chapter.

§ 217.602 Definitions.

(a) Terms that are set forth in § 217.2 and used in this subpart have the definitions assigned thereto in § 217.2.

(b) For the purposes of this subpart, the following terms are defined as follows:

Allocation share means the portion of a downstream building block's available capital or building block capital requirement that a building block parent must aggregate in calculating its own building block available capital or building block capital requirement, as applicable, and calculated in accordance with § 217.605(d).

Assignment means the process of associating an inventory company with one or more building block parents for purposes of inclusion in the building block parents' building blocks.

BBA ratio is defined in § 217.603.

Building block means a building block parent and all downstream companies and subsidiaries assigned to the building block parent.

Building block available capital has the meaning set out in § 217.608.

Building block capital requirement has the meaning set out in § 217.607.

Building block parent means the lead company of a building block whose indicated capital framework must be applied to all members of a building block for purposes of determining building block available capital and the building block capital requirement.

Capital-regulated company means a company that is—

(i) A depository institution, foreign bank, or company engaged in the business of insurance in a supervised insurance organization; and

(ii) Directly subject to a regulatory capital framework.

Common capital framework means NAIC RBC.

Company available capital means, for a company, the amount of its capital elements, net of any adjustments and deductions, as determined in accordance with the company's indicated capital framework.

Company capital element means any part, item, component, balance sheet account, instrument, or other element qualifying as regulatory capital under a company's indicated capital framework prior to any adjustments and deductions under that framework.

Company capital requirement means:

(i) For a company whose indicated capital framework is NAIC RBC, the Authorized Control Level risk-based capital requirement as set forth in NAIC RBC;

(ii) For a company whose indicated capital framework is a U.S. Federal banking capital rule, the total risk-weighted assets; and

(iii) For any other company, a risk-sensitive measure of required capital used to determine the jurisdictional intervention point applicable to that company.

Downstream building block parent means a building block parent that is a downstream company of another building block parent.

Downstream company means a company whose company capital element is directly or indirectly owned, in whole or in part, by another company in the supervised insurance organization.

Downstreamed capital means direct ownership of a downstream company's company capital element that is accretive to a downstream building block parent's building block available capital. When calculating building block available capital, the amount of the downstreamed capital is calculated as the amount, excluding any impact on taxes, of the company available capital of the building block parent of the upstream building block, if the owner were to deduct the downstreamed capital.

Financial entity means:

(i) A bank holding company; a savings and loan holding; a U.S. intermediate holding company established or designated for purposes of compliance with part 252 of this chapter;

(ii) A depository institution as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States; a Federal credit union or state credit union; a national association, state member bank, or state nonmember bank that is not a depository institution; an institution that functions solely in a trust or fiduciary capacity; an industrial loan company, an industrial bank, or other similar institution;

(iii) An entity that is state-licensed or registered as:

(A) A credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; except entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers; or

(B) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

(iv) Any person registered with the Commodity Futures Trading Commission as a swap dealer or major swap participant pursuant to the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), or an entity that is registered with the U.S. Securities and Exchange Commission as a security-based swap dealer or a major security-based swap participant pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(v) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); a broker or dealer as defined in sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)–(5)); an investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–53(a));

(vi) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(5)(C) of that Act; or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to 17 CFR 270.3a–7 (Investment Company Act Rule 3a–7 of the U.S. Securities and Exchange Commission);

(vii) A commodity pool, a commodity pool operator, or a commodity trading advisor as defined, respectively, in sections 1a(10), 1a(11), and 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(10), 1a(11), and 1a(12)); a floor broker, a floor trader, or introducing broker as defined, respectively, in sections 1a(22), 1a(23) and 1a(31) of the Commodity Exchange Act (7 U.S.C. 1a(22), 1a(23), and 1a(31)); or a futures commission merchant as defined in section 1a(28) of the Commodity Exchange Act (7 U.S.C. 1a(28));

(viii) An entity that is organized as an insurance company, primarily engaged in underwriting insurance or reinsuring risks underwritten by insurance companies;

(ix) Any designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462); and

(x) An entity that would be a financial entity described in paragraphs (i) through (ix) of this definition, if it were organized under the laws of the United States or any State thereof.

Indicated capital framework is defined in § 217.605, provided that for purposes of § 217.605(b)(2), the NAIC RBC frameworks for life insurance and fraternal insurers, property and casualty (P&C) insurance, and health insurance companies are different indicated capital frameworks.

Inventory company means a company identified pursuant to § 217.605(b)(1).

Material means, for a company in the supervised insurance organization:

(i) Where the top-tier depository institution holding company's total exposure to the company exceeds 5 percent of the maximum of—

(A) Top-tier depository institution holding company's company available capital; and

(B) The largest company available capital of all capital regulated companies reported in the supervised insurance organization's inventory; or

(ii) The company is otherwise significant when assessing the building block available capital or building block capital requirement of the top-tier depository institution holding company based on factors including risk exposure, activities, organizational structure, complexity, affiliate guarantees or recourse rights, and size.

(iii) For purposes of this definition, total exposure includes:

(A) The absolute value of the top-tier depository institution holding company's direct or indirect interest in the company capital elements of the company;

(B) The maximum possible loss from a guarantee (explicit or implicit) the top-tier depository institution holding company or any other company in the supervised insurance organization provides for the benefit of the company; and

(C) Maximum potential counterparty credit risk to the top-tier depository institution holding company or any other company in the supervised insurance organization arising from any derivative or similar instrument, reinsurance or similar arrangement, or other contractual agreement.

Material financial entity means a financial entity that, together with its subsidiaries, but excluding any subsidiary capital-regulated company (or subsidiary thereof), is material, provided that an inventory company is not eligible to be a material financial entity if:

(i) The supervised insurance organization has elected pursuant to § 217.605(c) not to treat the company as a material financial entity; or

(ii) The inventory company is a financial subsidiary, as defined in section 121 of the Gramm-Leach-Bliley Act.

Member means, with respect to a building block, the building block parent or any of its downstream companies or subsidiaries that have been assigned to a building block.

NAIC means the National Association of Insurance Commissioners.

NAIC RBC means the most recent version of the Risk-Based Capital (RBC) For Insurers Model Act, together with the RBC instructions, as adopted in a substantially similar manner by an NAIC member and published in the NAIC's Model Regulation Service.

Permitted accounting practice means an accounting practice, specifically requested by a state-regulated insurer, that departs from SAP and state prescribed accounting practices and has been approved by the state-regulated insurer's domiciliary state regulatory authority.

Prescribed accounting practice means an accounting practice that is incorporated directly or by reference to state laws, regulations, and general administrative rules applicable to all insurance companies domiciled in a particular state.

Principles based reserving (PBR) means the valuation standard adopted for certain life insurance reserves by the NAIC effective as of January 1, 2020.

Recalculated building block capital requirement means, for a downstream building block parent and an upstream building block parent, the downstream building block parent's building block capital requirement recalculated assuming that the downstream building block parent had no upstream investment in the upstream building block parent.

Regulatory capital framework means, with respect to a company, the applicable legal requirements, excluding this subpart, specifying the minimum amount of total regulatory capital the company must hold to avoid restrictions on distributions and discretionary bonus payments, regulatory intervention on the basis of capital adequacy levels for the company, or equivalent standards; provided that the NAIC RBC frameworks for life and fraternal insurance, P&C insurance, and health insurance companies are different regulatory capital frameworks.

SAP means Statutory Accounting Principles as promulgated by the NAIC and adopted by a jurisdiction for purposes of financial reporting by insurance companies.

Scaling means the translation of building block available capital and building block capital requirement from one indicated capital framework to another by application of § 217.606.

Scalar compatible means a capital framework:

(i) For which the Board has determined scalars; or

(ii) That is an insurance capital regulatory framework, and exhibits each of the following three attributes:

(A) The framework is clearly defined and broadly applicable;

(B) The framework has an identifiable regulatory intervention point that can be used to calibrate a scalar; and

(C) The framework provides a risk-sensitive measure of required capital reflecting material risks to a company's financial strength.

Submission date means the date as of which form FR Q–1 is filed with the Board.

Supervised insurance organization means:

(i) In the case of a depository institution holding company, the set of companies consisting of:

(A) A top-tier depository institution holding company that is an insurance underwriting company, together with its inventory companies; or

(B) A top-tier depository institution holding company, together with its inventory companies, that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in insurance underwriting companies (other than assets associated with insurance underwriting for credit risk). For purposes of this paragraph (i)(B), the supervised firm must calculate its total consolidated assets in accordance with GAAP, or if the firm does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board; or

(ii) An institution that is otherwise subject to this subpart, as determined by the Board, together with its inventory companies.

Tier 2 capital instruments has the meaning set out in § 217.608(a).

Top-tier depository institution holding company means a depository institution holding company that is not controlled by another depository institution holding company.

Upstream building block parent means an upstream company that is a building block parent.

Upstream company means a company within a supervised insurance organization that directly or indirectly controls a downstream company, or directly or indirectly owns part or all of a downstream company's company capital elements.

Upstream investment means any direct or indirect investment by a downstream building block parent in an upstream building block parent. When calculating adjusted downstream building block available capital, the amount of the upstream investment is calculated as the impact, excluding any impact on taxes, on the downstream building block parent's building block available capital if the owner were to deduct the investment.

U.S. Federal banking capital rules mean this part, other than this subpart, and the regulatory capital rules promulgated by the Federal Deposit Insurance Corporation at chapter III of this title and the Office of the Comptroller of the Currency at chapter I of this title.

§ 217.603 BBA ratio and minimum requirements.

(a) *In general.* A supervised insurance organization must determine its BBA ratio, subject to the minimum requirement set out in this section and buffer set out in § 217.604, for each depository institution holding company within its enterprise by:

(1) Establishing an inventory that includes the supervised insurance organization and every company that meets the requirements of § 217.605(b)(1);

(2) Identifying all building block parents as required under § 217.605(b)(3);

(3) Determining the available capital and capital requirement for each building block parent in accordance with its indicated capital framework;

(4) Determining the building block available capital and building block capital requirement for each building block, reflecting adjustments and scaling as set out in this subpart;

(5) Rolling up building block available capital and building block capital requirement amounts across all building blocks in the supervised insurance organization's enterprise to determine the same for any depository institution holding companies in the enterprise; and

(6) Determining the ratio of building block available capital to building block capital requirement for each depository institution holding company in the supervised insurance organization.

(b) *Determination of BBA ratio.* For a depository institution holding company in a supervised insurance organization, the BBA ratio is the ratio of the company's building block available capital to the company's building block capital requirement, each scaled to the common capital framework in accordance with § 217.606.

(c) *Minimum capital requirement.* A depository institution holding company in a supervised insurance organization must maintain a BBA ratio of at least 250 percent.

(d) *Capital adequacy.* (1) Notwithstanding the minimum requirement in this subpart, a depository institution holding company in a supervised insurance organization must maintain capital commensurate with the level and nature of all risks to which it is exposed. The supervisory evaluation of the depository institution holding company's capital adequacy is based on an individual assessment of numerous factors, including the character and condition of the company's assets and its existing and prospective liabilities and other corporate responsibilities.

(2) A depository institution holding company in a supervised insurance organization must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

§ 217.604 Capital conservation buffer.

(a) *Capital conservation buffer*—(1) *Composition of the capital conservation buffer.* The capital conservation buffer is composed solely of building block available capital excluding tier 2 capital instruments and additional tier 1 capital instruments.

(2) *Definitions.* For purposes of this section, the following definitions apply:

(i) *Distribution* means:

(A) A reduction of tier 1 capital through the repurchase of a tier 1 capital instrument or by other means, except when a Board-regulated institution, within the same quarter when the repurchase is announced, fully replaces a tier 1 capital instrument it has repurchased by issuing another capital instrument that meets the eligibility criteria for:

(*1*) A common equity tier 1 capital instrument if the instrument being repurchased was part of the Board-regulated institution's common equity tier 1 capital; or

(*2*) A common equity tier 1 or additional tier 1 capital instrument if the instrument being repurchased was part of the Board-regulated institution's tier 1 capital;

(B) A reduction of tier 2 capital through the repurchase, or redemption prior to maturity, of a tier 2 capital instrument or by other means, except when a Board-regulated institution, within the same quarter when the repurchase or redemption is announced, fully replaces a tier 2 capital instrument it has repurchased by issuing another capital instrument that meets the eligibility criteria for a tier 1 or tier 2 capital instrument;

(C) A dividend declaration or payment on any tier 1 capital instrument;

(D) A dividend declaration or interest payment on any tier 2 capital instrument if the Board-regulated institution has full discretion to permanently or temporarily suspend such payments without triggering an event of default;

(E) A discretionary dividend payment on participating insurance policies; or

(F) Any similar transaction that the Board determines to be in substance a distribution of capital.

(ii) *Eligible retained income* means, for a depository institution holding company in a supervised insurance organization, the annual change in the company's building block available capital, calculated as of the last day of the current and immediately preceding calendar years based on the supervised insurance organization's most recent form FR Q–1, net of any distributions and accretion to building block available capital from capital instruments issued in the current or immediately preceding calendar year, excluding issuances corresponding with retirement of capital instruments under paragraph (a)(2)(i)(A) of this section.

(iii) *Maximum payout amount* means, for the current calendar year, is equal to the Board-regulated institution's eligible retained income, multiplied by its maximum payout ratio.

(iv) *Maximum payout ratio* means the percentage of eligible retained income that a Board-regulated institution can pay out in the form of distributions and discretionary bonus payments during the current calendar year. The maximum payout ratio is determined by the Board-regulated institution's capital conservation buffer, calculated as of the last day of the previous calendar year, as set forth in table 1 to this section.

(3) C*alculation of capital conservation buffer.* The capital conservation buffer for a depository institution holding company in a supervised insurance organization is the greater of its BBA ratio, calculated as of the last day of the previous calendar year based on the supervised insurance organization's most recent form FR Q–1, minus the minimum capital requirement under § 217.603(c), and zero.

(4) *Limits on distributions and discretionary bonus payments.* (i) A top-tier depository institution holding company in a supervised insurance organization shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar year that, in the aggregate, exceed its maximum payout amount.

(ii) A top-tier depository institution holding company in a supervised insurance organization and that has a capital conservation buffer that is greater than 150 percent is not subject to a maximum payout amount under this section.

(iii) Except as provided in paragraph (a)(4)(iv) of this section, a top-tier depository institution holding company in a supervised insurance organization may not make distributions or discretionary bonus payments during the current calendar year if the Board-regulated institution's:

(A) Eligible retained income is negative; and

(B) Capital conservation buffer was less than 150 percent as of the end of the previous calendar year.

(iv) Notwithstanding the limitations in paragraphs (a)(4)(i) through (iii) of this section, the Board may permit a top-tier depository institution holding company in a supervised insurance organization to make a distribution or discretionary bonus payment upon a request of the depository institution holding company, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the depository institution holding company. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

(b) [Reserved]

TABLE 1 TO § 217.604—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Greater than 150 percent	No payout ratio limitation applies.
Less than or equal to 150 percent, *and* greater than 113 percent	60 percent.
Less than or equal to 113 percent, *and*greater than 75 percent	40 percent.
Less than or equal to 75 percent, *and* greater than 38 percent	20 percent.
Less than or equal to 38 percent	0 percent.

§ 217.605 Determination of building blocks.

(a) *In general.* A supervised insurance organization must identify each building block parent and its allocation share of any downstream building block parent, as applicable.

(b) *Operation.* To identify building block parents and determine allocation shares, a supervised insurance organization must take the following steps in the following order:

(1) *Inventory of companies.* A supervised insurance organization must identify as inventory companies:

(i) All companies that are—

(A) Required to be reported on the FR Y–6;

(B) Required to be reported on the FR Y–10; or

(C) Classified as affiliates in accordance with NAIC Statement of Statutory Accounting Principles (SSAP) No. 25 and Schedule Y;

(ii) Any company, special purpose entity, variable interest entity, or similar entity that:

(A) Enters into one or more reinsurance or derivative transactions with inventory companies identified pursuant to paragraph (b)(1)(i) of this section;

(B) Is material;

(C) Is engaged in activities such that one or more inventory companies identified pursuant to paragraph (b)(1)(i) of this section are expected to absorb more than 50 percent of its expected losses; and

(D) Is not otherwise identified as an inventory company; and

(iii) Any other company that the Board determines must be identified as an inventory company.

(2) *Determination of indicated capital framework.* (i) A supervised insurance organization must:

(A) Determine the indicated capital framework for each inventory company; and

(B) Identify inventory companies that are subject to a regulatory capital framework.

(ii) The indicated capital framework for an inventory company is:

(A) If the inventory company is not engaged in insurance or reinsurance underwriting, the U.S. Federal banking capital rules, in particular:

(*1*) If the inventory company is not a depository institution, subparts A through F of this part; and

(*2*) If the inventory company is a depository institution, the regulatory capital framework applied to the depository institution by the appropriate primary Federal regulator—that is, subparts A through F of this part (Board), part 3 of this title (Office of the Comptroller of the Currency), or part 324 of this title (Federal Deposit Insurance Corporation), as applicable;

(B) If the inventory company is engaged in insurance or reinsurance underwriting and subject to a regulatory capital framework that is scalar compatible, the regulatory capital framework; and

(C) If the inventory company is engaged in insurance or reinsurance underwriting and not subject to a regulatory capital framework that is scalar compatible, then NAIC RBC for life and fraternal insurers, health insurers, or property & casualty insurers based on the company's primary source of premium revenue.

(3) *Identification of building block parents.* A supervised insurance organization must identify all building block parents according to the following procedure:

(i)(A) Identify all top-tier depository institution holding companies in the supervised insurance organization.

(B) Any top-tier depository institution holding company is a building block parent.

(ii)(A) Identify any inventory company that is a depository institution holding company.

(B) An inventory company identified in paragraph (b)(3)(ii)(A) of this section is a building block parent.

(iii) Identify all inventory companies that are capital-regulated companies (that is, inventory companies that are subject to a regulatory capital framework) or material financial entities.

(iv)(A) Of the inventory companies identified in paragraph (b)(3)(iii) of this section, identify any inventory company that:

(*1*) Is assigned an indicated capital framework that is different from the indicated capital framework of any next upstream inventory company identified in paragraphs (b)(3)(i) through (iii) of this section or does not have a next upstream inventory company; and

(*i*) In a simple structure, an inventory company would compare its indicated capital framework to the indicated capital framework of its parent company. However, if the parent company does not meet the criteria to be identified as a building block parent, the inventory company must compare its capital framework to the next upstream company that is eligible to be identified as a building block parent. For purposes of this paragraph (b)(3)(iv), a company is ''next upstream'' to a downstream company if it controls or owns, in whole or in part, a company capital element of the downstream company either directly, or indirectly other than through a company identified in paragraphs (b)(3)(ii) and (iii) of this section.

(*ii*) [Reserved]

(*2*) Is assigned an indicated capital framework for which the Board has determined a scalar or, if the company in aggregate with all other companies subject to the same indicated capital framework are material, a provisional scalar;

(B) Of the inventory companies identified in paragraph (b)(3)(iii) of this section, identify any inventory company that:

(*1*) Is assigned an indicated capital framework that is the same as the indicated capital framework of each next upstream inventory company identified in paragraphs (b)(3)(i) through (iii) of this section;

(*2*) Is assigned an indicated capital framework for which the Board has determined a scalar or, if the company in aggregate with all other companies subject to the same indicated capital framework is material, a provisional scalar; and

(*3*) Is owned, in whole or part, by an inventory company that is subject to the same regulatory capital framework, and the owner:

(*i*) Applies a charge on the inventory company's equity value in calculating its company capital requirement; or

(*ii*) Deducts all or a portion of its investment in the inventory company in calculating its company available capital.

(C) An inventory company identified in paragraph (b)(3)(iv)(A) through (B) of this section is a building block parent.

(v) Include any inventory company identified in paragraph (b)(1)(ii) of this section as a building block parent.

(vi)(A) Identify any inventory company—

(*1*) For which more than one building block parent, as identified pursuant to paragraphs (b)(3)(i) through (v) of this section, owns a company capital element either directly or indirectly other than through another such building block parent; and

(*2*)(*i*) Is consolidated under any such building block parent's indicated capital framework; or

(*ii*) Owns downstreamed capital.

(B) An inventory company identified in paragraph (b)(3)(vi)(A) of this section is a building block parent.

(4) *Building blocks.* (i) Except as provided in paragraph (b)(4)(ii) of this section, a supervised insurance organization must assign an inventory company to the building block of any building block parent that owns a company capital element of the inventory company, or of which the inventory company is a subsidiary, directly or indirectly through any company other than a building block parent, unless the inventory company is a building block parent.

(A) For purposes of this section, subsidiary includes a company that is required to be reported on the FR Y–6, FR Y–10, or NAIC's Schedule Y, as applicable.

(B) [Reserved]

(ii) A supervised insurance organization is not required to assign to a building block any inventory company that is not a downstream company or subsidiary of a top-tier depository institution holding company.

(5) *Financial statements.* The supervised insurance organization must:

(i) For any inventory company whose indicated capital framework is NAIC RBC, prepare financial statements in accordance with SAP; and

(ii) For any building block parent whose indicated capital framework is subparts A through F of this part:

(A) Apply the same elections and treatment of exposures as are applied to the subsidiary depository institution;

(B) Apply subparts A through F of this part, to the members of the building block of which the building block parent is a member, on a consolidated basis, to the same extent as if the building block parent were a Board-regulated institution; and

(C) Where the building block parent is not the top-tier depository institution holding company, not deduct investments in capital of unconsolidated financial institutions, nor exclude these investments from the calculation of risk-weighted assets.

(6) *Allocation share.* A supervised insurance organization must, for each building block parent, identify any downstream building block parent owned directly or indirectly through any company other than a building block parent, and determine the building block parent's allocation share of these downstream building block

parents pursuant to paragraph (d) of this section.

(c) *Material financial entity election.* (1) A supervised insurance organization may elect not to treat an inventory company meeting the criteria in paragraph (c)(2) of this section as a material financial entity. An election under this paragraph (c)(1) must be included with the first financial statements submitted to the Board after the company is included in the supervised insurance organization's inventory.

(2) The election in paragraph (c)(1) of this section is available to an inventory company if:

(i) The company engages in transactions consisting solely of either—

(A) Transactions for the purpose of transferring risk from one or more affiliates within the supervised insurance organization to one or more third parties; or

(B) Transactions to invest assets contributed to the company by one or more affiliates within the supervised insurance organization, where the company is established for purposes of limiting tax obligation or legal liability; and

(ii) The supervised insurance organization is able to calculate the adjustment required in § 217.607(b)(4).

(d) *Allocation share.* (1) Except as provided in paragraph (d)(2) of this section, a building block parent's allocation share of a downstream building block parent is calculated as the percentage of equity ownership of a downstream building block parent, including associated paid-in capital, held by an upstream building block parent directly or indirectly through a member of the upstream building block parent's building block.

(2) The top-tier depository institution holding company's allocation share of a building block parent that has no outstanding common equity or that is identified under paragraph (b)(3)(v) of this section is 100 percent. Any other building block parent's allocation share of such building block parent is zero.

§ 217.606 Scaling parameters.

(a) *Scaling specified by the Board*—(1) *Scaling between the U.S. Federal banking capital rules and NAIC RBC*—(i) *Scaling capital requirement.* When calculating the building block capital requirement for a building block parent in accordance with § 217.607, where the indicated capital framework is NAIC RBC or the U.S. Federal banking capital rules, and where the indicated capital framework of the appropriate downstream building block parent is NAIC RBC or the U.S. Federal banking capital rules, the capital requirement scaling modifier is provided by table 1 to this paragraph (a)(1)(i).

TABLE 1 TO PARAGRAPH (a)(1)(i)—CAPITAL REQUIREMENT SCALING MODIFIERS FOR NAIC RBC AND THE U.S. FEDERAL BANKING CAPITAL RULES

	Upstream building block parent's indicated capital framework:	
	NAIC RBC	U.S. Federal banking capital rules
Downstream building block parent's indicated capital framework:		
U.S. Federal banking capital rules	0.0106	1
NAIC RBC	1	94.3

(ii) *Scaling available capital.* When calculating the building block available capital for a building block parent in accordance with § 217.608, where the indicated capital framework is NAIC RBC or the U.S. Federal banking capital rules, and where the indicated capital framework of the appropriate downstream building block parent is NAIC RBC or the U.S. Federal banking capital rules, the available capital scaling modifier is provided by table 2 to this paragraph (a)(1)(ii).

TABLE 2 TO PARAGRAPH (a)(1)(ii)—AVAILABLE CAPITAL SCALING MODIFIERS FOR NAIC RBC AND THE U.S. FEDERAL BANKING CAPITAL RULES

	Upstream building block parent's indicated capital framework:	
	NAIC RBC	U.S. Federal banking capital rules
Downstream building block parent's indicated capital framework:		
U.S. Federal banking capital rules	Recalculated building block capital requirement * 0.063.	0.
NAIC RBC	0	Recalculated building block capital requirement * 5.9.
Capital framework:		
NAIC RBC	0	Recalculated building block capital requirement * 5.9.

(2) *Scaling to determine BBA ratio.* For purposes of determining the BBA ratio under § 217.603(b)—

(i) A depository institution holding company for which the indicated capital framework is the U.S. Federal banking capital rules scales its building block available capital and building block capital requirement the common capital framework by using the methods described in paragraphs (a)(1) of this section. For purposes of scaling under this paragraph (a)(2)(i), the downstream building block parent's indicated capital framework is the U.S. Federal banking capital rules and the upstream building block parent's indicated capital framework is NAIC RBC; and

(ii) A depository institution holding company for which the indicated capital framework is NAIC RBC does not scale its building block available capital or building block capital requirement.

(b) *Scaling not specified by the Board but framework is scalar compatible.* Where a scaling modifier to be used in § 217.607 or § 217.608 is not specified in paragraph (a) of this section, and the building block parent's indicated capital framework (*i.e.,* jurisdictional capital framework) is scalar compatible, a building block parent determines the scaling modifier as follows:

(1) *Definitions.* For purposes of this section, the following definitions apply:

(i) *Jurisdictional intervention point.* The jurisdictional intervention point is the capital level, under the laws of the jurisdiction for its domestic insurers, at which the supervisory authority in the jurisdiction may intervene as to a company subject its capital framework by imposing restrictions on distributions and discretionary bonus payments by the company or, if no such intervention may occur in a jurisdiction, then the capital level at which the supervisory authority would first have the authority to take action against a company based on its capital level.

(ii) *Jurisdiction adjustment.* The jurisdictional adjustment is the risk adjustment set forth in table 3 to this paragraph (b)(1)(ii), based on the country risk classification set by the Organization for Economic Cooperation and Development (OECD) for the jurisdiction. This adjustment is applied to the jurisdictional intervention point.

TABLE 3 TO PARAGRAPH (b)(1)(ii)—JURISDICTIONAL ADJUSTMENTS BY OECD COUNTRY RISK CLASSIFICATION

OECD CRC	Jurisdictional adjustment (percent)
0–1, including jurisdictions with no OECD country risk classification	0
2	20
3	50
4–6	100
7	150

(2) *Scaling capital requirement.* When calculating the building block capital requirement for a building block parent in accordance with § 217.607, where the indicated capital framework of the appropriate downstream building block parent is a scalar-compatible framework for which the Board has not specified a capital requirement scaling modifier, the capital requirement scaling modifier is calculated according to the following formula:

Equation 1 to Paragraph (b)(2)

$$\frac{(1 + Adjustment_{Scaling\ from}) * Requirement_{Scaling\ from}}{Requirement_{Scaling\ to}}$$

Where:

$Adjustment_{scaling\ from}$ is equal to the jurisdictional adjustment of the downstream building block parent;

$Requirement_{scaling\ from}$ is equal to the jurisdictional intervention point of the downstream building block parent; and

$Requirement_{scaling\ to}$ is equal to the jurisdictional intervention point of the upstream building block parent.

(3) *Scaling available capital.* When calculating the building block available capital for a building block parent in accordance with § 217.608, where the indicated capital framework of the appropriate downstream building block parent is a scalar-compatible framework for which the Board has not specified an available capital scaling modifier, the available capital scaling modifier is equal to zero.

§ 217.607 Capital requirements under the Building Block Approach.

(a) *Determination of building block capital requirement.* For each building block parent, *building block capital requirement* means the sum of the items in paragraphs (a)(1) and (2) of this section:

(1) The company capital requirement of the building block parent; that is:

(i) Recalculated under the assumption that members of the building block parent's building block had no investment in any downstream building block parent; and is:

(ii) Adjusted pursuant to paragraph (b) of this section;

(2) For each downstream building block parent, the adjusted downstream building block capital requirement ($BBCR_{ADJ}$), which is calculated according to the following formula:

Equation 1 to Paragraph (a)(2)

$$BBCR_{ADJ} = BBCR_{DS} \cdot CRSM \cdot \mathrm{AS}$$

Where:

$BBCR_{DS}$ is equal to the building block capital requirement of the downstream building block parent recalculated under the assumption that the downstream building block parent had no upstream investment in the building block parent;

CRSM is equal to the appropriate capital requirement scaling modifier under § 217.606; and

AS is equal to the building block parent's allocation share of the downstream building block parent.

(b) *Adjustments in determining the building block capital requirement.* A supervised insurance organization must adjust the company capital requirement for any building block parent as follows:

(1) *Internal credit risk charges.* A supervised insurance organization must deduct from the building block parent's company capital requirement any difference between:

(i) The building block parent's company capital requirement; and

(ii) The building block parent's company capital requirement recalculated excluding capital requirements related to potential for the possibility of default of any company in the supervised insurance organization.

(2) *Permitted accounting practices and prescribed accounting practices.* A supervised insurance organization must adjust the building block parent's company capital requirement by any difference between:

Note 1 to paragraph (b)(2) introductory text: The adjustment can be either positive or negative depending on the permitted or prescribed practices. In most cases, the reversal of the permitted or prescribed practice would result in an increase in the building block parent's company required capital. In rare cases, a permitted or prescribed practice could increase the insurers required capital. In this instance, this adjustment would reduce the building block parent's company required capital.

(i) The building block parent's company capital requirement, after making any adjustment in accordance with paragraph (b)(1) of this section; and

(ii) The building block parent's company capital requirement, after making any adjustment in accordance with paragraph (b)(1) of this section, recalculated under the assumption that neither the building block parent, nor any company that is a member of that building block parent's building block, had prepared its financial statements with the application of any permitted accounting practice, prescribed accounting practice, or other practice, including legal, regulatory, or accounting procedures or standards, that departs from a solvency framework as promulgated for application in a jurisdiction.

(3) *Risks of certain intermediary entities.* Where a supervised insurance organization has made an election with respect to a company not to treat that company as a material financial entity pursuant to § 217.605(c), the supervised insurance organization must add to the company capital requirement of any building block parent, whose building block contains a member, with which the company engages in one or more transactions, and for which the company engages in one or more transactions described in § 217.605(c)(2) with a third party, any difference between:

(i) The building block parent's company capital requirement; and

(ii) The building block parent's company capital requirement recalculated taking into account the risks of the company, excluding internal credit risks described in paragraph (b)(1) of this section, allocated to the building block parent, reflecting the transaction(s) that the company engages in with any member of the building block parent's building block. Note, the total allocation of the risks of the intermediary entity to building block parents must capture all material risks and avoid double counting.

(4) *Investments in own capital instruments*—(i) *In general.* A supervised insurance organization must deduct from the building block parent's company capital requirement any difference between:

(A) The building block parent's company capital requirement; and

(B) The building block parent's company capital requirement recalculated after assuming that neither the building block parent, nor any company that is a member of the building block parent's building block, held any investment in the building block parent's own capital instrument(s), including any net long position determined in accordance with paragraph (b)(5)(ii) of this section.

(ii) *Net long position.* For purposes of calculating an investment in a building block parent's own capital instrument under this section, the net long position is determined in accordance with § 217.22(h), provided that a separate account asset or associated guarantee is not regarded as an indirect exposure unless the net long position of the fund underlying the separate account asset (determined in accordance with § 217.22(h) without regard to this paragraph (b)(4)(ii)) equals or exceeds 5 percent of the value of the fund.

(5) *Risks relating to title insurance.* A supervised insurance organization must add to the building block parent's company capital requirement the amount of the building block parent's reserves for claims pertaining to title insurance, multiplied by 300 percent.

§ 217.608 Available capital resources under the Building Block Approach.

(a) *Qualifying capital instruments*—(1) *General criteria.* A qualifying capital instrument with respect to a building block parent is a capital instrument that meets the following criteria:

(i) The instrument is issued and paid-in;

(ii) The instrument is subordinated to depositors and general creditors of the building block parent;

(iii) The instrument is not secured, not covered by a guarantee of the building block parent or of an affiliate of the building block parent, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument in relation to more senior claims;

(iv) The instrument has a minimum original maturity of at least five years. At the beginning of each of the last five years of the life of the instrument, the amount that is eligible to be included in building block available capital is reduced by 20 percent of the original amount of the instrument (net of redemptions), and is excluded from building block available capital when the remaining maturity is less than one year. In addition, the instrument must not have any terms or features that require, or create significant incentives for, the building block parent to redeem the instrument prior to maturity; and

Note 1 to paragraph (a)(1)(iv): A building block parent may replace qualifying capital instruments concurrent with the redemption of existing qualifying capital instruments.

(v) The instrument, by its terms, may be called by the building block parent only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called sooner upon the occurrence of an event that would preclude the instrument from being included in the building block parent's company available capital or building block available capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*). In addition:

(A) The top-tier depository institution holding company must receive the prior approval of the Board to exercise a call option on the instrument.

(B) The building block parent does not create at issuance, through action or communication, an expectation the call option will be exercised.

(C) Prior to exercising the call option, or immediately thereafter, the top-tier depository institution holding company must either: replace any amount called with an equivalent amount of an instrument that meets the criteria for qualifying capital instruments under this section; or demonstrate to the satisfaction of the Board that following redemption, the top-tier depository institution holding company would continue to hold an amount of capital that is commensurate with its risk.

Note 2 to paragraph (a)(1)(v)(C): A building block parent may replace qualifying capital instruments concurrent with the redemption of existing qualifying capital instruments.

(vi) Redemption of the instrument prior to maturity or repurchase requires the prior approval of the Board.

(vii) The instrument meets the criteria in § 217.20(d)(1)(vi) through (ix) and (xi), except that each instance of ''Board-regulated institution'' is replaced with ''building block parent'' and, in § 217.20(d)(1)(ix), ''tier 2 capital instruments'' is replaced with ''qualifying capital instruments''.

(2) *Additional tier 1 capital instruments.* Additional tier 1 capital instruments of a top-tier depository institution holding company are instruments issued by any inventory company that are qualifying capital instruments under paragraph (a)(1) of this section and meet all of the following criteria:

Note 3 to paragraph (a)(2) introductory text: For purposes of this paragraph (a)(2), the supervised insurance organization evaluates the criteria in paragraph (a)(1) of this section with regard to the building block in which the issuing inventory company is a member.

(i) The instrument is subordinated to depositors, general creditors, and subordinated debt holders of the building block parent in a receivership, insolvency, liquidation, or similar proceeding;

(ii) The instrument is not secured, not covered by a guarantee of the building block parent or of an affiliate of the building block parent, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) The instrument has no maturity date and does not contain a dividend step-up or any other term or feature that creates an incentive to redeem; and

(iv) If callable by its terms, the instrument may be called only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called earlier than five years upon the occurrence of a regulatory event that precludes the instrument from being included in the building block parent's company available capital or building block available capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*). In addition:

(A) The top-tier depository institution holding company must receive the prior approval of the Board to exercise a call option on the instrument.

(B) The building block parent does not create at issuance, through action or communication, an expectation that the call option will be exercised.

(C) Prior to exercising the call option, or immediately thereafter, the top-tier depository institution holding company must either: replace any amount called with an equivalent amount of an instrument that meets the criteria for additional tier 1 capital instruments or common equity tier 1 instruments under this section; or demonstrate to the satisfaction of the Board that following redemption, the top-tier depository institution holding company would continue to hold an amount of capital that is commensurate with its risk.

Note 4 to paragraph (a)(2)(iv)(C): A building block parent may replace qualifying capital instruments concurrent with the redemption of existing qualifying capital instruments.

(v) Redemption or repurchase of the instrument requires prior approval of the Board.

(vi) The paid-in amount would be classified as equity under GAAP.

(vii) The instrument meets the criteria in § 217.20(c)(1)(vii) through (ix) and (xi) through (xiv), except that each instance of ''Board-regulated institution'' is replaced with ''building block parent''.

(3) *Common equity tier 1 capital instruments.* Common equity tier 1 capital instruments of a top-tier depository institution holding company are instruments issued by any inventory company that are qualifying capital instruments under paragraph (a)(1) of this section and that meet all of the following criteria:

Note 5 to paragraph (a)(3) introductory text: For purposes of this paragraph (a)(3), the supervised insurance organization evaluates the criteria in paragraph (a)(1) of this section with regard to the building block in which the issuing inventory company is a member.

(i) The holders of the instrument bear losses, as they occur, equally, proportionately, and simultaneously with the holders of all other qualifying capital instruments (other than additional tier 1 capital instruments or tier 2 capital instruments) before any losses are borne by holders of claims on the building block parent any with greater priority in a receivership, insolvency, liquidation, or similar proceeding.

(ii) The paid-in amount would be classified as equity under GAAP.

(iii) The instrument meets the criteria in § 217.20(b)(1)(i) through (vii) and (x) through (xiii).

(4) *Tier 2 capital instruments.* Tier 2 capital instruments of a top-tier depository institution holding company are instruments issued by any inventory company that are qualifying capital instruments under paragraph (a)(1) of this section and are not additional tier 1 capital instruments or common equity tier 1 capital instruments.

(b) *Determination of building block available capital*—(1) *In general.* For each building block parent, *building block available capital* means the sum of the items described in paragraphs (b)(1)(i) and (ii) of this section:

(i) The company available capital of the building block parent:

(A) Less the amount of downstreamed capital owned by any member of the building block parent's building block; and

(B) Adjusted pursuant to paragraph (c) of this section.

(ii) For each downstream building block parent, the adjusted downstream building block available capital ($BBAC_{ADJ}$), which is calculated according to the following formula:

Equation 1 to Paragraph (b)(1)(ii)

$$BBAC_{ADJ} = (BBAC_{DS} - UpInv + ACSM) \cdot AS$$

Where:

$BBAC_{DS}$ is equal to the building block available capital of the downstream building block parent;

UpInv is equal to the amount of any upstream investment held by that downstream building block parent in the building block parent;

ACSM is equal to the appropriate available capital scaling modifier under § 217.606; and *AS* is equal to the building block parent's allocation share of the downstream building block parent.

(2) *Combining tiers of capital.* If there is more than one tier of company available capital under a building block parent's indicated capital framework, the amounts of company available capital from all tiers are combined in calculating building block available capital in accordance with paragraph (b) of this section.

(c) *Adjustments in determining building block available capital.* For purposes of the calculations required in paragraph (b) of this section, a supervised insurance organization must adjust the company available capital for any building block parent as follows:

(1) *Nonqualifying capital instruments.* A supervised insurance organization must deduct from the building block parent's company available capital any accretion arising from any instrument issued by any company that is a member of the building block parent's building block, where the instrument is not a qualifying capital instrument.

(2) *Insurance underwriting RBC.* When applying the U.S. Federal banking capital rules as the indicated capital framework for a building block parent, a supervised insurance organization must add back into the building block parent's company available capital any amounts deducted pursuant to § 3.22(b)(3) of this title, § 217.22(b)(3), or § 324.22(b)(3) of this title, as applicable.

(3) *Permitted accounting practices and prescribed accounting practices.* A supervised insurance organization must adjust the building block parent's company available capital by any difference between:

(i) The building block parent's company available capital; and

(ii) The building block parent's company available capital recalculated under the assumption that neither the building block parent, nor any company that is a member of that building block parent's building block, had prepared its financial statements with the application of any permitted accounting practice, prescribed accounting practice, or other practice, including legal, regulatory, or accounting procedures or standards, that departs from a solvency framework as promulgated for application in a jurisdiction.

(4) *Adjusting certain life insurance reserves.* A supervised insurance organization must adjust the building block parent's company available capital by any difference between:

(i) The building block parent's company available capital; and

(ii) The building block parent's company available capital recalculated based on using a 40 percent factor applied to all term life insurance accounted for using an approach based on the Valuation of Life Insurance Policies Model Regulation and a 90 percent factor applied to all secondary-guaranteed universal life insurance products accounted for using Actuarial Guideline XXXVIII—The Application of the Valuation of Life Insurance Policies Model Regulation.

(5) *Deduction of investments in own capital instruments*—(i) *In general.* A supervised insurance organization must deduct from the building block parent's company available capital any investment by the building block parent in its own capital instrument(s), or any investment by any member of the building block parent's building block in capital instruments of the building block parent, including any net long position determined in accordance with paragraph (c)(5)(ii) of this section, to the extent that such investment(s) would otherwise be accretive to the building block parent's building block available capital.

(ii) *Net long position.* For purposes of calculating an investment in a building block parent's own capital instrument under this section, the net long position is determined in accordance with § 217.22(h), provided that a separate account asset or associated guarantee is not regarded as an indirect exposure unless the net long position of the fund underlying the separate account asset (determined in accordance with § 217.22(h) without regard to this paragraph (c)(5)(ii)) equals or exceeds 5 percent of the value of the fund.

(6) *Reciprocal cross holdings in the capital of financial institutions.* A supervised insurance organization must deduct from the building block parent's company available capital any investment(s) by the building block parent in the capital of unaffiliated financial institutions that it holds reciprocally, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, to the extent that such investment(s) would otherwise be accretive to the building block parent's building block available capital.

(d) *Limits on certain elements in building block available capital of top-tier depository institution holding companies*—(1) *Investment in capital of unconsolidated financial institutions.* (i) A top-tier depository institution holding company must deduct from its building block available capital any accreted capital from an investment in the capital of an unconsolidated financial institution that is not an inventory company, that exceeds twenty-five percent of the amount of its building block available capital, prior to application of this adjustment, excluding tier 2 capital instruments. For purposes of this paragraph (d)(1), the amount of an investment in the capital of an unconsolidated financial institution is calculated in accordance with § 217.22(h), except that a separate account asset or associated guarantee is not an indirect exposure.

(ii) The deductions described in this paragraph (d)(1) are net of associated deferred tax liabilities in accordance with § 217.22(e).

(2) *Adjustments to accretions from tier 2 capital instruments.* A top-tier depository institution holding company must adjust accretions from tier 2 capital instruments in accordance with this paragraph (d)(2).

(i) A top-tier depository institution holding company must deduct any accretions from tier 2 capital instruments that, in the aggregate, exceed the greater of:

(A) 150 percent of the amount of its building block capital requirement; and

(B) The amount of instruments subject to paragraph (e) or (f) of this section that are outstanding as of the submission date; and

(ii) A top-tier depository institution holding company must increase accretions from tier 2 capital instruments by any amount deducted from accretions from additional tier 1 capital instruments by operation of paragraph (d)(3) of this section.

(3) *Limitation on additional tier 1 capital instruments.* A top-tier depository institution holding company must deduct any accretions from additional tier 1 capital instruments that, in the aggregate, exceed the greater of:

(i) 100 percent of the amount of its building block capital requirement; and

(ii) The amount of instruments subject to paragraph (f) of this section that are outstanding as of the submission date.

(e) *Treatment of outstanding surplus notes.* A surplus note issued by any company in a supervised insurance organization is deemed to meet the criteria in paragraphs (a)(1)(iii) and (vi) of this section if:

(1) The instrument was issued prior to the later of—

(i) November 1, 2019; and

(ii) The earliest date on which any depository institution holding company in the group became a depository institution holding company;

(2) The surplus note is a company capital element for the issuing company;

(3) The surplus note is not owned by an affiliate of the issuer; and

(4) The surplus note is outstanding as of the submission date.

(f) *Treatment of certain callable instruments.* Notwithstanding the criteria under paragraph (a)(1) of this section, an instrument with terms that provide that the instrument may be called earlier than five years upon the occurrence of a rating event does not violate the criterion in paragraph (a)(1)(v) of this section, provided that the instrument was a company capital element issued prior to January 1, 2014, and that such instrument satisfies all other criteria under paragraph (a)(1) of this section.

(g) *Board approval of a capital instrument.* (1) A supervised insurance organization must receive Board prior approval to include in its building block available capital for any building block an instrument (as listed in this section), issued by any company in the supervised insurance organization, unless the instrument:

(i) Was a capital element for the issuer prior to May 19, 2010, in accordance with the indicated capital framework that was effective as of that date and the underlying instrument meets the criteria to be a qualifying capital instrument (as defined in paragraph (a) of this section); or

(ii) Is equivalent, in terms of capital quality and ability to absorb losses with respect to all material terms, to a company capital element that the Board determined may be included in regulatory capital pursuant to paragraph (g)(2) of this section, or may be included in the regulatory capital of a Board-regulated institution pursuant to § 217.20(e)(3).

(2) After determining that an instrument may be included in a supervised insurance organization's regulatory capital under this subpart, the Board will make its decision publicly available, including a brief description of the material terms of the instrument and the rationale for the determination.

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

■ 7. The authority citation for part 238 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 5365; 1813, 1817, 1829e, 1831i, 1972, 15 U.S.C. 78*l.*

Subpart P—Company-Run Stress Test Requirements for Savings and Loan Holding Companies

■ 8. In § 238.142:

■ a. Revise paragraph (a)(1) introductory text; and

■ b. Add paragraph (a)(3).

The revision and addition read as follows:

§ 238.142 Applicability.

(a) * * *

(1) *Applicability.* Except as provided in paragraphs (a)(3) and (b) of this

section, this subpart applies to any covered company, which includes:

* * * * *

(3) *Insurance savings and loan holding companies.* Notwithstanding any other provision of this paragraph (a), this subpart does not apply to a covered company that is subject to part 217, subpart J, of this chapter.

* * * * *

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 9. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p-1, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

Subpart F—Company-Run Stress Test Requirements for Certain U.S. Bank Holding Companies and Nonbank Financial Companies Supervised by the Board

■ 10. In § 252.53:

■ a. Revise paragraph (a)(1) introductory text; and

■ b. Add paragraph (a)(3).

The revision and addition read as follows:

§ 252.53 Applicability.

(a) * * *

(1) *Applicability.* Except as provided in paragraphs (a)(3) and (b) of this section, this subpart applies to any covered company, which includes:

* * * * *

(3) *Insurance bank holding companies.* Notwithstanding any other provision of this paragraph (a), this subpart does not apply to a covered company that is a bank holding company that is subject to part 217, subpart J, of this chapter.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023–23911 Filed 11–24–23; 8:45 am]

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Part III

Department of Housing and Urban Development

Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG–DR Consolidated Waivers and Alternative Requirements Notice; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6428–N–01]

Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG–DR Consolidated Waivers and Alternative Requirements Notice

AGENCY: Office of the Assistant Secretary for Community Planning and Development, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This Allocation Announcement Notice allocates $142 million of CDBG–DR funds appropriated by the Disaster Relief Supplemental Appropriations Act, 2023 for major disasters occurring in 2022 and 2023. This notice identifies grant requirements for these funds, including requirements in HUD's CDBG–DR Consolidated Notice (''Consolidated Notice'') found in appendix B, and a limited number of amendments to the Consolidated Notice that apply to CDBG–DR grants for disasters occurring in 2022 and January 2023. The Consolidated Notice, as amended by this Allocation Announcement Notice, includes waivers and alternative requirements, relevant regulatory requirements, the grant award process, criteria for action plan approval, and eligible disaster recovery activities.

DATES: *Applicability Date:* December 4, 2023.

FOR FURTHER INFORMATION CONTACT: Tennille Smith Parker, Director, Office of Disaster Recovery, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Facsimile inquiries may be sent to Ms. Parker at 202–708–0033 (this is not a toll-free number). Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. Allocations

The Disaster Relief Supplemental Appropriations Act, 2023 (Pub. L. 117–328, Division N, Title X) approved December 29, 2022, makes available $3,000,000,000 in CDBG–DR funds. These CDBG–DR funds are for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCDA) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the ''most impacted and distressed'' (MID) areas resulting from a qualifying major disaster that occurred in 2022 or later until such funds are fully allocated. The **Federal Register** notice published on May 18, 2023 (88 FR 32046) announced $2,837,849,000 from Public Law 117–328 to address recovery needs and mitigation activities for major disasters that occurred in 2022. Based on the unmet needs allocation methodology outlined in appendix A, this notice announces the remaining allocations of $142,151,000 from Public Law 117–328 (the ''Appropriations Act'') for disasters occurring in 2022 and January 2023. The Appropriations Act requires HUD to include with any final allocation for the total estimate of unmet need an additional amount of 15 percent of that estimate for mitigation activities that reduce risk in the MID areas (see table 1).

The Appropriations Act provides that grants shall be awarded directly to a state, local government, or Indian tribe at the discretion of the Secretary.

Pursuant to the Appropriations Act, HUD has identified MID areas based on the best available data for all eligible affected areas. A detailed explanation of HUD's allocation methodology is provided in appendix A of this notice. All of the grantees within this notice must use at least 80 percent of their allocations to address unmet disaster needs or mitigation activities in the HUD-identified MID areas, as identified in the last column of table 2. These grantees may use the remaining 20 percent of their allocation to address unmet disaster needs or mitigation activities in those areas that the grantee determines are ''*most* impacted and distressed'' within an area that received a Presidential major disaster declaration identified by the Federal Emergency Management Agency (FEMA) disaster numbers listed in column two of table 1. However, these grantees are not precluded from spending 100 percent of their allocation in the HUD-identified MID areas if they choose to do so. Detailed requirements related to MID areas are provided in section II.A.3. of the Consolidated Notice.

Based on a review of the impacts from the eligible disasters, and estimates of unmet need, HUD made the following allocations for disasters occurring in 2022 and January 2023:

TABLE 1—ALLOCATIONS FOR UNMET NEEDS AND MITIGATION ACTIVITIES UNDER PUBLIC LAW 117–328 FOR DISASTERS OCCURRING IN 2022 AND 2023

Year	FEMA disaster No.	State	Grantee	Allocation for unmet needs from Public Law 117–328	CDBG–DR mitigation set-aside amounts from Public Law 117–328	Total allocated under this notice from Public Law 117–328
2022	4652	New Mexico	State of New Mexico	[1] $1,587,000	$2,544,000	$4,131,000
2023	4684	Alabama	State of Alabama	9,046,000	1,357,000	10,403,000
2023	4683	California	State of California	100,019,000	15,003,000	115,022,000
2023	4685	Georgia	State of Georgia	10,952,000	1,643,000	12,595,000

[1] Total Unmet Needs for DR 4652 were calculated at $16,961,434 before adjusting for the special Congressional appropriations for the Hermits Creek/Calf Canyon Fire (the ''Hermit's Peak/Calf Canyon Fire Assistance Act,'' Public Law 117–180, 136 Stat. 2114 (2022)). As such, HUD has calculated the mitigation for this disaster as 15 percent of those total unmet needs. The allocation for unmet needs is reduced to $1,587,000 to reflect that the special appropriation is anticipated to address many of the calculated unmet needs.

TABLE 1—ALLOCATIONS FOR UNMET NEEDS AND MITIGATION ACTIVITIES UNDER PUBLIC LAW 117–328 FOR DISASTERS OCCURRING IN 2022 AND 2023—Continued

Year	FEMA disaster No.	State	Grantee	Allocation for unmet needs from Public Law 117–328	CDBG–DR mitigation set-aside amounts from Public Law 117–328	Total allocated under this notice from Public Law 117–328
Totals	....	....	....	120,017,000	18,003,000	142,151,000

TABLE 2—MOST IMPACTED AND DISTRESSED AREAS FOR DISASTERS OCCURRING IN 2022 AND 2023

Grantee	Minimum amount from Public Law 117–328 that must be expended in the HUD-identified "most impacted and distressed" areas in column 3	"Most impacted and distressed" areas
State of New Mexico	$3,304,800	87742 and 87745 (San Miguel County).
State of Alabama	8,322,400	36703 (Dallas County).
State of California	92,017,600	Merced, Santa Cruz, San Luis Obispo Counties; 95220 (San Joaquin County), 93001 (Ventura County).
State of Georgia	10,076,000	30223 (Spalding County).

II. Use of Funds

This Allocation Announcement Notice outlines requirements that apply to grantees receiving funds under this notice. Funds for disasters occurring in 2022 and 2023 announced in this notice are subject to the requirements of this Allocation Announcement Notice and the Consolidated Notice, included as appendix B, as amended. HUD makes amendments to the Consolidated Notice in this Allocation Announcement Notice to reflect the terms of the Appropriations Act. However, the Consolidated Notice in appendix B is the same Consolidated Notice included as appendix B in previous Allocation Announcements Notices published in the **Federal Register** (87 FR 6364, 87 FR 31636, 88 FR 3198, and 88 FR 32046). Sections III.A.1, III.A.1.a, and III.A.1.b of this Allocation Announcement Notice include instructions for a grantee submitting an early action plan for program administrative costs and will replace the alternative requirement in the Consolidated Notice at III.C.1 for purposes of accessing funds for program administrative costs prior to the Secretary's certification.

To comply with the statutory requirement in the Appropriations Act, grantees shall not use CDBG–DR funds for activities reimbursable by or for which funds are made available by FEMA or the U.S. USACE of Engineers (USACE). Grantees must verify whether FEMA or USACE funds are available prior to awarding CDBG–DR funds to specific activities or beneficiaries. Grantees may use CDBG–DR funds as the non-Federal match as described in section II.C.3 of the Consolidated Notice.

II.A. Allocations of CDBG–DR Funds for Smaller Grants

Paragraph III.C.1.b of the Consolidated Notice requires that CDBG–DR action plans "demonstrate a reasonably proportionate allocation of resources relative to areas and categories (*i.e.,* housing, economic revitalization, and infrastructure) of greatest needs identified in the grantee's impact and unmet needs assessment or provide an acceptable justification for a disproportional allocation." Additionally, paragraph III.C.1.g of the Consolidated Notice requires grantees to "provide a budget for the full amount of the allocation that is reasonably proportionate to its unmet needs (or provide an acceptable justification for disproportional allocation) and is consistent with the requirements to integrate hazard mitigation measures into all its programs and projects."

HUD recognizes that grantees receiving a relatively small allocation of funds for 2022 and 2023 disasters in this notice may most effectively advance recovery by more narrowly targeting these limited recovery and mitigation resources. Accordingly, for grantees receiving an allocation of less than $20 million for 2022 and 2023 disaster(s) announced in this notice, HUD will consider the small size of the grant and HUD's allocation methodology as acceptable justification for a grantee to propose a disproportional allocation when the grantee is allocating funds to address unmet affordable rental housing needs caused by or exacerbated by the disaster(s). Grantees exercising this option must continue to comply with the applicable requirements of this notice and the Consolidated Notice, including the CDBG–DR mitigation set-aside requirement in section IV.A.2 of this notice.

III. Overview of Grant Process

III.A. Requirements Related to Administrative Funds

III.A.1. Action plan submittal for program administrative costs. The Appropriations Act allows grantees receiving an award under this notice to access funding for program administrative costs prior to the Secretary's certification of financial controls and procurement processes, and adequate procedures for proper grant management. To implement this authority, the following alternative requirement will replace the alternative requirement in the Consolidated Notice at III.C.1.

If a grantee chooses to access funds for program administrative costs prior to the Secretary's certification, it must first prepare an action plan describing its use of funds for program administrative costs, subject to the five percent cap on the use of grant funds for such costs. Instead of following requirements in section III.C.1 of the Consolidated Notice, which require grantees to use the Public Action Plan in HUD's DRGR system to submit their action plans, grantees will follow a different process to access funds for program administrative costs prior to the Secretary's certification.

As part of the process of accessing funds for these costs, grantees must submit to HUD an action plan describing their use of funds for program administrative costs. The action plan will be developed outside of DRGR and must include all proposed uses of funds for program administrative costs incurred prior to a final action plan being submitted and approved. The action plan for program administrative costs must also include the criteria for eligibility and the amount to be budgeted for that activity. If a grantee chooses to submit the action plan for program administrative costs, the grantee should calculate its need to cover program administrative costs over the life of the grant and consider how much of its available program administrative funds may be reasonably budgeted at this very early stage of its grant lifecycle.

III.A.1.a. Publication of the action plan for program administrative costs and opportunity for public comment. The grantee must publish the proposed action plan for program administrative costs, and substantial amendments to the plan, for public comment. To permit a more streamlined process and ensure that grants for program administrative costs are awarded in a timely manner in order to allow grantees to more rapidly design and launch recovery activities, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, 24 CFR 91.105(b) through (d), and 24 CFR 91.115(b) through (d), with respect to citizen participation requirements, are waived and replaced by the alternative requirements in section III.A.1 that apply only to action plans for program administrative costs and substantial amendments to these plans. Additionally, for these action plans only, grantees are not subject to the Consolidated Notice action plan requirements in sections III.B.2.i, III.C.2, III.C.3, III.C.6, and III.D.1.a–c.

The manner of publication of the action plan for program administrative costs must include prominent posting on the grantee's official disaster recovery website and must afford residents, affected local governments, and other interested parties a reasonable opportunity to review the contents of the plan or substantial amendment. Subsequent to publication of the action plan or substantial amendment to that plan, the grantee must provide a reasonable time frame (no less than seven days) and multiple methods (including electronic submission) for receiving comments on the action plan or substantial amendment for program administrative costs. At a minimum, the topic of disaster recovery on the grantee's website, including the posted action plan or substantial amendment, must be navigable by interested parties from the grantee homepage and must link to the disaster recovery website as required by section III.D.1.e of the Consolidated Notice. The grantee's records must demonstrate that it has notified affected parties through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations. Grantees are not required to hold any public hearings on the proposed action plan or substantial amendment for program administrative costs.

The grantee must consider all oral and written comments on the action plan or any substantial amendment. Any updates or changes made to the action plan in response to public comments should be clearly identified in the action plan. A summary of comments on the plan or amendment, and the grantee's response to each, must be included with the action plan or substantial amendment. Grantee responses shall address the substance of the comment rather than merely acknowledge that the comment was received.

After the grantee responds to public comments, it will then submit its action plan or substantial amendment for program administrative costs (which includes Standard Form 424 (SF–424)) to HUD for approval. There is no due date for this plan as it may be submitted any time prior to the grantee's Public Action Plan. HUD will review the action plan or substantial amendment for program administrative costs within 15 days from date of receipt and determine whether to approve the action plan or substantial amendment to that plan per the criteria identified in this notice.

III.A.1.b. Certifications waiver and alternative requirement. Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c), and (m)), sections 106(d)(2)(C) and (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) and (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the following alternative. Each grantee choosing to submit an action plan for program administrative costs must make the following certifications listed in section III.F.7 of the Consolidated Notice and include them with the submission of this plan: paragraphs b, c, d, g, i, j, k, l, p, and q. Additionally, HUD is waiving section 104(a)-(c) and (d)(1) of the HCDA (42 U.S.C. 5304), section 106(c)(1) and (d) of the HCDA (42 U.S.C. 5306), section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4630), section 305 of the URA (42 U.S.C. 4655), and regulations at 24 CFR 91.225(a)(2), (6), and (7), 91.225(b)(7), 91.325(a)(2), (6), and (7), 49 CFR 24.4(a), and 24 CFR 42.325 only to the extent necessary to allow grantees to receive a portion of their allocation as a grant for program administrative costs before submitting other statutorily required certifications. Each grantee must make all certifications included in section III.F.7 of the Consolidated Notice and submit them to HUD when it submits its Public Action Plan in DRGR described in III.C.1.

III.A.1.c. Submission of the action plan for program administrative costs in DRGR. After HUD's approval of the action plan for program administrative costs, the grantee enters the activities from its approved action plan into the DRGR system if it has not previously done so and submits its DRGR action plan to HUD (funds can be drawn from the line of credit only for activities that are established in the DRGR system). HUD has previously provided additional guidance (''Fact Sheet'') with screenshots and step-by-step instructions describing the submittal process for this DRGR action plan for program administrative costs.[2] This process will allow a grantee to access funds for program administrative costs while the grantee begins developing its Public Action Plan in DRGR as provided in section III.C.1 of the Consolidated Notice.

III.A.1.d. Incorporation of the action plan for program administrative costs into the Public Action Plan. The grantee shall describe the use of all grant funds for administrative costs in the Public Action Plan required by section III.C.1. Use of grant funds for administrative costs before approval of the Public Action Plan must be consistent with the action plan for administrative costs. Once the Public Action Plan is approved, the use of all grant funds must be consistent with the Public Action Plan. Upon HUD's approval of the Public Action Plan, the action plan for administrative costs shall only be relevant to administrative costs charged to the grant before the date of approval of the Public Action Plan.

III.A.2. Use of administrative funds across multiple grants. The Appropriations Act authorize special treatment of grant administrative funds. Grantees that are receiving awards under this notice, and that have received CDBG–DR or Community Development Block Grant mitigation (CDBG–MIT) grants in the past or in any

[2] The Fact Sheet describing the process to submit an action plan for program administrative costs in DRGR can be viewed at *https://files.hudexchange.info/resources/documents/DRGR-Fact-Sheet-PL117-43-Appropriation-Grantees.pdf.*

future acts, may use eligible administrative funds (up to five percent of each grant award plus up to five percent of program income generated by the grant) appropriated by this act for the cost of administering any CDBG–DR or CDBG–MIT grant without regard to the particular disaster appropriation from which such funds originated. If the grantee chooses to exercise this authority, the grantee must have appropriate financial controls to comply with the requirement that the amount of grant administration expenditures for each CDBG–DR or CDBG–MIT grant will not exceed five percent of the total grant award for each grant (plus five percent of program income generated by each grant), review and modify its financial management policies and procedures regarding the tracking and accounting of administration costs, as necessary, and address the adoption of this treatment of administrative costs in the applicable portions of its Financial Management and Grant Compliance submissions as referenced in section III.A.1 of the Consolidated Notice. Grantees are reminded that all uses of funds for program administrative activities must qualify as an eligible administration cost.

IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. This section of the notice and the Consolidated Notice describe rules, statutes, waivers, and alternative requirements that apply to allocations under this notice. For each waiver and alternative requirement in this notice and incorporated through the Consolidated Notice, the Secretary has determined that good cause exists, and the waiver or alternative requirement is not inconsistent with the overall purpose of title I of the HCDA. The waivers and alternative requirements provide flexibility in program design and implementation to support full and swift recovery following eligible disasters, while ensuring that statutory requirements are met.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery and mitigation activities. Grantees should work with the assigned CPD representative to request any additional waivers or alternative requirements from HUD headquarters. The waivers and alternative requirements described below apply to all grantees under this notice. Under the requirements of the Appropriations Act, waivers and alternative requirements are effective five days after they are published in the **Federal Register** or on the website of the Department.

IV.A. Grant Administration

IV.A.1. Duplication of Benefits (DOB). Grantees that received funds for disasters occurring in 2022 and 2023 must follow the requirements located in section IV.A. of the Consolidated Notice and the DOB requirements described in this section. The **Federal Register** notice published on June 2019, titled ‘‘Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees’’ (84 FR 28836) (‘‘2019 DOB Notice’’), revised the DOB requirements that apply to CDBG–DR grants for disasters declared between January 1, 2016, and December 31, 2021. For these disasters, the 2019 DOB Notice also implemented temporary changes to the treatment of loans made by the Disaster Recovery Reform Act of 2018 (DRRA) (division D of Pub. L. 115–254), which sunsets on October 5, 2023.

This DRRA loan exception does not apply to disasters occurring in 2022 and 2023, therefore, subsidized loans may be a duplication of benefits for CDBG–DR grants announced in this notice (depending on a grantee's DOB analysis). Without the DRRA loan exception, most subsidized loans duplicate CDBG–DR funds for the same purpose (there are limited exceptions for declined, cancelled, or subsidized short-term loans to pay for eligible costs before CDBG–DR funds became available, as described in section IV.A.1. of the Consolidated Notice). Therefore, HUD's time-limited policy in the 2019 DOB Notice to permit reimbursement of costs paid with the proceeds of subsidized loans does not apply after the DRRA loan exception sunsets. Additionally, because the DRRA loan exception never applied to disasters occurring in 2022 or later, grantees receiving CDBG–DR funds for those disasters are not able to reimburse the costs paid by subsidized loans, including SBA loans, unless the exceptions in section IV.A.1.a. of the Consolidated Notice applies. These grantees must follow the duplication of benefits requirements described below and in section IV.A. of the Consolidated Notice.

This section of the notice describes the applicable laws and requirements related to DOB, including the general framework to calculate DOB. Section IV.A. of the Consolidated Notice describes the exceptions for when a subsidized loan that is cancelled or declined is not considered a duplication of benefits.

IV.A.1.(a). The Stafford Act. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5207) (Stafford Act) is the primary legal authority establishing the framework for the Federal government to provide disaster and emergency assistance.

Section 312 of the Stafford Act directs Federal agencies that provide disaster assistance to assure that people, businesses, or other entities do not receive financial assistance that duplicates any part of their disaster loss covered by insurance or another source (42 U.S.C. 5155(a)). Section 312 also makes recipients of Federal disaster assistance liable for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)).

The Stafford Act also provides that when assistance covers only a part of the recipient's disaster needs, additional assistance to cover needs not met by other sources will not cause a DOB (42 U.S.C. 5155(b)(3)). CDBG–DR assistance may only pay for eligible activities to address unmet needs. This section advises grantees on the calculation of unmet needs through a duplication of benefits analysis.

*IV.A.1.(b). CDBG–DR Appropriations Act and **Federal Register** Notices.* CDBG–DR funds are made available for ‘‘necessary expenses’’ by the Appropriations Act that contain statutory requirements on the use of the grant funds. Grantees are subject to the requirements of the Appropriations Act, this notice, and the Consolidated Notice.

Since 2013, as a condition of making any CDBG–DR grant, the Secretary must certify that the grantee has established adequate procedures to prevent DOB. To meet this requirement, grantees must submit DOB policies to HUD for review before HUD will award non-administrative funds. ‘‘Adequate’’ procedures are those that meet the requirements that HUD established in this notice, in the Consolidated Notice, and as reflected in the related checklists that are available online. HUD requires grantees to establish DOB policies that incorporate certain steps before committing or awarding assistance. Typically, the steps include determining the total need for assistance, verifying the total assistance available from all sources of disaster assistance (using recent data available from FEMA, SBA, and other sources), excluding non-duplicative assistance from total assistance to calculate DOB, reducing the total award by the amount of the DOB, and obtaining an agreement from applicants to repay duplicative assistance.

This notice and the Consolidated Notice also require CDBG–DR grantees to consider projected sources of disaster assistance in the needs assessment that is part of an action plan for disaster recovery. Consideration of other potential sources of assistance when planning for the use of grant funds helps to limit the possibility of duplication between CDBG–DR and other assistance.

IV.A.1.(c). Necessary and Reasonable Requirements. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in subpart E of 2 CFR part 200 (the Cost Principles) applicable to all CDBG–DR grantees and their subrecipients require that costs are necessary and reasonable. The Cost Principles are made applicable to states by 24 CFR 570.489(p) and to local governments through 24 CFR 570.502. State grantees are also subject to 24 CFR 570.489(d), which requires that states shall have fiscal and administrative requirements to ensure that grant funds are used ''for reasonable and necessary costs of operating programs.''

Under the Cost Principles, a cost assigned to a grant ''is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost'' (2 CFR 200.404).

Grantees must consider factors described at 2 CFR 200.404(a) through (e) when determining which types and amounts of cost items are necessary and reasonable. Based on these factors, HUD generally presumes that if a cost has been paid by another source, charging it to the Federal award violates the necessary and reasonable standard unless grant requirements permit reimbursement.

IV.A.1.(d). Basic Duplication of Benefits Calculation Framework. The Stafford Act requires a fact specific inquiry into assistance received by each applicant. This notice refers to the subject of a DOB review as an ''applicant'' or ''CDBG–DR applicant'' and uses the term ''applicant'' to include individuals, businesses, households, or other entities that apply to the grantee or a subrecipient for CDBG–DR assistance, as well as entities that use CDBG–DR assistance for an activity without submitting an application (*e.g.,* the department or agency of the grantee administering the grant, other state or local departments or agencies, or local governments).

A grantee is prohibited from making a blanket determination that CDBG–DR assistance under one of its programs or activities does not duplicate another category or source of assistance. The grantee must conduct an individualized review of each applicant to determine that the amount of assistance will not cause a DOB by exceeding the unmet needs of that applicant. A review specific to each applicant is necessary because assistance available to each applicant varies widely based on individual insurance coverage, eligibility for various sources of assistance, and other factors.

This section establishes the primary considerations that must be part of a DOB analysis when providing CDBG–DR assistance, and a framework for analyzing need and avoiding DOB when calculating awards. CDBG–DR grantees have discretion to develop policies and procedures that tailor their DOB analyses to their own programs and activities so long as the grantee's policies and procedures are consistent with the requirements of this notice. If the grantee modifies its DOB procedures after the Secretary certifies that the grantee's DOB procedures are adequate, the grantee's modified procedures must meet standards HUD adopts to determine adequacy.

IV.A.1.(d)(i). Assess Applicant Need. A grantee must determine an applicant's total need. Total need is calculated based on need estimates at a point in time; total need is the current need. However, if the grantee's action plan permits CDBG–DR assistance to reimburse costs of CDBG–DR eligible activities undertaken by the applicant before submitting an application the total need also includes these costs. Generally, total need is calculated without regard to the grantee's program-specific caps on the amount of assistance.

For rehabilitation, reconstruction, or new construction activities, the need can be reasonably documented using construction cost estimates.

For recovery programs of the grantee that do not entail physical rebuilding, such as special economic development activities to provide an affected business with working capital, the total need will be determined by the requirements or parameters of the program or activity. For special economic development activities, total need should be guided by standard underwriting guidelines (when required by section II.D.6. of the Consolidated Notice, CDBG–DR grantees and subrecipients must comply with the underwriting guidelines in appendix A to 24 CFR part 570 when assisting a for-profit entity as part of a special economic development project).

The grantee's assessment of total need must consider in-kind donations of materials or services that are known to the grantee at the time it calculates need and makes the award. In-kind donations are non-cash contributions, such as donations of professional services, use of construction equipment, or contributions of building materials. In-kind donations are not ''financial assistance'' that creates a DOB under the Stafford Act, but they do reduce the amount of CDBG–DR assistance for unmet need because the donated goods or services reduce activity costs.

IV.A.1.(d)(ii). Identify Total Assistance. To calculate DOB, grantees are required to identify ''total assistance.'' For this notice, total assistance includes all reasonably identifiable financial assistance available to an applicant.

Total assistance includes resources such as cash awards, insurance proceeds, grants, and loans received by or available to each CDBG–DR applicant, including awards under local, state, or Federal programs, and from private or nonprofit charity organizations. At a minimum, the grantee's efforts to identify total assistance must include a review to determine whether the applicant received FEMA, SBA, insurance, and any other major forms of assistance (*e.g.,* state disaster assistance programs) generally available to applicants.

Total assistance does not include personal assets such as money in a checking or savings account (excluding insurance proceeds or disaster assistance deposited into the applicant's account); retirement accounts; credit cards and lines of credit; in-kind donations (although these non-cash contributions known to the grantee reduce total need); and private loans.

For this notice, a private loan is a loan that is not provided by or guaranteed by a governmental entity, and that requires the CDBG–DR applicant (the borrower) to repay the full amount of the loan (principal and interest) under typical commercial lending terms, *e.g.,* the loan is not forgivable. For DOB calculations, private loans are not financial assistance and need not be considered in the DOB calculation, regardless of whether the borrower is a person or entity.

By contrast, subsidized loans for the same purpose are to be included in the

DOB calculation unless an exception applies (see sections IV.A.1.a. or IV.A.1.b. of the Consolidated Notice).

Total assistance includes available assistance. Assistance is available if an applicant: (1) would have received it by acting in a reasonable manner, or in other words, by taking the same practical steps toward funding recovery as would disaster survivors faced with the same situation but not eligible to receive CDBG–DR assistance; or (2) has received the assistance and has legal control over it. Available assistance includes reasonably anticipated assistance that has been awarded and accepted but has not yet been received. For example, if a local government seeks CDBG–DR assistance to fund part of a project that also has been awarded FEMA Hazard Mitigation Grant Program (HMGP) assistance, the entire HMGP award must be included in the calculation of total assistance even if FEMA obligates the first award increment for the project, but subsequent increments remain unfunded until certain project milestones are met.

Applicants for CDBG–DR assistance are expected to seek insurance or other assistance to which they are legally entitled under existing policies and contracts, and to behave reasonably when negotiating payments to which they may be entitled. For example, it may be reasonable for an applicant to elect to receive an immediate lump sum insurance settlement based on estimated cost of rehabilitation instead of waiting for a longer period of time for the insurance company to calculate reimbursement based on actual replacement costs, even if the reimbursement based on actual costs would exceed the lump sum insurance settlement.

HUD generally considers assistance to be available if it is awarded to the applicant but is administered by another party instead of being directly deposited with the applicant. For example, if an entity administering homeowner rehabilitation assistance pays a contractor directly to complete the rehabilitation, the assistance is still considered available to the applicant.

By contrast, funds that are not available to an applicant must be excluded from the final CDBG–DR award calculation. For example, insurance or rehabilitation assistance received by a previous owner of a disaster damaged housing unit is not available to a current owner that acquired the unit by sale or transfer (including a current owner that inherited the unit as a result of the death of the previous owner) unless the current owner is a co-recipient of that assistance.

Funds are not available to an applicant if the applicant does not have legal control of the funds when they are received. For example, if a homeowner's mortgage requires insurance proceeds to be applied to reduce the unpaid mortgage principal, then the lender/mortgage holder (not the homeowner) has legal control over those funds. The homeowner is legally obligated to use insurance proceeds for the purpose of reducing the unpaid mortgage principal and does not have a choice in using them for any other purpose, such as to rehabilitate the house. Under these circumstances, insurance proceeds do not reduce CDBG–DR rehabilitation assistance eligibility.

Alternatively, if a lender requires use of insurance for rehabilitation, or a disaster-affected homeowner chooses to apply insurance proceeds received for damage to the building to reduce an unpaid mortgage principal, these insurance proceeds are treated as a DOB and reduce the amount of CDBG–DR funds the grantee may provide for rehabilitation.

IV.A.1.(d)(iii). Exclude Non-Duplicative Amounts. Once a grantee has determined the total need and the total assistance, it determines which sources it must exclude as non-duplicative for the DOB calculation. Grantees must exclude amounts that are: (1) provided for a different purpose; or (2) provided for the same purpose (eligible activity), but for a different, allowable use (cost). Below, each of these categories is explained in greater detail.

IV.A.1.(d)(iii)(1). Funds for a Different Purpose. Any assistance provided for a different purpose than the CDBG–DR eligible activity, or a general, non-specific purpose (*e.g.,* ''disaster relief/recovery'') and not used for the same purpose must be excluded from total assistance when calculating the amount of the DOB.

Insurance proceeds for damage or destruction of a building are for the same purpose as CDBG–DR assistance to rehabilitate or reconstruct that building. On the other hand, grantees may exclude, as non-duplicative, insurance provided for a different purpose (*e.g.,* insurance proceeds for loss of contents and personal property, or insurance proceeds for loss of buildings (such as a detached garage) that the grantee has determined it will not assist with CDBG–DR funds). However, a grantee may treat all insurance proceeds as duplicative if it is impractical to identify the portion of insurance proceeds that are non-duplicative because they are for a different purpose than the CDBG–DR assistance.

Similarly, CDBG–DR assistance paid to a homeowner as a housing incentive for the purpose of inducing the homeowner to sell the home to the grantee (*e.g.,* in conjunction with a buyout) are for a different purpose than funds provided for interim housing (*e.g.,* temporary assistance for rental housing during a period when a household is unable to reside in its home). In such a case, interim housing assistance may be excluded from the final DOB calculation as non-duplicative of funds paid for the housing incentive.

IV.A.1.(d)(iii)(2). Funds for Same Purpose, Different Allowable Use. Assistance provided for the same purpose as the CDBG–DR purpose (the CDBG–DR eligible activity) must be excluded when calculating the amount of the DOB if the applicant can document that actual specific use of the assistance was an allowable use of that assistance and was different than the use (cost) of the CDBG–DR assistance (*e.g.,* the purpose is housing rehabilitation, the use of the other assistance was roof replacement and the use of the CDBG–DR assistance is rehabilitation of the interior of the house). Grantees are advised to consult with HUD to determine what documentation is appropriate in this circumstance. As a starting point, grantees should consider whether the source of the assistance requires beneficiaries to maintain documentation of how the assistance was used.

Whether the use of the non-CDBG–DR assistance is an allowable use depends on the rules imposed by the source that provided the assistance. For example, assume that a CDBG–DR grantee is administering a homeowner rehabilitation program and an applicant to the program can document that he/she previously received and used FEMA funds for interim housing costs (*i.e.,* rent). If FEMA permitted the applicant to use its assistance for the general purpose of meeting any housing need, the CDBG–DR grantee can exclude the FEMA assistance used for interim housing as non-duplicative of the CDBG–DR assistance for rehabilitation.

If, on the other hand, FEMA limited the use of FEMA funds to housing rehabilitation, then the full amount of the FEMA assistance must be considered for the specific purpose of housing rehabilitation and cannot be excluded if the applicant used those funds for interim housing. If interim housing is not an allowable use, the amount of the FEMA housing rehabilitation assistance used for interim housing is considered a DOB. If the grantee thinks the actual use of the FEMA assistance may be allowable, the CDBG–DR grantee should contact FEMA for clarification.

Assistance provided for the purpose of housing rehabilitation, including assistance provided for temporary or minor rehabilitation, is for the same purpose as CDBG–DR rehabilitation assistance. However, the grantee can exclude assistance used for different costs of the rehabilitation, which are a different allowable use (rehabilitation costs not assisted with CDBG–DR). For example, if the other assistance is used for minor or temporary rehabilitation which enabled the applicant family to live in their home instead of moving to temporary housing until rehabilitation can be completed, the grantee can undertake remaining work necessary to complete rehabilitation. The grantee's assessment of total need at the time of application may include the costs of replacing temporary materials with permanent construction and of completing mold remediation by removing drywall installed with other assistance. These types of costs to modify partially completed rehabilitation that the grantee determines are necessary to comply with the requirements of CDBG–DR assistance do not duplicate other assistance used for the partial rehabilitation.

Grantees are encouraged to contact HUD for further guidance in cases when it is unclear whether non-CDBG–DR assistance for the same general purpose can be excluded from the DOB calculation because it was used for a different allowable use.

IV.A.1.(d)(iv). Identify DOB Amount and Calculate the Total CDBG–DR Award. The total DOB is calculated by subtracting non-duplicative exclusions from total assistance. Therefore, to calculate the total maximum amount of the CDBG–DR award, the grantee must: (1) identify total need; (2) identify total assistance; (3) subtract exclusions from total assistance to determine the amount of the DOB; and (4) subtract the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG–DR award.

Three considerations may change the maximum amount of the CDBG–DR award.

First, the grantee may impose a program cap that limits the amount of assistance an applicant is eligible to receive, which may reduce the potential CDBG–DR assistance available to the applicant.

Second, the grantee may increase the amount of an award if the applicant agrees to repay duplicative assistance it receives in the future (unless prohibited by a statutory order of assistance, as in the requirement to use FEMA or USACE assistance before CDBG–DR assistance discussed in sections II. and. IV.A.1.(f)). Section 312(b) of the Stafford Act permits a grantee to provide CDBG–DR assistance to an applicant who is or may be entitled to receive assistance that would be duplicative if: (1) the applicant has not received the other assistance at the time the CDBG–DR grantee makes its award; and (2) the applicant agrees to repay the CDBG–DR grantee for any duplicative assistance once it is received. The agreement to repay from future funds may enable a faster recovery in cases when other sources of assistance are delayed (*e.g.,* due to insurance litigation). HUD requires all grantees to enter into agreements with applicants before the applicant receives CDBG–DR assistance.

Third, the applicant's CDBG–DR award may increase if a reassessment shows that the applicant has additional unmet need.

IV.A.1.(d)(v). Reassess Unmet Need When Necessary. Although long-term recovery is a process, disaster recovery needs are calculated at points in time. As a result, a subsequent change in an applicant's circumstances can affect that applicant's remaining unmet need, meaning the need that was not met by CDBG–DR and other sources of assistance. Oftentimes, unmet need does not become apparent until after CDBG–DR assistance has been provided. Examples may include: a subsequent disaster that causes further damage to a partially rehabilitated home or business; an increase in the cost of construction materials; vandalism; contractor fraud; or theft of materials. Unmet need may also change if other resources become available to pay for costs of the activity (such as FEMA or USACE), and reduce the need for CDBG–DR.

To the extent that an original disaster recovery need was not fully met or was exacerbated by factors beyond the control of the applicant, the grantee may provide additional CDBG–DR funds to meet the increased unmet need.

Grantees must be able to identify and document additional unmet need, for example, by completing a professional inspection to verify the revised estimate of costs to rehabilitate or reconstruct damaged property.

IV.A.1.(e). Special Considerations. The potential for DOB arises most frequently under homeowner rehabilitation programs but is not limited solely to that type of activity. The following examples do not form an exhaustive list of all CDBG–DR funded programs or activities. They are included to illustrate instances when duplicative assistance can occur when assisting other recovery activities:

1. Assistance to businesses. Many grantees carry out economic revitalization programs that provide working capital assistance to businesses. Generally, working capital assistance is calculated after assessing a business's ability to use its current assets to pay its current liabilities. The grantee's DOB analysis must consider total assistance, which includes all sources of financial assistance available to the applicant to pay a portion of liabilities that will become due. For example, a downtown business alliance might award business recovery grants from its funds to cover some of the same liabilities. Even if the downtown business alliance does not call its assistance ''working capital'' assistance, the amount the business received from the downtown business alliance to pay the same costs as the CDBG–DR funds is a DOB. Therefore, a grantee's basis for calculating CDBG–DR economic development assistance and the purposes for which the applicant can use the assistance should be clearly identified so that grantees can prevent a DOB. As discussed above, assets such as cash and cash equivalents (excluding deposits of insurance proceeds or other disaster assistance), inventories, short-term investments and securities, accounts receivable, and other assets of the business are not financial assistance, although those assets may be relevant to underwriting.

2. Assistance for infrastructure. State grantees may assist state or local government entities by providing funding to restore infrastructure (public facilities and improvements) after a disaster. CDBG–DR funds used directly by state and local governments for public facilities and improvements, or other purposes are also subject to the DOB requirements of the Stafford Act. For example, a wastewater treatment facility owned by a local government may need to be rehabilitated. In this instance, total assistance, for a DOB analysis, would not only include any other Federal assistance available to rehabilitate the facility, but it must also include any local funds that are available for this activity. And if local funds were previously designated or planned for the activity, but are no longer available, the grantee should document that the local government recipient does not have funds set aside for the activity in any capital improvement plan (or similar document showing planned use of funds).

3. Payments made under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA).

Grantees may provide a displaced person (as defined under 24 CFR 570.606) with rental assistance payments under the URA or provide temporary relocation assistance (as described in 49 CFR part 24, *appendix A, 49 CFR 24.2(a)(9)(ii)(D)*) to persons temporary relocated as a result of a project. Relocation payments made under the URA, as well as under CDBG's optional relocation assistance provisions of 24 CFR 570.606(d), are subject to DOB requirements in this notice and the Consolidated Notice, as well as DOB requirements under the URA that prohibit payments for the same ''purpose and effect'' as another payment to a displaced person (49 CFR 24.3). To comply with CDBG–DR DOB requirements, before issuance of rental assistance payments required by the URA, grantees must complete a DOB analysis. For example, a CDBG–DR grantee must check FEMA assistance data to determine that FEMA did not provide rental assistance payments during the same time period (under the URA or as part of a FEMA Individual Assistance Award). Please note that while you cannot duplicate assistance for the same purpose, advisory services and the provision of notices required under the URA are not subject to this analysis because they are not financial assistance to the person, and therefore must be provided in accordance with the URA.

Subsidized Loans. For this notice, subsidized loans (including forgivable loans) are loans other than private loans. Subsidized loans are assistance that must be included in the DOB analysis unless an exception applies. Section IV.A. of the Consolidated Notice discusses these exceptions and related requirements for the treatment of subsidized loans in a duplication of benefits analysis. The full amount of a subsidized loan available to the applicant for the same purpose as CDBG–DR assistance is assistance that must be included in the DOB calculation unless one of the exceptions in IV.A.1. of the Consolidated Notice applies. A subsidized loan is available when it is accepted, meaning that the borrower has signed a note or other loan document that allows the lender to advance loan proceeds. Both SBA and FEMA provide subsidized loans for disaster recovery. Note that the statutory order of assistance provision pertaining to assistance from FEMA and USACE applies to grants and subsidized loans made by these agencies. Subsidized loans may also be available from other sources.

IV.A.1.(f). Order of Assistance. CDBG–DR appropriations acts generally include a statutory order of assistance for Federal agencies. Although the language may vary among appropriations, the statutory order of assistance typically provides that CDBG–DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA or USACE. This means that grantees must verify whether FEMA or USACE funds are available for an activity (*i.e.,* the application period is open) or the costs are reimbursable by FEMA or USACE (*i.e.,* the grantee will receive FEMA or USACE assistance to reimburse the costs of the activity) before awarding CDBG–DR assistance for costs of carrying out the same activity. If FEMA or USACE are accepting applications for the activity, the applicant must seek assistance from those sources before receiving CDBG–DR assistance. If the applicant's costs for the activity will be reimbursed by FEMA or USACE, the grantee cannot provide the CDBG–DR assistance for those costs. In the event that FEMA or USACE assistance is awarded after CDBG–DR to pay the same costs, it is the CDBG–DR grantee's responsibility to recapture CDBG–DR assistance that duplicates assistance from FEMA or USACE.

Under the Stafford Act, a Federal agency that provides duplicative assistance must collect that assistance. For CDBG–DR grants, the grantee is required to collect duplicative assistance it provides. A grantee that does not collect duplicative CDBG–DR assistance that it provides may resolve this noncompliance by reimbursing its program account with non-Federal funds in the amount of the duplication and reprograming the use of the funds in accordance with applicable requirements to avoid other corrective or remedial actions.

FEMA regulations at 44 CFR 206.191 set forth a delivery sequence that establishes which source of assistance is duplicative for certain programs. CDBG–DR assistance is not listed in FEMA's sequence, but as a practical matter, CDBG–DR assistance duplicates other sources received before CDBG–DR assistance for the same purpose and portion of need. Any amount received from other sources before the CDBG–DR assistance that is determined to be duplicative must be collected by the grantee. The mandatory agreement to repay (discussed in section IV.A.1.(i)below) can be used to prevent duplication by assistance that is available, but not yet received. If the duplicative assistance is received after CDBG–DR, the grantee must collect the DOB or contact HUD if it has questions about whether another Federal agency is responsible for collecting the duplication.

IV.A.1.(g). Multiple Disasters. When multiple disasters occur in the same location, and the applicant has not recovered from the first disaster at the time of a second disaster, the assistance provided in response to the second disaster may duplicate assistance for the same purpose and need as assistance provided after the first disaster. HUD recognizes that in this scenario, DOB calculations can be complicated. Damage from a second disaster, for example, may destroy work funded and completed in response to the first disaster. The second disaster may also damage or destroy receipts and other documentation of how applicants expended assistance provided after the first disaster.

Therefore, HUD is adopting the following policy that is applicable to circumstances when two disasters occur in the same area, and the applicant has not fully recovered from the first disaster before the second disaster occurs: Applicants are not required to maintain documentation related to the use of public disaster assistance (Federal, state, and local) beyond the period required by the agency that provided the assistance. If documentation cannot be provided, the grantee may accept a self-certification regarding how the applicant used the other agency's assistance, provided that the applicant is advised of the criminal and civil penalties that apply in cases of false claims and fraud, and the grantee determines that the applicant's total need is consistent with data the grantee has about the nature of damage caused by the disasters (*e.g.,* flood inundation levels). For example, a second disaster strikes three years after an agency provided assistance in response to the first disaster, and that agency required applicants to maintain documentation for two years, the grantee may accept a self-certification regarding how the applicant used the other agency's assistance.

IV.A.1.(h). Recordkeeping. The grantee must document compliance with DOB requirements. Policies and procedures for DOB may be specific for each program funded by the CDBG–DR grantee and should be commensurate with risk. Grantees should be especially careful to sufficiently document the DOB analysis for activities they are carrying out directly. Insufficient documentation on DOB can lead to findings, which can be difficult to resolve if records are missing, inadequate, or inaccurate to demonstrate compliance with DOB requirements.

When documenting its DOB analysis, grantees cannot rely on certification alone for proof of other sources of funds for the same purpose (unless authorized by this notice, see section IV.A.1.(g). above). Any certification by an applicant must be based on supporting evidence that will be kept available for inspection by HUD. For example, if an applicant certifies that other sources of funds were received and expended for a different purpose than the CDBG–DR funds, grantees must substantiate this assertion with an additional source of information (*e.g.,* physical inspections, credit card statements, work estimates, contractor invoices, flood inundation records, or receipts). For these reasons, HUD recommends that as soon as possible after a disaster, grantees advise the public and potential applicants to retain all receipts that document expenditures for recovery needs. Grantees should consult their CPD specialist or CPD representative with questions about the sufficiency of documentation.

IV.A.1.(i). Agreement to Repay. The Stafford Act requires grantees to ensure that applicants agree to repay all duplicative assistance to the agency providing that Federal assistance. To address any potential DOB, each applicant must also enter into an agreement with the CDBG–DR grantee to repay any assistance later received for the same purpose for which the CDBG–DR funds were provided. This agreement can be in the form of a subrogation agreement or similar document and must be signed by every applicant before the grantee disburses any CDBG–DR assistance to the applicant.

In its policies and procedures, the grantee must establish a method to monitor each applicant's compliance with the agreement for a reasonable period after project completion (*i.e.,* a time period commensurate with risk). Additionally, section III.A.1. of the Consolidated Notice requires a grantee's agreement to also include the following language: ''Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.''

IV.A.1.(j). Collecting a Duplication. If a potential DOB is discovered after CDBG–DR assistance has been provided, the grantee must reassess the applicant's need at that time (see section IV.A.1.(d)(v) above). If additional need is not demonstrated, CDBG–DR funds shall be recaptured to the extent they are in excess of the remaining need and duplicate other assistance received by the applicant for the same purpose. However, this determination may depend on what sources of assistance were last received by the applicant.

If a grantee fails to recapture funds from an applicant, HUD may impose corrective actions pursuant to 24 CFR 570.495 and 570.910, and **Federal Register** notices, as applicable. Also, HUD reminds grantees that the Stafford Act states that ''A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source.'' A grantee's failure to collect duplication of benefits does not remove an applicant's potential liability to the United States. A grantee that does not collect duplicative CDBG–DR assistance that it provides, should review HUD's guidance in the second paragraph of section *IV.A.1.(f).* above.

The grantee may refer to any relevant guidance or the debt collection procedures in place for the state or local government. HUD is available to provide guidance to grantees in establishing or revising the grantee's duplication of benefits policies and procedures.

CDBG–DR grantees awarded funds for disasters occurring in 2022 or later can find the additional DOB requirements in Section IV.A. of the Consolidated Notice.

IV.A.2. CDBG–DR mitigation set-aside. The Appropriations Act requires HUD to include in any allocation of CDBG–DR funds for unmet needs an additional amount of 15 percent for mitigation activities (''CDBG–DR mitigation set-aside''). Grantees should consult table 1 for the amount allocated specifically for the CDBG–DR mitigation set-aside. For purposes of grants under this notice, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

In the grantee's action plan, it must identify how the proposed use of the CDBG–DR mitigation set-aside will: (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the grantee's mitigation needs assessment in the MID areas; (3) be CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective.

Unlike recovery activities where grantees must demonstrate that their activities ''tie-back'' to the specific disaster and address a specific unmet recovery need for which the CDBG–DR funds were appropriated, activities funded by the CDBG–DR mitigation set-aside do not require such a ''tie-back'' to the specific qualified disaster that has served as the basis for the grantee's allocation. Instead, grantees must demonstrate that activities funded by the CDBG–DR mitigation set-aside meet the provisions included as (1) through (4) in the prior paragraph, to be eligible. Grantees must report activities as a ''MIT'' activity type in DRGR so that HUD and the public can determine that the grantee has fulfilled the requirement for the CDBG–DR mitigation set-aside.

Grantees may also meet the requirement of the CDBG–DR mitigation set-aside by including eligible recovery activities that both address the impacts of the disaster (*i.e.,* have ''tie-back'' to the specific qualified disaster) and incorporate mitigation measures into the recovery activities. In section II.A.2.b of the Consolidated Notice, grantees are instructed to incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential structures with CDBG–DR funds as part of activities eligible under 42 U.S.C. 5305(a) (including activities authorized by waiver and alternative requirement). Additionally, in section II.A.2.c of the Consolidated Notice, grantees are required to establish resilience performance metrics for those activities.

If grantees wish to count those activities towards the grantee's CDBG–DR mitigation set-aside, grantees must: (1) Document how those activities and the incorporated mitigation measures will meet the definition of mitigation, as provided above; and (2) Report those activities as a ''MIT'' activity type in DRGR so they are easily tracked.

IV.A.2.a. Mitigation needs assessment. In addition to the requirements prescribed in section III.C.1.a of the Consolidated Notice that grantees must develop an impact and unmet needs assessment, grantees receiving an award under this Allocation Announcement Notice must also include in their action plan a mitigation needs assessment to inform the activities funded by the CDBG–DR mitigation set-aside. Each grantee must assess the characteristics and impacts of current and future hazards identified through its recovery from the qualified disaster and any other Presidentially declared disaster. Mitigation solutions designed to be resilient only for threats and hazards related to a prior disaster can leave a community vulnerable to negative effects from future extreme events related to other threats or hazards. When risks are identified among other vulnerabilities during the framing and design of mitigation projects, implementation of those projects can enhance protection and save lives, maximize the utility of scarce resources, and benefit the community long after the projects are complete.

Accordingly, each grantee receiving a CDBG–DR allocation under this notice must conduct a risk-based assessment to inform the use of its CDBG–DR mitigation set-aside considering identified current and future hazards. Grantees must assess their mitigation needs in a manner that effectively addresses risks to indispensable services that enable continuous operation of critical business and government functions and are critical to human health and safety or economic security. In the mitigation needs assessment, each grantee must cite data sources and must, at a minimum, use the risks identified in the current FEMA-approved state or local Hazard Mitigation Plan (HMP). If a jurisdiction is currently updating an expired HMP, the grantee's agency administering the CDBG–DR funds must consult with the agency administering the HMP update to identify the risks that will be included in the assessment. Mitigation needs evolve over time and grantees are to amend the mitigation needs assessment and action plan as conditions change, additional mitigation needs are identified, and additional resources become available.

IV.A.2.b. Connection of programs and projects to the mitigation needs assessment. Grantees are required by section III.C.1.b of the Consolidated Notice to describe the connection between identified unmet needs and the allocation of CDBG–DR resources. In a similar fashion, the plan must provide a clear connection between a grantee's mitigation needs assessment and its proposed activities in the MID areas funded by the CDBG–DR mitigation set-aside (or outside in connection to the MID areas as described in section II.A.3 of the Consolidated Notice). To maximize the impact of all available funds, grantees are encouraged to coordinate and align these funds with other projects funded with CDBG–DR and CDBG–MIT funds, as well as other disaster recovery activities funded by FEMA, USACE, the U.S. Forest Service, and other agencies as appropriate. Grantees are encouraged to fund planning activities that complement FEMA's Building Resilient Infrastructure and Communities (BRIC) program and to upgrade mapping, data, and other capabilities to better understand evolving disaster risks.

IV.A.3. Interchangeability of disaster funds. The Appropriations Act gives the Secretary authority to authorize grantees that receive an award in this Allocation Announcement Notice and under prior or future appropriations to use those funds interchangeably and without limitation for the same activities related to unmet recovery needs in the MID areas resulting from a major disaster in the Appropriations Act or in prior or future appropriation acts, when the MID areas overlap and when the use of the funds will address unmet recovery needs of major disasters in the Appropriations Act or in any prior or future appropriation acts.

Based on this authority, the Secretary authorizes grantees receiving a CDBG–DR grant under the Appropriations Act and prior or future appropriation acts for activities authorized under title I of the HCDA for a specific qualifying disaster(s) to use these funds interchangeably and without limitation for the same activities in MID areas resulting from a major disaster in prior or future appropriation acts, as long as the MID areas overlap and the activities address unmet needs of both disasters.

Grantees are reminded that expanding the eligible beneficiaries of activities in an action plan funded by any prior or future acts to include those impacted by the specific qualifying disaster(s) in this notice requires the submission of a substantial action plan amendment in accordance with section III.C.6 of the Consolidated Notice. Additionally, all waivers and alternative requirements associated with a CDBG–DR grant apply to the use of the funds provided by that grant, regardless of which disaster the funded activity will address.

For example, if a grantee is receiving funds under this notice for a disaster occurring in 2023 and the MID areas for the 2023 disaster overlap with the MID areas for a disaster that occurred in 2017, the grantee may choose to use the funds allocated under this notice to address unmet needs of both the 2017 disaster and the 2023 disaster. In doing so, the grantee must follow the rules and requirements outlined in this notice. However, if the grantee chooses to use its CDBG–DR grant awarded due to a disaster that occurred in 2017 to address unmet needs of both that disaster and the 2023 disaster, the grantee must follow the rules and requirements outlined in the **Federal Register** notices applicable to its CDBG–DR grant for 2017 disasters.

IV.A.4. Assistance to utilities. The Appropriations Act provides that funds ''may be used by a grantee to assist utilities as part of a disaster-related eligible activity under section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)).''

Accordingly, paragraph III.G.3 of the Consolidated Notice does not apply to funds under the Appropriations Act, and HUD is adding a modified alternative requirement that applies in lieu of paragraph III.G.3.

While it is possible that not every CDBG–DR assisted utility will serve predominantly low- and moderate-income (LMI) populations, HUD recognizes that LMI populations would benefit especially from the increased resilience and recovery of private utilities. HUD also recognizes that privately-owned, for-profit utilities have a means of obtaining private investment or otherwise recapturing costs from ratepayers. Therefore, HUD's alternative requirement below includes basic safeguards that HUD has determined are necessary to ensure that costs comply with the certification to give maximum feasible priority to activities that benefit LMI persons and that costs are necessary and reasonable and do not duplicate other financial assistance. The modified alternative requirement also makes clear that assistance to utilities is subject to all other requirements that apply to the use of funds, consistent with the requirement in the Appropriations Act that funds must be for an ''eligible activity under section 105(a).'' If a grantee needs to submit a substantial amendment to add any activity based on these new alternative requirements, they must follow section III.C.6.a in the Consolidated Notice.

For grants made in response to 2022 and 2023 disasters under the Appropriations Act, the following alternative requirement applies:

A grantee may assist private for-profit, non-profit, or publicly owned utilities as part of disaster-related activities that are eligible under section 105(a) of the HCDA, or otherwise made eligible through a waiver or alternative requirement, provided that the grantee complies with the following:

1. The funded activity must comply with applicable CDBG–DR requirements, including the requirements that the assisted activity will meet a national objective, the activity will address an unmet recovery need or a risk identified in the grantee's mitigation needs assessment, and if the assistance is provided to a for-profit entity for an economic development project under section 105(a)(17), the grantee must first comply with the underwriting requirements in section II.D.6 of the Consolidated Notice.

2. Each grantee must carry out the grant consistent with the grantee's certification that:

''With respect to activities expected to be assisted with CDBG–DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.''

To fortify compliance with the existing certification, if the grantee carries out activities that assist privately-owned, for-profit utilities, the grantee must prioritize assistance to for-profit utilities that will benefit areas where at least 51 percent of the residents are LMI persons and demonstrate how assisting the private, for-profit utility will benefit those areas.

3. The grantee must determine that the costs of the activity to assist a utility are necessary and reasonable and that they do not duplicate other financial assistance. To fortify these requirements and achieve a targeted use of funds and to safeguard against the potential over-subsidization when assistance is used to carry out activities that benefit private, for-profit utilities, the grantee must document that the level of assistance provided to a private, for-profit utility addresses only the actual identified needs of the utility. Additionally, the grantee must establish policies and procedures to ensure that the CDBG–DR funds that assist private, for-profit utilities reflect the actual identified financing needs of the assisted businesses by establishing a mix of financing terms (loan, forgivable loan, and/or grant) for each assisted private, for-profit utility, based on the business's financial capacity, in order to ensure that assistance is based on actual identified need.

IV.B. Clarifications to the Consolidated Notice

IV.B.1. Reimbursement Requirements for Grants Under the Appropriations Act. This section sets out requirements for 2022 and 2023 disasters under the Appropriations Act. In paragraph III.F.5 of the Consolidated Notice, HUD permits grantees to charge to grants the pre-award and pre-application costs of homeowners, renters, businesses, and other qualifying entities for eligible costs these applicants have incurred in response to an eligible disaster covered under a grantee's applicable Allocation Announcement Notice. In addition to other requirements, paragraph III.F.5 stipulates that grantees may charge the eligible pre-application costs to the grant only if (1) the person or private entity incurred the expenses within one year after the applicability date of the grantee's Allocation Announcement Notice (or within one year after the date of the disaster, whichever is later); and (2) the person or entity pays for the cost before the date on which the person or entity applies for CDBG–DR assistance.

Congress may enact multiple supplemental appropriations of CDBG–DR funds for disasters occurring in the same year and HUD may then publish multiple notices announcing CDBG–DR grants for the same disaster. For example, HUD announced CDBG–DR grants for disasters occurring in 2022 and 2023 in this notice. If Congress appropriates additional funds for 2022 and 2023 disasters in a future appropriations act, grantees may find it difficult to track expenses incurred within one year after the applicability date of this notice and another Allocation Announcement Notice, given that funds for disasters occurring in 2022 and 2023 would be announced in different notices. To avoid confusion and to apply a uniform time frame to reimbursement of all pre-application costs for 2022 and 2023 disasters, the requirement in III.F.5.(1) in the Consolidated Notice that states, ''The person or private entity incurred the expenses within one year after the applicability date of the grantee's Allocation Announcement Notice (or within one year after the date of the disaster, whichever is later)'' shall not apply, and instead, grantees shall comply with the following alternative to that requirement in III.F.5.(1): ''The person or private entity incurred the expenses within one year after the applicability date of the notice that announced the *initial* allocation of CDBG–DR funds (or within one year after the date of the disaster, whichever is later).'' For grantees receiving an allocation for a 2022 and 2023 disaster, the notice that announced the initial allocation of CDBG–DR funds is this notice.

IV.B.2. Clarification of the green and resilient building standard. Paragraph II.B.2.a. of the Consolidated Notice requires that all covered construction (new construction, reconstruction, and rehabilitation) that is assisted with CDBG–DR funds meet an industry-recognized standard that has achieved certain certifications described in the notice. In the Consolidated Notice, HUD updated its building standards to support the adoption and enforcement of modern and resilient codes and inadvertently omitted a standard.

Accordingly, HUD clarifies that paragraph II.B.2.a. in the Consolidated Notice allows a grantee to use either the ICC–700 National Green Building Standard (NGBS) Green or NGBS Green+ Resilience standard, among other industry-recognized standards. For grants made in response to disasters occurring in 2022 and 2023, this notice replaces paragraph II.B.2.a. in the Consolidated Notice with the following text:

II.B.2.a. Green and resilient building standard for new construction and reconstruction of housing. Grantees must meet the Green and Resilient Building Standard, as defined in this subparagraph, for: (i) all new construction and reconstruction (*i.e.,* demolishing a housing unit and rebuilding it on the same lot in substantially the same manner) of residential buildings and (ii) all rehabilitation activities of substantially damaged residential buildings, including changes to structural elements such as flooring systems, columns, or load-bearing interior or exterior walls.

The Green and Resilient Building Standard requires that all construction covered by the paragraph above and assisted with CDBG–DR funds meet an industry-recognized standard that has achieved certification under (i) Enterprise Green Communities; (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iii) ICC–700 National Green Building Standard (NGBS) Green or NGBS Green+ Resilience; (iv) Living Building Challenge; or (v) any other equivalent comprehensive green building program acceptable to HUD.

IV.B.3. Clarification of the Use of ''Uncapped'' Income Limits. The Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105–276) enacted a provision that directs the Department to grant exceptions to at least 10 jurisdictions that are currently ''capped' under HUD's low and moderate-income limits. Under this exception, several CDBG entitlement grantees may use ''uncapped'' income limits that reflect 80 percent of the actual median income for the area. Each year, HUD publishes guidance on its website identifying which grantees may use uncapped limits.

Accordingly, HUD clarifies that, the annual uncapped income limits published by HUD applies to CDBG–DR funded activities in jurisdictions covered by the uncapped limits, including jurisdictions that receive disaster recovery funds from a state CDBG–DR grantee. This alternative requirement applies to grants made in response to disasters occurring in 2022 and 2023 that are subject to this notice (including requirements identified as a ''Consolidated Notice'' incorporated in this notice as appendix B).

V. Duration of Funding

The Appropriations Act made the funds available for obligation by HUD until expended. HUD waives the provisions at 24 CFR 570.494 and 570.902 regarding timely distribution and expenditure of funds and establishes an alternative requirement providing that each grantee must expend 100 percent of its allocation within six years of the date HUD signs the grant agreement. HUD may extend the time period in this alternative requirement and associated grant period of performance administratively, if good cause for such an extension exists at that time, as requested by the grantee, and approved by HUD. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

VI. Assistance Listing Numbers (Formerly Known as the CFDA Number).

The Assistance Listing Numbers (formerly known as the Catalog of Federal Domestic Assistance numbers) for the disaster recovery grants under this notice are as follows: 14.218; 14.228.

VII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available online on HUD's CDBG–DR website at *https://www.hud.gov/program_offices/comm_planning/cdbg-dr.* Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Adrianne Todman,

Deputy Secretary.

Appendix A

Allocation of CDBG–DR Funds to Most Impacted and Distressed Areas Due to Presidentially Declared Disasters Occurring in 2022 and 2023

Background

The Disaster Relief Supplemental Appropriations Act, 2023 (Pub. L. 117–328, Division N, Title X) (approved on December 29, 2022) appropriated $3 billion of CDBG–DR for disasters ''that occurred in 2022 or later until such funds are fully allocated''. The law instruct HUD that the funds are ''for the same purposes and under the same terms and conditions as funds appropriated under such heading in title VIII of the Disaster Relief Supplemental Appropriations Act, 2022 (division B of Pub. L. 117–43)'' except that such amounts shall be for major disasters that occurred in 2022 or later until such funds are fully allocated and the fourth, twentieth, and twenty-first provisos under such heading in the Disaster Relief Supplemental Appropriations Act, 2022 shall not apply.

The statutory text related to the allocation in Public Law 117–43 is as follows:

''. . . for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation, in the most impacted and distressed areas resulting from a major disaster . . . *Provided,* That amounts made available under this heading in this Act shall be awarded directly to the State, unit of general local government, or Indian tribe (as such term is defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302)) at the discretion of the Secretary: *Provided further,* That the Secretary shall allocate, using the best available data, an amount equal to the total estimate for unmet needs for qualifying disasters under this heading in this Act: *Provided further,* That any final allocation for the total estimate for unmet need made available under the preceding proviso shall include an additional amount of 15 percent of such estimate for additional mitigation: ''

Under a prior Notice, $2,837,849,000 of the funds allocated under Public Law 117–328 had been awarded. Of the remaining $162,151,000, $20 million is set aside for capacity building, HUD Administration, and Inspector General expenses, leaving $142,151,000 for allocations to additional disasters. Total unmet needs and mitigation needs for one disaster in 2022 (New Mexico) is calculated as discussed in a special section below at $4.131 million. In addition, for three disasters (California, Alabama, and Georgia)—all declared in January 2023—unmet needs and additional mitigation amounts were calculated at $241.728 million. HUD chose to allocate 57.10 percent of the unmet needs and additional mitigation amounts of each 2023 disaster to stay within the $138.020 million available after taking into account the $4.131 million for the 2022 New Mexico disaster ($138.020 million/ $241.728 million = 57.10%).

Most Impacted and Distressed Areas

As with prior CDBG–DR appropriations, HUD is not obligated to allocate funds for all major disasters occurring in the statutory timeframes. HUD is directed to use the funds ''in the most impacted and distressed areas.'' HUD has implemented this directive by limiting CDBG–DR formula allocations to grantees with major disasters that meet these standards:

(1) Individual and Households Program (IHP) designation. HUD has limited allocations to those disasters where the Federal Emergency Management Agency (FEMA) had determined the damage was sufficient to declare the disaster as eligible to receive IHP funding.

(2) Concentrated damage. HUD has limited its estimate of serious unmet housing need to counties and/or counties with zip codes with high levels of damage, collectively referred to as ''most impacted areas.'' For this allocation, HUD is defining most impacted areas as either most impacted counties—counties exceeding $10 million in serious unmet housing needs—and most impacted Zip Codes—Zip Codes with $2 million or more of serious unmet housing needs. The calculation of serious unmet housing needs is described below.

For disasters that meet the most impacted threshold described above, the unmet need allocations are based on the following factors summed together:

(1) Repair estimates for seriously damaged owner-occupied units without insurance (with some exceptions) in most impacted areas after FEMA and Small Business Administration (SBA) repair grants or loans;

(2) Repair estimates for seriously damaged rental units occupied by very low-income renters in most impacted areas;

(3) Repair and content loss estimates for small businesses with serious damage denied by SBA; and

(4) The estimated local cost share for Public Assistance Category C to G projects.

Methods for Estimating Serious Unmet Needs for Housing

The data HUD uses to calculate unmet needs for qualifying disasters declared between November 1, 2022 and January 30, 2023 come from the FEMA IHP data on housing-unit damage as of April 6, 2023 and reflect disasters occurring in 2022 and/or 2023 and declared after October 30, 2022 and before January 30, 2023. The New Mexico (DR 4652) estimates uses the same data as discussed in the prior **Federal Register** Notice for 2022 disasters (88 FR 32046).

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's IHP and SBA's disaster loan program. HUD calculates ''unmet housing needs'' as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds estimated to be provided by FEMA and SBA.

Each of the FEMA IHP inspected owner units are categorized by HUD into one of five categories:

• *Minor-Low:* Less than $3,000 of FEMA inspected real property damage.

• *Minor-High:* $3,000 to $7,999 of FEMA inspected real property damage.

• *Major-Low:* $8,000 to $14,999 of FEMA inspected real property damage and/or 1 to 3.9 feet of flooding on the first floor.

• *Major-High:* $15,000 to $28,800 of FEMA inspected real property damage and/or 4 to 5.9 feet of flooding on the first floor.

• *Severe:* Greater than $28,800 of FEMA inspected real property damage or determined destroyed and/or six or more feet of flooding on the first floor.

When owner-occupied properties also have a personal property inspection or only have a personal property inspection, HUD reviews the personal property damage amounts such that if the personal property damage places the home into a higher need category over the real property assessment, the personal property amount is used. The personal property-based need categories for owner-occupied units are defined as follows:

• *Minor-Low:* Less than $2,500 of FEMA inspected personal property damage.

• *Minor-High:* $2,500 to $3,499 of FEMA inspected personal property damage.

• *Major-Low:* $3,500 to $4,999 of FEMA inspected personal property damage or 1 to 3.9 feet of flooding on the first floor.

• *Major-High:* $5,000 to $9,000 of FEMA inspected personal property damage or 4 to 5.9 feet of flooding on the first floor.

• *Severe:* Greater than $9,000 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

To meet the statutory requirement of ''most impacted'' in this legislative language, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a FEMA inspected real property damage of $8,000 or above, personal property damage $3,500 or above, or flooding 1 foot or above on the first floor.

Furthermore, a homeowner with flooding outside the one percent risk flood hazard area is determined to have unmet needs if they reported damage and no flood insurance to cover that damage. For homeowners inside the one percent risk flood hazard area, homeowners without flood insurance with flood damage below the greater of national median or 120 percent of Area Median Income are determined to have unmet needs. For non-flood damage, homeowners without hazard insurance with incomes below the greater of national median or 120 percent of Area Median Income are included as having unmet needs. The unmet need categories for these types of homeowners are defined as above for real and personal property damage.

FEMA IHP does not inspect rental units for real property damage so personal property damage is used as a proxy for unit damage. Each of the FEMA-inspected renter units are categorized by HUD into one of five categories:

• Minor-Low: Less than $1,000 of FEMA inspected personal property damage.

• *Minor-High:* $1,000 to $1,999 of FEMA inspected personal property damage or determination of ''Moderate'' damage by the FEMA inspector.

• *Major-Low:* $2,000 to $3,499 of FEMA inspected personal property damage or 1 to 3.9 feet of flooding on the first floor or determination of ''Major'' damage by the FEMA inspector.

• *Major-High:* $3,500 to $7,500 of FEMA inspected personal property damage or 4 to 5.9 feet of flooding on the first floor.

• *Severe:* Greater than $7,500 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor or determination of ''Destroyed'' by the FEMA inspector.

To meet the statutory requirement of ''most impacted'' for rental properties, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a FEMA personal property damage assessment of $2,000 or greater or flooding 1 foot or above on the first floor.

Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income less than the greater of the Federal poverty level or 50 percent of the area median income. Units occupied by a tenant with income less than the greater of the poverty level or 50 percent of the area median income are used to calculate likely unmet needs for affordable rental housing.

The average cost to fully repair a home for a specific disaster to code within each of the damage categories noted above is calculated using the median real property damage repair costs determined by the SBA for its disaster loan program based on a match comparing FEMA and SBA inspections by each of the FEMA damage categories described above.

If there is a match of 20 or more SBA inspections to FEMA inspections for any damage category, the median damage estimate for the SBA properties is used less the estimated average FEMA IHP repair grant and average SBA disaster loan grant weighted on take-up rates, which are generally high for IHP and low and for SBA. Except that no matched multiplier can be less than the 25th percentile for all IHP eligible disasters combined in eligible disaster years at the time of the allocation calculation or more than the 75th percentile for all IHP eligible disasters combined with data available as of the allocation.

If there is a match of fewer than 20 SBA inspections to FEMA inspections within individual damage categories, these multipliers are used which are based on the 2020 and 2021 disaster years:

Disaster type	Multipliers by disaster type		
	Major-low	Major-high	Severe
Dam/Levee Break	$33,007	$47,078	$47,078
Earthquake	27,141	33,714	134,503
Fire	22,971	82,582	134,503
Flood	47,074	57,856	64,513
Hurricane	36,800	45,952	45,952
Severe Ice Storm	33,528	33,714	36,592
Severe Storm(s)	22,971	37,299	37,299
Tornado	52,961	82,582	134,503

A separate multiplier is applied to mobile homes for all disaster types. Where there are fewer than 20 mobile homes for a match for a disaster, the mobile home multipliers are $49,571 for major-low, $60,189 for major-high, and $67,594 for severe. If there are 20 or more matches for a specific disaster's mobile homes, that specific disaster multiplier is used.

Methods for Estimating Serious Unmet Economic Revitalization Needs

Based on SBA disaster loans to businesses using data from as of April 5, 2023, HUD calculates the median real estate and content loss by the following damage categories for each disaster:

• *Category 1:* real estate + content loss = below $12,000

• *Category 2:* real estate + content loss = $12,000–$29,999

• *Category 3:* real estate + content loss = $30,000–$64,999

• *Category 4:* real estate + content loss = $65,000–$149,999

• *Category 5:* real estate + content loss = $150,000 and above

For properties with real estate and content loss of $30,000 or more, HUD calculates the estimated amount of unmet needs for small businesses by multiplying the median damage estimates for the categories above by the number of small businesses denied an SBA loan, including those denied a loan prior to inspection due to inadequate credit or income (or a decision had not been made), under the assumption that damage among those denied at pre-inspection have the same distribution of damage as those denied after inspection.

Methods for Estimating Unmet Infrastructure Needs

To calculate unmet needs for infrastructure projects, HUD received FEMA cost estimates on April 6, 2023, of the expected local cost share to repair the permanent public infrastructure (Categories C to G) to their pre-storm condition.

Allocation Calculation

Once eligible entities are identified using the above criteria, the allocation to individual grantees represents their proportional share of the estimated unmet needs. For the formula allocation, HUD calculates total unmet recovery needs for eligible disasters as the aggregate of:

- Serious unmet housing needs in most impacted and distressed areas;
- Serious unmet business needs; and
- Unmet infrastructure need.

Mitigation is calculated as 15 percent of the unmet need calculation, and then rounded to the nearest $1,000.[3]

Adjustments for 2022 Disaster—DR 4652 (New Mexico)

When HUD made its March 2023 announcement for 2022 disasters, we had not made an allocation for the 2022 wildfires in New Mexico (DR 4652) because of separate appropriations ($3.95 billion appropriated in the ''Continuing Appropriations Act, 2023,'' Public Law 117–180, 136 Stat. 2114 (2022), and the ''Disaster Relief Supplemental Appropriations Act, 2023'' Public Law 117–328, 136 STAT. 4459 (2022)) to a claims fund (the ''Hermit's Peak/Calf Canyon Fire Assistance Act,'' Public Law 117–180, 136 Stat. 2114 (2022)) administered by FEMA for the Hermit's Peak/Calf Canyon Fire which was the larger fire covered by DR 4652. At the time we were seeking more information from the state and FEMA on how those claims funds could be used.

Absent the special appropriation, HUD had determined for this disaster $16.961 million in total unmet needs and $2.544 million in mitigation (15% of the unmet needs). A great deal of what HUD calculates for unmet needs would be covered by the claims fund.

According to FEMA,[4] ''covered losses will include but are not limited to uninsured and uncompensated property loss; business and financial loss; and some heightened risk reduction to minimize impacts from heightened risks caused by the wildfires.'' Individuals, businesses, non-federal government, Indian Tribes, and Not-for-Profit entities are eligible. (See 44 CFR part 296).

According to 44 CFR 296.21, claims can be made for:

- Loss of property (examples: property loss, decrease in value of real property, damage to physical infrastructure, lost subsistence, cost reforestation, other.)
- Business loss (examples: damage to tangible assets or inventory, business interruption loss, overhead, employee wages, loss of business net income, other.)
- Financial loss (examples: increased mortgage interest cost, insurance deductible, temporary living or relocation expenses, lost wages or personal income, emergency staffing, debris removal and clean-up, other.)
- Personal injury (examples: general damages, medical expenses, injury-related lost wages/personal income

But there are items that are not eligible under the claims fund, including replacing lost affordable rental housing, business and infrastructure needs outside of the Hermits Peak/Calf Canyon fire claims fund area, and mitigation. As such, HUD has calculated this grant as the total unmet needs $16.961 million, plus mitigation based on the total unmet needs (15% of $16.961 million = $2.544 million), less the amount expected to be covered by the claims fund $15.374 million, resulting in an allocation of $4.131 million.

Pro-Rata Allocation for January 2023 Disasters

Consistent with long-standing practice when unmet needs for CDBG–DR exceed funding available, the allocation among eligible grantees is made proportionally. That is, the overall amount available—$138.020 million in funding—is divided by the total estimated unmet need and mitigation for the three disasters—$241.728 million to arrive at 57.1%. Each of the three grantees is being allocated 57.1 percent of their unmet needs and mitigation rounded to the nearest $1,000.

Appendix B—The Consolidated Notice

CDBG–DR Consolidated Notice Waivers and Alternative Requirements

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I. Waivers and Alternative Requirements

CDBG–DR grantees that are subject to this Consolidated Notice, as indicated in each **Federal Register** notice that announces allocations of the appropriated CDBG–DR funds (''Allocation Announcement Notice''), must comply with all waivers and alternative requirements in the Consolidated Notice, unless expressly made inapplicable (*e.g.,* a waiver that applies to states only does not apply to units of general local governments and Indian tribes). Except as described in applicable waivers and alternative requirements, the statutory and regulatory provisions governing the CDBG program (and for Indian tribes, the Indian CDBG program) shall apply to grantees receiving a CDBG–DR allocation. Statutory provisions (title I of the HCDA) that apply to all grantees can be found at 42 U.S.C. 5301 *et seq.* and regulatory requirements, which differ for each type of grantee, are described in each of the three paragraphs below.

Except as modified, the State CDBG program rules shall apply to state grantees receiving a CDBG–DR allocation. Applicable State CDBG program regulations are found at 24 CFR part 570, subpart I. For insular areas, HUD waives the provisions of 24 CFR part 570, subpart F and imposes the following alternative requirement: Insular areas shall administer their CDBG–DR allocations in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by the Consolidated Notice.

Except as modified, statutory and regulatory provisions governing the Entitlement CDBG Program shall apply to unit of general local government grantees (often referred to as local government grantees in appropriations acts). Applicable Entitlement CDBG Program regulations are found at 24 CFR part 570, as described in § 570.1(a).

Except as modified, CDBG–DR grants made by HUD to Indian tribes shall be subject to the statutory provisions in title I of the HCDA that apply to Indian tribes and the regulations in 24 CFR part 1003 governing the Indian CDBG program, except those requirements in part 1003 related to the funding application and selection process.

References to the action plan in the above regulations shall refer to the action plan required by the Consolidated Notice and not to the consolidated plan action plan required by 24 CFR part 91. All references pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted.

II. Eligible Activities

II.A. Clarification of Disaster-Related Activities

CDBG–DR funds are provided for necessary expenses for activities authorized under title I of the HCDA related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and

[3] *Correction.* In the **Federal Register** notice published on Thursday, May 18, 2023, at 88 FR 32046, HUD makes the following correction: On page 32059, in the Sub-Disaster Allocations for Local Governments section of appendix A, for DR 4673 FL the unmet need value reads as ''$100 million'' but should read as ''$125 million.''

[4] *https://www.fema.gov/disaster/current/hermits-peak/frequently-asked-questions#:~:text=An%20additional%20%241.45%20billion%20was,business%20loss%20or%20financial%20loss.*

mitigation of risk associated with activities carried out for these purposes, in the ''most impacted and distressed'' areas (identified by HUD or the grantee) resulting from a major disaster. All CDBG–DR funded activities must address an impact of the disaster for which funding was allocated. Accordingly, each activity must: (1) address a direct or indirect impact from the disaster in a most impacted and distressed area; (2) be a CDBG-eligible activity (or be eligible under a waiver or alternative requirement); and (3) meet a national objective. When appropriations acts provide an additional allocation amount for mitigation of hazard risks that does not require a connection to the qualifying major disaster, requirements for the use of those funds will be included in the Allocation Announcement Notice.

II.A.1. *Documenting a Connection to the Disaster.* Grantees must maintain records that document how each funded activity addresses a direct or indirect impact from the disaster. Grantees may do this by linking activities to a disaster recovery need that is described in the impact and unmet needs assessment in the action plan (requirements for the assessment are addressed in section III.C.1.a.). Sufficient documentation of physical loss must include damage or rebuilding estimates, insurance loss reports, images, or similar information that documents damage caused by the disaster. Sufficient documentation for non-physical disaster-related impacts must clearly show how the activity addresses the disaster impact, *e.g.,* for economic development activities, data about job loss or businesses closing after the disaster or data showing how pre-disaster economic stressors were aggravated by the disaster; or for housing activities, a post-disaster housing analysis that describes the activities that are necessary to address the post-disaster housing needs.

II.A.2. *Resilience and hazard mitigation.* The Consolidated Notice will help to improve long-term community resilience by requiring grantees to fully incorporate mitigation measures that will protect the public, including members of protected classes, vulnerable populations, and underserved communities, from the risks identified by the grantee among other vulnerabilities. This approach will better ensure the revitalization of the community long after the recovery projects are complete.

Accordingly, HUD is adopting the following alternative requirement to section 105(a): Grantees may carry out the activities described in section 105(a), as modified by waivers and alternative requirements, to the extent that the activities comply with the following:

II.A.2.a. *Alignment with mitigation plans.* Grantees must ensure that the mitigation measures identified in their action plan will align with existing hazard mitigation plans submitted to the Federal Emergency Management Agency (FEMA) under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) or other state, local, or tribal hazard mitigation plans.

II.A.2.b. *Mitigation measures.* Grantees must incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential structures with CDBG–DR funds as part of activities eligible under 42 U.S.C. 5305(a) (including activities authorized by waiver and alternative requirement). To meet this alternative requirement, grantees must demonstrate that they have incorporated mitigation measures into CDBG–DR activities as a construction standard to create communities that are more resilient to the impacts of recurring natural disasters and the impacts of climate change. When determining which mitigation measures to incorporate, grantees should design and construct structures to withstand existing and future climate impacts expected to occur over the service life of the project.

II.A.2.c. *Resilience performance metrics.* Before carrying out CDBG–DR funded activities to construct, reconstruct, or rehabilitate residential or non-residential structures, the grantee must establish resilience performance metrics for the activity, including: (1) an estimate of the projected risk to the completed activity from natural hazards, including those hazards that are influenced by climate change (*e.g.,* high winds destroying newly built homes), (2) identification of the mitigation measures that will address the projected risks (*e.g.,* using building materials that are able to withstand high winds), and (3) an assessment of the benefit of the grantee's measures through verifiable data (*e.g.,* 10 newly built homes will withstand high winds up to 100 mph).

II.A.3. *Most impacted and distressed (MID) areas.* Funds must be used for costs related to unmet needs in the MID areas resulting from qualifying disasters. HUD allocates funds using the best available data that cover the eligible affected areas and identifies MID areas. Grantees are required to use 80 percent of all CDBG–DR funds to benefit the HUD-identified MID areas. The HUD-identified MID areas and the minimum dollar amount that must be spent to benefit those areas will be identified for each grantee in the applicable Allocation Announcement Notice. If a grantee seeks to add other areas to the HUD-identified MID area, the grantee must contact its CPD Representative or CPD Specialist and submit the request with a data-driven analysis that illustrates the basis for designating the additional area as most impacted and distressed as a result of the qualifying disaster.

Grantees may use up to five percent of the total grant award for grant administration. Therefore, HUD will include 80 percent of a grantee's expenditures for grant administration in its determination that 80 percent of the total award has benefited the HUD-identified MID area. Expenditures for planning activities may also be counted towards the HUD-identified MID area requirement, if the grantee describes in its action plan how those planning activities benefit those areas.

HUD may identify an entire jurisdiction or a ZIP code as a MID area. If HUD designates a ZIP code as a MID area for the purposes of allocating funds, the grantee may expand program operations to the whole county or counties that overlap with the HUD designated ZIP code. A grantee must indicate the decision to expand eligibility to the whole county or counties in its action plan.

Grantees must determine where to use the remaining amount of the CDBG–DR grant, but that portion of the allocation may only be used to address unmet needs and that benefit those areas that the grantee determines are most impacted and distressed (''grantee-identified MID areas'') within areas that received a presidential major disaster declaration identified by the disaster numbers listed in the applicable Allocation Announcement Notice. The grantee must use quantifiable and verifiable data in its analysis, as referenced in its action plan, to identify the MID areas where it will use the remaining amount of CDBG–DR funds.

Grantee expenditures for eligible unmet needs outside of the HUD-identified or grantee-identified MID areas are allowable, provided that the grantee can demonstrate how the expenditure of CDBG–DR funds outside of the MID areas will address unmet needs identified within the HUD-identified or grantee-identified MID area (*e.g.,* upstream water retention projects to reduce downstream flooding in the HUD-identified MID area).

II.B. Housing Activities and Related Floodplain Issues

Grantees may use CDBG–DR funds for activities that may include, but are not limited to, new construction, reconstruction, and rehabilitation of single-family or multifamily housing, homeownership assistance, buyouts, and rental assistance. The broadening of eligible CDBG–DR activities related to housing under the HCDA is necessary following major disasters in which housing, including large numbers of affordable housing units, have been damaged or destroyed. The following waivers and alternative requirements will assist grantees in addressing the full range of unmet housing needs arising from a disaster.

II.B.1. *New housing construction waiver and alternative requirement.* 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) are waived to the extent necessary to permit new housing construction, subject to the following alternative requirement. When a CDBG–DR grantee carries out a new housing construction activity, 24 CFR 570.202 shall apply and shall be read to extend to new construction in addition to rehabilitation assistance. Private individuals and entities must remain compliant with federal accessibility requirements as well as with the applicable site selection requirements of 24 CFR 1.4(b)(3) and 8.4(b)(5).

II.B.2. *Construction standards for new construction, reconstruction, and rehabilitation.* HUD is adopting an alternative requirement to require grantees to adhere to the applicable construction standards in II.B.2.a. through II.B.2.d. when carrying out activities to construct, reconstruct, or rehabilitate residential structures with CDBG–DR funds as part of activities eligible under 42 U.S.C. 5305(a) (including activities authorized by waiver and alternative requirement). For purposes of the Consolidated Notice, the terms ''substantial damage'' and ''substantial improvement'' shall be as defined in 44 CFR 59.1 unless otherwise noted.

II.B.2.a. *Green and resilient building standard for new construction and* *reconstruction of housing.* Grantees must meet the Green and Resilient Building Standard, as defined in this subparagraph, for: (i) all new construction and reconstruction (*i.e.,* demolishing a housing unit and rebuilding it on the same lot in substantially the same manner) of residential buildings and (ii) all rehabilitation activities of substantially damaged residential buildings, including changes to structural elements such as flooring systems, columns, or load-bearing interior or exterior walls.

The Green and Resilient Building Standard requires that all construction covered by the paragraph above and assisted with CDBG–DR funds meet an industry-recognized standard that has achieved certification under (i) Enterprise Green Communities; (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iii) ICC–700 National Green Building Standard Green+ Resilience; (iv) Living Building Challenge; or (v) any other equivalent comprehensive green building program acceptable to HUD. Additionally, all such covered construction must achieve a minimum energy efficiency standard, such as (i) ENERGY STAR (Certified Homes or Multifamily High-Rise); (ii) DOE Zero Energy Ready Home; (iii) EarthCraft House, EarthCraft Multifamily; (iv) Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US (PHIUS), International Passive House Association; (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label); (vi) Earth Advantage New Homes; or (vii) any other equivalent energy efficiency standard acceptable to HUD. Grantees must identify, in each project file, which of these Green and Resilient Building Standards will be used for any building subject to this paragraph. However, grantees are not required to use the same standards for each project or building.

II.B.2.b. *Standards for rehabilitation of nonsubstantially damaged residential buildings.* For rehabilitation other than the rehabilitation of substantially damaged residential buildings described in section II.B.2.a. above, grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist.

Grantees must apply these guidelines to the extent applicable for the rehabilitation work undertaken, for example, the use of mold resistant products when replacing surfaces such as drywall. Products and appliances replaced as part of the rehabilitation work, must be ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products or appliances.

II.B.2.c. *Elevation standards for new construction, reconstruction, and rehabilitation of substantial damage, or rehabilitation resulting in substantial improvements.* The following elevation standards apply to new construction, rehabilitation of substantial damage, or rehabilitation resulting in substantial improvement of residential structures located in an area delineated as a special flood hazard area or equivalent in FEMA's data sources. 24 CFR 55.2(b)(1) provides additional information on data sources, which apply to all floodplain designations. All structures, defined at 44 CFR 59.1, designed principally for residential use, and located in the one percent annual chance (or 100-year) floodplain, that receive assistance for new construction, reconstruction, rehabilitation of substantial damage, or rehabilitation that results in substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the one percent annual chance floodplain elevation (base flood elevation). Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.

All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2) and (3) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2) and (3) or successor standard) at least three feet above the 100-year floodplain elevation. Critical Actions are defined as ''any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property.'' For example, Critical Actions include hospitals, nursing homes, emergency shelters, police stations, fire stations, and principal utility lines.

In addition to other requirements in this section, grantees must comply with applicable state, local, and tribal codes and standards for floodplain management, including elevation, setbacks, and cumulative substantial damage requirements. Grantees using CDBG–DR funds as the non-Federal match in a FEMA-funded project may apply the alternative requirement for the elevation of structures described in section III.F.6. Structures that are elevated must meet federal accessibility standards.

II.B.2.d. *Broadband infrastructure in housing.* Any substantial rehabilitation, as defined by 24 CFR 5.100, reconstruction, or new construction of a building with more than four rental units must include installation of broadband infrastructure, except where the grantee documents that: (i) the location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (ii) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity, or in an undue financial burden; or (iii) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

II.B.3. *Applicable affordability periods for new construction of affordable rental housing.* To meet the low- and moderate-income housing national objective, rental housing assisted with CDBG–DR funds must be rented to low- and moderate-income (LMI) households at affordable rents, and a grantee must define ''affordable rents'' in its action plan. Because the waiver and alternative requirement in II.B.1. authorizes the use of grant funds for new housing construction, HUD is imposing the following alternative requirement to modify the low- and moderate-income housing national objective criteria in 24 CFR 570.208(a)(3) and 570.483(b)(3) for activities involving the new construction of affordable rental housing of five or more units. For activities that will construct five or more units, in addition to other applicable criteria in 24 CFR 570.208(a)(3) and 570.483(b)(3), in its action plan, a grantee must define the affordability standards, including ''affordable rents,'' the enforcement mechanisms, and applicable timeframes, that will apply to the new construction of affordable rental housing, *i.e.,* when the activity will result in construction of five or more units, the affordability requirements described in the action plan apply to the units that will be occupied by LMI households. The minimum timeframes and other related requirements acceptable for compliance with this alternative requirement are the HOME Investment Partnerships Program (HOME) requirements at 24 CFR 92.252(e), including the table listing the affordability periods at the end of 24 CFR 92.252(e). Therefore, the grantee must adopt and implement enforceable affordability standards that comply with or exceed requirements at 24 CFR 92.252(e)(1) for the new construction of affordable rental housing in structures containing five or more units.

II.B.4. *Affordability period for new construction of homes built for LMI households.* In addition to alternative requirements in II.B.1., the following alternative requirement applies to activities to construct new single-family units for homeownership that will meet the LMI housing national objective criteria. Grantees must establish affordability restrictions on all newly constructed single-family housing (for purposes of the Consolidated Notice, single-family housing is defined as four units or less), that, upon completion, will be purchased and occupied by LMI homeowners. The minimum affordability period acceptable for compliance are the HOME requirements at 24 CFR 92.254(a)(4). If a grantee applies other standards, the periods of affordability applied by a grantee must meet or exceed the applicable HOME requirements in 24 CFR 92.254(a)(4) and the table of affordability periods directly following that provision. Grantees shall establish resale or recapture requirements for housing funded pursuant to this paragraph and shall describe those requirements in the action plan or substantial amendment in which the activity is proposed. The resale or recapture requirements must clearly describe the terms of resale or recapture and the specific circumstances under which resale or recapture will be used. Affordability restrictions must be enforceable and imposed by recorded deed restrictions, covenants, or other similar mechanisms. The affordability restrictions, including the affordability period requirements in this paragraph do not apply to housing units newly constructed or reconstructed for an owner-occupant to replace the owner-occupant's home that was damaged by the disaster.

II.B.5. *Homeownership assistance waiver and alternative requirement.* 42 U.S.C. 5305(a)(24) is waived and replaced with the following alternative requirement:

''Provision of direct assistance to facilitate and expand homeownership among persons at or below 120 percent of area median income (except that such assistance shall not be considered a public service for purposes of 42 U.S.C. 5305(a)(8)) by using such assistance to—

(A) subsidize interest rates and mortgage principal amounts for homebuyers with incomes at or below 120 percent of area median income;

(B) finance the acquisition of housing by homebuyers with incomes at or below 120 percent of area median income that is occupied by the homebuyers;

(C) acquire guarantees for mortgage financing obtained by homebuyers with incomes at or below 120 percent of area median income from private lenders, meaning that if a private lender selected by the homebuyer offers a guarantee of the mortgage financing, the grantee may purchase the guarantee to ensure repayment in case of default by the homebuyer. This subparagraph allows the purchase of mortgage insurance by the household but not the direct issuance of mortgage insurance by the grantee;

(D) provide up to 100 percent of any down payment required from homebuyers with incomes at or below 120 percent of area median income; or

(E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by homebuyers with incomes at or below 120 percent of area median income.''

While homeownership assistance, as described above, may be provided to households with incomes at or below 120 percent of the area median income, HUD will only consider those funds used for households with incomes at or below 80 percent of the area median income to qualify as meeting the LMI person benefit national objective.

II.B.6. *Limitation on emergency grant payments—interim mortgage assistance.* 42 U.S.C. 5305(a)(8), 24 CFR 570.201(e), 24 CFR 570.207(b)(4), and 24 CFR 1003.207(b)(4) are modified to extend interim mortgage assistance (IMA) to qualified individuals from three months to up to twenty months. IMA must be used in conjunction with a buyout program, or the rehabilitation or reconstruction of single-family housing, during which mortgage payments may be due but the home is not habitable. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine that the amount of assistance to be provided is necessary and reasonable.

II.B.7. *Buyout activities.* CDBG–DR grantees may carry out property acquisition for a variety of purposes, but buyouts are a type of acquisition for the specific purpose of reducing the risk of property damage. HUD has determined that creating a new activity and alternative requirement for buyouts is necessary for consistency with the application of other Federal resources commonly used for this type of activity. Therefore, HUD is waiving 42 U.S.C. 5305(a) and establishing an alternative requirement only to the extent necessary to create a new eligible activity for buyouts. The term ''buyouts'' means the acquisition of properties located in a floodway, floodplain, or other Disaster Risk Reduction Area that is intended to reduce risk from future hazards. Grantees can designate a Disaster Risk Reduction Area, as defined below.

Grantees carrying out buyout activities must establish an open space management plan or equivalent, if one has not already been established, before implementation. The plan must establish full transparency about the planned use of acquired properties post-buyout, or the process by which the planned use will be determined and enforced.

Buyout activities are subject to all requirements that apply to acquisition activities generally including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601, *et seq.*) and its implementing regulations at 49 CFR part 24, subpart B, unless waived or modified by alternative requirements. Only acquisitions that meet the definition of a ''buyout'' are subject to the post-acquisition land use restrictions imposed by the alternative requirement (II.B.7.a. below). The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce risk of property damage from future flooding or other hazards in a floodway, floodplain, or a Disaster Risk Reduction Area. A grantee that will buyout properties in a Disaster Risk Reduction Area must establish criteria in its policies and procedures to designate an area as a Disaster Risk Reduction Area for the buyout, pursuant to the following requirements:

(1) the area has been impacted by the hazard that has been caused or exacerbated by the disaster for which the grantee received its CDBG–DR allocation;

(2) the hazard identified must be a predictable environmental threat to the safety and well-being of program beneficiaries, including members of protected classes, vulnerable populations, and underserved communities, as evidenced by the best available data (*e.g.,* FEMA Repetitive Loss Data, EPA's Environmental Justice Screening and Mapping Tool, HHS's climate change related guidance and data, etc.) and science (such as engineering and structural solutions propounded by FEMA, USACE, other federal agencies, etc.); and

(3) the area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

Grantees may only redevelop an acquired property if the property is not acquired through a buyout program (*i.e.,* the purpose of acquisition was something other than risk reduction). When acquisitions are not acquired through a buyout program, the purchase price must be consistent with 2 CFR part 200, subpart E—Cost Principles (''cost principles'') and the pre-disaster fair market value may not be used.

II.B.7.a. *Buyout requirements:*

(i) Property to be acquired or accepted must be located within a floodway, floodplain, or Disaster Risk Reduction Area.

(ii) Any property acquired or accepted must be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, floodplain and wetlands management practices, or other disaster-risk reduction practices.

(iii) No new structure will be erected on property acquired or accepted under the buyout program other than:

(a) a public facility that is open on all sides and functionally related to a designated open space (*e.g.,* a park, campground, or outdoor recreation area);

(b) a restroom; or

(c) a flood control structure, provided that:

(1) the structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream; and

(2) the local floodplain manager approves the structure, in writing, before commencement of construction of the structure.

(iv) After the purchase of a buyout property with CDBG–DR funds, the owner of the buyout property (including subsequent owners) is prohibited from making any applications to any Federal entity in perpetuity for additional disaster assistance for any purpose related to the property acquired through the CDBG–DR funded buyout, unless the assistance is for an allowed use as described in paragraph (ii) above. The entity acquiring the property may lease or sell it to adjacent property owners or other parties for compatible uses that comply with buyout requirements in return for a maintenance agreement.

(v) A deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses that comply with buyout requirements in perpetuity.

(vi) Grantees must choose from one of two valuation methods (pre-disaster value or post-disaster value) for a buyout program (or a single buyout activity). The grantee must apply its valuation method for all buyouts carried out under the program. If the grantee determines the post-disaster value of a property is higher than the pre-disaster value, a grantee may provide exceptions to its established valuation method on a case-by-case basis. The grantee must describe the process for such exceptions and how it will analyze the circumstances to permit an exception in its buyout policies and procedures. Each grantee must adopt policies and procedures on how it will demonstrate that the amount of assistance for a buyout is necessary and reasonable.

(vii) All buyout activities must be classified using the ''buyout'' activity type in the Disaster Recovery and Grant Reporting (DRGR) system.

(viii) Any state grantee implementing a buyout program or activity must consult with local or tribal governments within the areas in which buyouts will occur.

II.B.8. *Safe housing incentives in disaster-affected communities.*

The limitation on eligible activities in section 42 U.S.C. 5305(a) is waived and HUD is establishing the following alternative requirement to establish safe housing incentives as an eligible activity. A safe housing incentive is any incentive provided to encourage households to relocate to suitable housing in a lower risk area or in an area promoted by the community's comprehensive recovery plan. Displaced persons must receive any relocation assistance to which they are entitled under other legal authorities, such as the URA, section 104(d) of the HCDA, or those described in the Consolidated Notice. The grantee may offer safe housing incentives in addition to the relocation assistance that is legally required.

Grantees must maintain documentation, at least at a programmatic level, describing how the grantee determined the amount of assistance for the incentive was necessary and reasonable, how the incentive meets a national objective, and that the incentives are in accordance with the grantee's approved action plan and published program design(s). A grantee may require the safe housing incentive to be used for a particular purpose by the household receiving the assistance. However, this waiver does not permit a compensation program meaning that funds may not be provided to a beneficiary to compensate the beneficiary for an estimated or actual amount of loss from the declared disaster. Grantees are prohibited from offering housing incentives to a homeowner as an incentive to induce the homeowner to sell a second home, consistent with the prohibition and definition of second home in section II.B.12.

II.B.9. *National objectives for buyouts and safe housing incentives.*

Activities that assist LMI persons and meet the criteria for the national objectives described below, including in II.B.10., will be considered to benefit LMI persons unless there is substantial evidence to the contrary and will count towards the calculation of a grantee's overall LMI benefit requirement as described in section III.F.2. The grantee shall appropriately ensure that activities that meet the criteria for any of the national objectives below do not benefit moderate-income persons to the exclusion of low-income persons.

When undertaking buyout activities, to demonstrate that a buyout meets the low- and moderate-income housing (LMH) national objective, grantees must meet all requirements of the HCDA, and applicable regulatory criteria described below. 42 U.S.C. 5305(c)(3) provides that any assisted activity that involves the acquisition of property to provide housing shall be considered to benefit LMI persons only to the extent such housing will, upon completion, be occupied by such persons. In addition, 24 CFR 570.483(b)(3), 24 CFR 570.208(a)(3), and 24 CFR 1003.208(c) apply the LMH national objective to an eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by LMI households.

A buyout program that merely pays homeowners to leave their existing homes does not guarantee that those homeowners will occupy a new residential structure. Therefore, acquisition-only buyout programs cannot satisfy the LMH national objective criteria.

To meet a national objective that benefits a LMI person, buyout programs can be structured in one of the following ways:

(1) The buyout activity combines the acquisition of properties with another direct benefit—LMI housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria;

(2) The activity meets the low- and moderate-income area (LMA) benefit criteria and documents that the acquired properties will have a use that benefits all the residents in a particular area that is primarily residential, where at least 51 percent of the residents are LMI persons. Grantees covered by the ''exception criteria'' as described in section IV.C. of the Consolidated Notice may apply it to these activities. To satisfy LMA criteria, grantees must define the service area based on the end use of the buyout properties; or

(3) The program meets the criteria for the low- and moderate-income limited clientele (LMC) national objective by restricting buyout program eligibility to exclusively LMI persons and benefiting LMI sellers by acquiring their properties for more than current fair market value (in accordance with the valuation requirements in section II.B.7.a.(vi)).

II.B.10. *For LMI Safe Housing Incentive (LMHI).* The following alternative requirement establishes new LMI national objective criteria that apply to safe housing incentive (LMHI) activities that benefit LMI households. HUD has determined that providing CDBG–DR grantees with an additional method to demonstrate how safe housing incentive activities benefit LMI households will ensure that grantees and HUD can account for and assess the benefit that CDBG–DR assistance for these activities has on LMI households.

The LMHI national objective may be used when a grantee uses CDBG–DR funds to carry out a safe housing incentive activity that benefits one or more LMI persons. To meet the LMHI national objective, the incentive must be a.) tied to the voluntary acquisition of housing (including buyouts) owned by a qualifying LMI household and made to induce a move outside of the affected floodplain or disaster risk reduction area to a lower-risk area or structure; or b.) for the purpose of providing or improving residential structures that, upon completion, will be occupied by a qualifying LMI household and will be in a lower risk area.

II.B.11. *Redevelopment of acquired properties.* Although properties acquired through a buyout program may not be redeveloped, grantees may redevelop other acquired properties. For non-buyout acquisitions, HUD has not permitted the grantee to base acquisition cost on pre-disaster fair market value. The acquisition cost must comply with applicable cost principles and with the acquisition requirements at 49 CFR part 24, subpart B, as revised by the Consolidated Notice waivers and alternative requirements. In addition to the purchase price, grantees may opt to provide optional relocation assistance, as allowable under Section 104 and 105 of the HCDA (42 U.S.C. 5304 and 42 U.S.C. 5305) and 24 CFR 570.606(d), and as expanded by section IV.F.5. of the Consolidated Notice, to the owner of a property that will be redeveloped if: a.) the property is purchased by the grantee or subrecipient through voluntary acquisition; and b.) the owner's need for additional assistance is documented. Any optional relocation assistance must provide equal relocation assistance within each class of displaced persons, including but not limited to providing reasonable accommodation exceptions to persons with disabilities. See 24 CFR 570.606(d) for more information on optional relocation assistance. In addition, tenants displaced by these voluntary acquisitions may be eligible for URA relocation assistance. In carrying out acquisition activities, grantees must ensure they are in compliance with the long-term redevelopment plans of the community in which the acquisition and redevelopment is to occur.

II.B.12. *Alternative requirement for housing rehabilitation—assistance for second homes.* HUD is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a)(4) as follows: properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance or safe housing incentives. This prohibition does not apply to acquisitions that meet the definition of a buyout. A second home is defined for purposes of the Consolidated Notice as a home that is not the primary residence of the owner, a tenant, or any occupant at the time of the disaster or at the time of application for CDBG–DR assistance. Grantees can verify a primary residence using a variety of documentation including, but not limited to, voter registration cards, tax returns, homestead exemptions, driver's licenses, and rental agreements. Acquisition of second homes at post-disaster fair market value is not prohibited.

II.C. Infrastructure (Public Facilities, Public Improvements), Match, and Elevation of Non-Residential Structures

HUD is adopting an alternative requirement to require grantees to adhere to the applicable construction standards and requirements in II.C.1., II.C.2. and II.C.4., which apply only to those eligible activities described in those paragraphs.

II.C.1. *Infrastructure planning and design.* All newly constructed infrastructure that is assisted with CDBG–DR funds must be designed and constructed to withstand extreme weather events and the impacts of climate change. To satisfy this requirement, the grantee must identify and implement resilience performance metrics as described in section II.A.2.

For purposes of this requirement, an infrastructure activity includes any activity or group of activities (including acquisition or site or other improvements), whether carried out on public or private land, that assists the development of the physical assets that are designed to provide or support services to the general public in the following sectors: Surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from renewable, nuclear, and hydro sources; electricity transmission; broadband; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; schools, hospitals, and housing shelters; and other sectors as may be determined by the Federal Permitting Improvement Steering Council. For purposes of this requirement, an activity that falls within this definition is an infrastructure activity regardless of whether it is carried out under sections 105(a)(2), 105(a)(4), 105(a)(14), another section of the HCDA, or a waiver or alternative requirement established by HUD. Action plan requirements related to infrastructure activities are found in section III.C.1.e. of the Consolidated Notice.

II.C.2. *Elevation of nonresidential structure.* Nonresidential structures, including infrastructure, assisted with CDBG–DR funds must be elevated to the standards described in this paragraph or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year (or one percent annual chance) floodplain. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2) and (3) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Activities subject to elevation requirements must comply with applicable federal accessibility mandates.

In addition to the other requirements in this section, the grantee must comply with applicable state, local, and tribal codes and standards for floodplain management, including elevation, setbacks, and cumulative substantial damage requirements. Grantees using CDBG–DR funds as the non-Federal match in a FEMA-funded project may apply the alternative requirement for the elevation of structures described in section IV.D.5.

II.C.3. *CDBG–DR funds as match.* As provided by the HCDA, grant funds may be used to satisfy a match requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–DR activity. This includes programs or activities administered by the FEMA or the U.S. Army Corps of Engineers (USACE). By law, (codified in the HCDA as a note to section 105(a)) only $250,000 or less of CDBG–DR funds may be used for the non-Federal cost-share of any project funded by USACE. Appropriations acts prohibit the use of CDBG–DR funds for any activity reimbursable by, or for which funds are also made available by FEMA or USACE.

In response to a disaster, FEMA may implement, and grantees may elect to follow, alternative procedures for FEMA's Public Assistance Program, as authorized pursuant to Section 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''Stafford Act''). Like other projects, grantees may use CDBG–DR funds as a matching requirement, share, or contribution for Section 428 Public Assistance Projects. For all match activities, grantees must document that CDBG–DR funds have been used for the actual costs incurred for the assisted project and for costs that are eligible, meet a national objective, and meet other applicable CDBG requirements.

II.C.4. *Requirements for flood control structures.* Grantees that use CDBG–DR funds to assist flood control structures (*i.e.,* dams and levees) are prohibited from using CDBG–DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining pre-approval from HUD and any Federal agencies that HUD determines are necessary based on their involvement or potential involvement with the levee or dam. Grantees that use CDBG–DR funds for levees and dams are required to: (1) register and maintain entries regarding such structures with the USACE National Levee Database or National Inventory of Dams; (2) ensure that the structure is admitted in the USACE PL 84–99 Program (Levee Rehabilitation and Inspection Program); (3) ensure the structure is accredited under the FEMA National Flood Insurance Program; (4) enter the exact location of the structure and the area served and protected by the structure into the DRGR system; and (5) maintain file documentation demonstrating that the grantee has conducted a risk assessment before funding the flood control structure and documentation that the investment includes risk reduction measures.

II.D. Economic Revitalization and Section 3 Requirements on Economic Opportunities

CDBG–DR funds can be used for CDBG–DR eligible activities related to economic revitalization. The attraction, retention, and return of businesses and jobs to a disaster-impacted area is critical to long-term recovery. Accordingly, for CDBG–DR purposes, economic revitalization may include any CDBG–DR eligible activity that demonstrably restores and improves the local economy through job creation and retention or by expanding access to goods and services. The most common CDBG–DR eligible activities to support economic revitalization are outlined in 24 CFR 570.203 and 570.204 and sections 105(a)(14), (15), and (17) of the HCDA.

Based on the U.S. Change Research Program's Fourth National Climate Assessment, climate-related natural hazards, extreme events, and natural disasters disproportionately affect LMI individuals who belong to underserved communities because they are less able to prepare for, respond to, and recover from the impacts of extreme events and natural hazards, or are members of communities that have experienced significant disinvestment and historic discrimination. Therefore, HUD is imposing the following alternative requirement: When funding activities under section 105(a) of the HCDA that support economic revitalization, grantees must prioritize those underserved communities that have been impacted by the disaster and that were economically distressed before the disaster, as described further below in II.D.1.

The term ''underserved communities'' refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. Underserved communities that were economically distressed before the disaster include, but are not limited to, those areas that were designated as a Promise Zone, Opportunity Zone, a Neighborhood Revitalization Strategy Area, a tribal area, or those areas that meet at least one of the distress criteria established for the designation of an investment area of Community Development Financial Institution at 12 CFR 1805.201(b)(3)(ii)(D).

Grantees undertaking an economic revitalization activity must maintain supporting documentation to demonstrate how the grantee has prioritized underserved communities for purposes of its activities that support economic revitalization, as described below in II.D.1.

II.D.1. *Prioritizing economic revitalization assistance—alternative requirement.* When funding activities outlined in 24 CFR 570.203 and 570.204 and sections 105(a)(14), (15), and (17) of the HCDA, HUD is instituting an alternative requirement in addition to the other requirements in these provisions to require grantees to prioritize assistance to disaster-impacted businesses that serve underserved communities and spur economic opportunity for underserved communities that were economically distressed before the disaster.

II.D.2. *National objective documentation for activities that support economic revitalization.* 24 CFR 570.208(a)(4)(i) and (ii), 24 CFR 570.483(b)(4)(i) and (ii), 24 CFR 570.506(b)(5) and (6), and 24 CFR 1003.208(d) are waived to allow the grantees under the Consolidated Notice to identify the LMI jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (*i.e.,* the number of persons). Thus, this method streamlines the documentation process by allowing the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

II.D.3. *Public benefit for activities that support economic revitalization.* When applicable, the public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for the aggregate of all economic development activities. Economic development activities support economic revitalization. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per LMI person to whom goods or services are provided by the activity. These dollar thresholds can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

HUD waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), and 24 CFR 1003.302(c) for all economic development activities. Paragraph (g) of 24 CFR 570.482 and paragraph (c) and (d) under § 570.209 are also waived to the extent these provisions are related to public benefit. However, grantees that choose to take advantage of this waiver in lieu of complying with public benefit standards under the existing regulatory requirements shall be subject to the following condition: grantees shall collect and maintain documentation in the project file on the creation and retention of total jobs; the number of jobs within appropriate salary ranges, as determined by the grantee; the average amount of assistance provided per job, by activity or program; and the types of jobs. Additionally, grantees shall report the total number of jobs created and retained and the applicable national objective in the DRGR system.

II.D.4. *Clarifying note on Section 3 worker eligibility and documentation requirements.* Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) applies to CDBG–DR activities that are Section 3 projects, as defined at 24 CFR 75.3(a)(2). The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent. CDBG–DR grantees are directed to HUD's guidance published in CPD Notice 2021–09, ''Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, final rule requirements for CDBG, CDBG–CV, CDBG–DR, CDBG-Mitigation (CDBG–MIT), NSP, Section 108, and RHP projects,'' as amended (*https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-09cpdn.pdf*). All direct recipients of CDBG–DR funding must report Section 3 information through the DRGR system.

II.D.5. *Waiver and modification of the job relocation clause to permit assistance to help a business return.* CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, 24 CFR 570.482(h), and 24 CFR 1003.209, are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another state or to another labor market area within the same state to continue business.

II.D.6. *Underwriting.* Notwithstanding section 105(e)(1) of the HCDA, no CDBG–DR funds may be provided to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA unless such project has been evaluated and selected in accordance with guidelines developed by HUD pursuant to section 105(e)(2) of the HCDA for evaluating and selecting economic development projects. Grantees and their subrecipients are required to comply with the underwriting guidelines in appendix A to 24 CFR part 570 if they are using grant funds to provide assistance to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA. The underwriting guidelines are found at appendix A of 24 CFR part 570.

II.D.7. *Limitation on use of funds for eminent domain.* CDBG–DR funds may not be used to support any Federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For purposes of this paragraph, public use shall not be construed to include economic development that primarily benefits private entities. The following shall be considered a public use for the purposes of eminent domain: any use of funds for (1) mass transit, railroad, airport, seaport, or highway projects; (2) utility projects that benefit or serve the general public, including energy related, communication-related, water related, and wastewater-related infrastructure; (3) other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government; and (4) projects for the removal of an immediate threat to public health and safety, including the removal of a brownfield as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118).

III. Grant Administration

III.A. Pre-Award Evaluation of Management and Oversight of Funds

III.A.1. *Certification of financial controls and procurement processes, and adequate procedures for proper grant management.* Appropriations acts require that the Secretary certify that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, 42 U.S.C. 5155, to ensure timely expenditure of funds, to maintain a comprehensive website regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

III.A.1.a. *Documentation requirements.* To enable the Secretary to make this certification, each grantee must submit to HUD the certification documentation listed below. This information must be submitted within 60 days of the applicability date of the Allocation Announcement Notice, or with the grantee's submission of its action plan in DRGR as described in section III.C.1, whichever date is earlier. If required by appropriations acts, grant agreements will not be executed until the Secretary has issued a certification for the grantee. For each of the items (1) through (6) below (collectively referred to as the ''Financial Management and Grant Compliance Certification Requirements'') the grantee must certify to the accuracy of its submission when submitting the Financial Management and Grant Compliance Certification Checklist (the ''Certification Checklist''). The Certification Checklist is a document that incorporates all of the Financial Management and Grant Compliance Certification Requirements. Not all of the requirements in (1) through (6) below are appropriate or applicable to Indian tribes. Therefore, Indian tribes that receive an allocation directly from HUD may request an alternative method to document support for the Secretary's certification.

(1) Proficient financial management controls. A grantee has proficient financial management controls if each of the following criteria is satisfied:

(a) The grantee agency administering this grant submits its most recent single audit and consolidated annual financial report (CAFR), which in HUD's determination indicates that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of CDBG, CDBG–DR, or CDBG–MIT funds. If the single audit or CAFR identified weaknesses or deficiencies, the grantee must provide documentation satisfactory to HUD showing how those weaknesses have been removed or are being addressed. (b) The grantee has completed and submitted the certification documentation required in the applicable Certification Checklist. The grantee's documentation must demonstrate that the standards meet the requirements in the Consolidated Notice and the Certification Checklist.

(2) Each grantee must provide HUD its procurement processes for review, so HUD may evaluate the grantee's processes to determine that they are based on principles of full and open competition. A grantee's procurement processes must comply with the procurement requirements at section IV.B.

(a) A state grantee has proficient procurement processes if HUD determines that its processes uphold the principles of full and open competition and include an evaluation of the cost or price of the product or service, and if its procurement processes reflect that it:

(i) Adopted 2 CFR 200.318 through 200.327;

(ii) Follows its own state procurement policies and procedures and establishes requirements for procurement processes for local governments and subrecipients based on full and open competition pursuant to 24 CFR 570.489(g), and the requirements for the state, its local governments, and subrecipients include evaluation of the cost or price of the product or service; or

(iii) Adopted 2 CFR 200.317, meaning that it will follow its own state procurement processes and evaluate the cost or price of the product or service, but impose 2 CFR 200.318 through 200.327 on its subrecipients.

(b) A local government grantee has proficient procurement processes if the processes are consistent with the specific applicable procurement standards identified in 2 CFR 200.318 through 200.327. When the grantee provides a copy of its procurement processes, it must indicate the sections that incorporate these provisions.

(c) An Indian tribe grantee has proficient procurement processes if its procurement standards are consistent with procurement requirements in 2 CFR part 200 imposed by 24 CFR 1003.501, and additional procurement requirements in 1003.509(e) and 1003.510.

(3) Duplication of benefits. A grantee has adequate policies and procedures to prevent the duplication of benefits (DOB) if the grantee submits and identifies a uniform process that reflects the requirements in section IV.A of the Consolidated Notice, including:

(a) Determining all disaster assistance received by the grantee or applicant and all reasonably identifiable financial assistance available to the grantee or applicant, as applicable, before committing funds or awarding assistance;

(b) Determining a grantee's or an applicant's unmet need(s) for CDBG–DR assistance before committing funds or awarding assistance; and

(c) Requiring beneficiaries to enter into a signed agreement to repay any duplicative assistance if they later receive additional assistance for the same purpose for which the CDBG–DR award was provided. The grantee must identify a method to monitor compliance with the agreement for a reasonable period (*i.e.,* a time period commensurate with risk) and must articulate this method in its policies and procedures, including the basis for the period during which the grantee will monitor compliance. This agreement must also include the following language: ''Warning: Any person who knowingly makes a false claim or statement to HUD or causes another to do so may be subject to civil or criminal penalties under 18 U.S.C. 2, 287, 1001 and 31 U.S.C. 3729.''

Policies and procedures of the grantee submitted to support the certification must provide that before the award of assistance, the grantee will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of local, state, and Federal sources of funding to prevent the duplication of benefits.

(4) Timely expenditures. A grantee has adequate policies and procedures to determine timely expenditures if it submits policies and procedures that indicate the following to HUD: how it will track and document expenditures of the grantee and its subrecipients (both actual and projected reported in performance reports); how it will account for and manage program income; how it will reprogram funds in a timely manner for activities that are stalled; and how it will project expenditures of all CDBG–DR funds within the period provided for in section V.A.

(5) Comprehensive disaster recovery website. A grantee has adequate policies and procedures to maintain a comprehensive accessible website if it submits policies and procedures indicating to HUD that the grantee will have a separate web page dedicated to its disaster recovery activities assisted with CDBG–DR funds that includes the information described at section III.D.1.d.–e. The procedures must also indicate the frequency of website updates. At minimum, grantees must update their website quarterly.

(6) Procedures to detect and prevent fraud, waste, and abuse. A grantee has adequate procedures to detect and prevent fraud, waste, and abuse if it submits procedures that indicate:

(a) How the grantee will verify the accuracy of information provided by applicants;

(b) The criteria to be used to evaluate the capacity of potential subrecipients;

(c) The frequency with which the grantee will monitor other agencies of the grantee that will administer CDBG–DR funds, and how it will monitor subrecipients, contractors, and other program participants, and why monitoring is to be conducted and which items are to be monitored;

(d) It has or will hire an internal auditor that provides both programmatic and financial oversight of grantee activities, and has adopted policies that describes the auditor's role in detecting fraud, waste, and abuse, which policies must be submitted to HUD;

(e)(i) For states or grantees subject to the same requirements as states, a written standard of conduct and conflicts of interest policy that complies with the requirements of 24 CFR 570.489(g) and (h) and subparagraph III.A.1.a(2)(a) of the Consolidated Notice, which policy includes the process for promptly identifying and addressing such conflicts;

(ii) For units of general local government or grantees subject to the same requirements as units of general local government, a written standard of conduct and conflicts of interest policy that complies with 24 CFR 570.611 and 2 CFR 200.318, as applicable, which includes the process for promptly identifying and addressing such conflicts;

(iii) For Indian tribes, a written standard of conduct and conflicts of interest policy that complies with 24 CFR 1003.606, as applicable; and

(f) It assists in investigating and taking action when fraud occurs within the grantee's CDBG–DR activities and/or programs. All grantees receiving CDBG–DR funds for the first time shall attend and require subrecipients to attend fraud related training provided by HUD OIG, when offered, to assist in the proper management of CDBG–DR grant funds. Instances of fraud, waste, and abuse should be referred to the HUD OIG Fraud Hotline (phone: 1–800–347–3735 or email: *hotline@hudoig.gov*).

Following a disaster, property owners and renters are frequently the targets of persons fraudulently posing as government employees, creditors, mortgage servicers, insurance adjusters, and contractors. The grantee's procedures must address how the grantee will make CDBG–DR beneficiaries aware of the risks of contractor fraud and other potentially fraudulent activity that can occur in communities recovering from a disaster. Grantees must provide CDBG–DR beneficiaries with information that raises awareness of possible fraudulent activity, how the fraud can be avoided, and what local or state agencies to contact to take action and protect the grantee and beneficiary investment. The grantee's procedures must address the steps it will take to assist a CDBG–DR beneficiary if the beneficiary experiences contractor or other fraud. If the beneficiary is eligible for additional assistance as a result of the fraudulent activity and the creation of remaining unmet need, the procedures must also address what steps the grantee will follow to provide the additional assistance.

III.A.1.b. *Relying on prior submissions—financial management and grant compliance certification requirements.* This section only applies once a grantee has received a CDBG–DR grant through an Allocation Announcement Notice that makes the Consolidated Notice applicable. After that original grant, if a CDBG–DR grantee is awarded a subsequent CDBG–DR grant, HUD will rely on the grantee's prior submissions provided in response to the Financial Management and Grant Compliance Certification Requirements in the Consolidated Notice. HUD will continue to monitor the grantee's submissions and updates made to policies and procedures during the normal course of business. The grantee must notify HUD of any substantial changes made to these submissions.

If a CDBG–DR grantee is awarded a subsequent CDBG–DR grant, and it has been more than three years since the executed grant agreement for the original CDBG–DR grant or a subsequent grant is equal to or greater than ten times the amount of the original CDBG–DR grant, grantees must update and resubmit the documentation required by paragraph III.A.1.a. with the completed Certification Checklist to enable the Secretary to certify that the grantee has in place proficient financial controls and procurement processes, and adequate procedures for proper grant management. However, the Secretary may require any CDBG–DR grantee to update and resubmit the documentation required by paragraph III.A.1.a., if there is good cause to require it.

III.A.2. *Implementation plan.* HUD requires each grantee to demonstrate that it has sufficient capacity to manage the CDBG–DR funds and the associated risks. Grantees must evidence their management capacity through their implementation plan submissions. These submissions must meet the criteria below and must be submitted within 120 days of the applicability date of the governing Allocation Announcement Notice or with the grantee's submission of its action plan, whichever is earlier, unless the grantee has requested, and HUD has approved an extension of the submission deadline.

III.A.2.a. To enable HUD to assess risk as described in 2 CFR 200.206, the grantee will submit an implementation plan to HUD. The implementation plan must describe the grantee's capacity to carry out the recovery and how it will address any capacity gaps. HUD will determine that the grantee has sufficient management capacity to adequately reduce risk if the grantee submits implementation plan documentation that addresses (1) through (3) below:

(1) Capacity assessment. The grantee identifies the lead agency responsible for implementation of the CDBG–DR award and indicates that the head of that agency will report directly to the chief executive officer of the jurisdiction. The grantee has conducted an assessment of its capacity to carry out CDBG–DR recovery efforts and has developed a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified. The assessment must include a list of any open CDBG–DR findings and an update on the corrective actions undertaken to address each finding.

(2) Staffing. The grantee must submit an organizational chart of its department or division and must also provide a table that clearly indicates which personnel or organizational unit will be responsible for each of the Financial Management and Grant Compliance Certification Requirements identified in section III.A.1.a. along with staff contact information, if available (*i.e.,* personnel responsible for conducting DOB analysis, timely expenditure, website management, monitoring and compliance, and financial management). The grantee must also submit documentation demonstrating that it has assessed staff capacity and identified positions for the purpose of: case management in proportion to the applicant population; program managers who will be assigned responsibility for each primary recovery area; staff who have demonstrated experience in housing, infrastructure (as applicable), and economic revitalization (as applicable); staff responsible for procurement/contract management, regulations implementing Section 3 of the Housing and Urban Development Act of 1968, as amended (24 CFR part 75) (Section 3), fair housing compliance, and environmental compliance. An adequate plan must also demonstrate that the internal auditor and responsible audit staff report independently to the chief elected or executive officer or board of the governing body of any designated administering entity.

The grantee's implementation plan must describe how it will provide technical assistance for any personnel that are not employed by the grantee at the time of action plan submission, and to fill gaps in knowledge or technical expertise required for successful and timely recovery. State grantees must also include how it plans to provide technical assistance to subgrantees and subrecipients, including units of general local government.

(3) Internal and interagency coordination. The grantee's plan must describe how it will ensure effective communication between different departments and divisions within the grantee's organizational structure that are involved in CDBG–DR-funded recovery efforts, mitigation efforts, and environmental review requirements, as appropriate; between its lead agency and subrecipients responsible for implementing the grantee's action plan; and with other local and regional planning efforts to ensure consistency. The grantee's submissions must demonstrate how it will consult with other relevant government agencies, including the State Hazard Mitigation Officer (SHMO), State or local Disaster Recovery Coordinator, floodplain administrator, and any other state and local emergency management agencies, such as public health and environmental protection agencies, that have primary responsibility for the administration of FEMA or USACE funds.

III.A.2.b. *Relying on prior submissions—Implementation plan.* This section only applies once a grantee has received a CDBG–DR grant through an Allocation Announcement Notice that makes the Consolidated Notice applicable. After that original grant, if a CDBG–DR grantee is awarded a subsequent CDBG–DR grant, HUD will rely on the grantee's implementation plan submitted for its original CDBG–DR grant unless it has been more than three years since the executed grant agreement for the original CDBG–DR grant or the subsequent grant is equal to or greater than ten times the amount of its original CDBG–DR grant.

If a CDBG–DR grantee is awarded a subsequent CDBG–DR grant, and it has been more than three years since the executed grant agreement for its original CDBG–DR grant or a subsequent grant is equal to or greater than ten times the amount of the original CDBG–DR grant, the grantee is to update and resubmit its implementation plan to reflect any changes to its capacity, staffing, and coordination.

III.B. Administration, Planning, and Financial Management

III.B.1. *Grant administration and planning.*

III.B.1.a. *Grantee responsibilities.* Each grantee shall administer its award in compliance with all applicable laws and regulations and shall be financially accountable for the use of all awarded funds. CDBG–DR grantees must comply with the recordkeeping requirements of 24 CFR 570.506 and 24 CFR 570.490, as amended by the Consolidated Notice waivers and alternative requirements. All grantees must maintain records of performance in DRGR, as described elsewhere in the Consolidated Notice.

III.B.1.b. *Grant administration cap.* Up to five percent of the grant (plus five percent of program income generated by the grant) can be used for administrative costs by the grantee, units of general local government, or subrecipients. Thus, the total of all costs classified as administrative for a CDBG–DR grant must be less than or equal to the five percent cap (plus five percent of program income generated by the grant). The cap for administrative costs is subject to the combined technical assistance and administrative cap for state grantees as discussed in section III.B.2.a.

III.B.1.c. *Use of funds for administrative costs across multiple grants.* The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116–20) authorized special treatment for eligible administrative costs for grantees that received awards under Public Laws 114–113, 114–223, 114–254, 115–31, 115–56, 115–123, 115–254, 116–20, or any future act. The Consolidated Notice permits grantees to use eligible administrative funds (up to five percent of each grant award plus up to five percent of program income generated by the grant) for the cost of administering any of these grants awarded under the identified Public Laws (including future Acts) without regard to the particular disaster appropriation from which such funds originated. To exercise this authority, the grantee must ensure that it has appropriate financial controls to guarantee that the amount of grant administration expenditures for each of the aforementioned grants will not exceed five percent of the total grant award for each grant (plus five percent of program income generated by the grant). The grantee must review and modify any financial management policies and procedures regarding the tracking and accounting of administration costs as necessary.

III.B.1.d. *Planning expenditures cap.* Both state and local government grantees are limited to spending a maximum of fifteen percent of their total grant amount on planning costs. Planning costs subject to the 15 percent cap are those defined in 42 U.S.C. 5305(a)(12) and more broadly in 24 CFR 570.205.

III.B.2. *State grantees only.*

III.B.2.a. *Combined technical assistance and administrative cap (state grantees only).* The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii), and 24 CFR 570.489(a)(2) shall not apply to the extent that they cap administration and technical assistance expenditures, limit a state's ability to charge a nominal application fee for grant applications for activities the state carries out directly, and require a dollar-for-dollar match of state funds for administrative costs exceeding $100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed five percent of the grant, plus five percent of program income generated by the grant.

III.B.2.b. *Planning-only activities (state grantees only).* The State CDBG Program requires that, for planning-only grants, local government grant recipients must document that the use of funds meets a national objective. In the CDBG Entitlement Program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). HUD notes that almost all effective recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. To assist state grantees, HUD is waiving the requirements at 24 CFR 570.483(b)(5) and (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income or slum-and-blight national objective. Instead, as an alternative requirement, 24 CFR 570.208(d)(4) applies to states when funding disaster recovery-assisted, planning-only grants, or when directly administering planning activities that guide disaster recovery. In addition, 42 U.S.C. 5305(a)(12) is waived to the extent necessary so the types of planning activities that states may fund or undertake are expanded to be consistent with those of CDBG Entitlement grantees identified at 24 CFR 570.205.

III.B.2.c. *Direct grant administration and means of carrying out eligible activities (state grantees only).* Requirements at 42 U.S.C. 5306(d) are waived to allow a state to use its disaster recovery grant allocation directly to carry out state-administered activities eligible under the Consolidated Notice, rather than distribute all funds to local governments. Pursuant to this waiver and alternative requirement, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the state carries out directly. Activities eligible under the Consolidated Notice may be carried out by a state, subject to state law and consistent with the requirement of 24 CFR 570.200(f), through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489(g) and (h), and subparagraph III.A.1.a.(2)(a) of the Consolidated Notice relating to conflicts of interest, and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

A state grantee may also carry out activities in tribal areas. A state must coordinate with the Indian tribe with jurisdiction over the tribal area when providing CDBG–DR assistance to beneficiaries in tribal areas. State grantees carrying out projects in tribal areas, either directly or through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients, must obtain the consent of the Indian tribe with jurisdiction over the tribal area to allow the state grantee to carry out or to fund CDBG–DR projects in the area.

III.B.2.d. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties (state grantees only).* 42 U.S.C. 5302(a)(7) (definition of ''nonentitlement area'') and related provisions of 24 CFR part 570, including 24 CFR 570.480, are waived to permit state grantees to distribute CDBG–DR funds to units of local government and Indian tribes.

III.B.2.e. *Use of subrecipients (state grantees only).* Paragraph III.B.2.c. provides a waiver and alternative requirement that a state may carry out activities directly, including through assistance provided under agreements with subrecipients. Therefore, when states carry out activities directly through subrecipients, the following alternative requirements apply: the state is subject to the definition of subrecipients at 24 CFR 570.500(c) and must adhere to the requirements for agreements with subrecipients at 24 CFR 570.503. Additionally, 24 CFR 570.503(b)(4) is modified to require the subrecipient to comply with applicable uniform requirements, as described in 24 CFR 570.502, except that the subrecipient shall follow procurement requirements imposed by the state in accordance with subparagraph III.A.1.a.(2) of the Consolidated Notice. When 24 CFR 570.503 applies, notwithstanding 24 CFR 570.503(b)(5)(i), units of general local government that are subrecipients are defined as recipients under 24 CFR part 58 and are therefore responsible entities that assume environmental review responsibilities, as described in III.F.5. Grantees are reminded that they are responsible for providing on-going oversight and monitoring of subrecipients and are ultimately responsible for subrecipient compliance with all CDBG–DR requirements.

III.B.2.f. *Recordkeeping (state grantees only).* When a state carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: a state grantee shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG–DR funds, under 24 CFR 570.493 and reviews and audits by the state under III.B.2.h. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the state shall be sufficient to: (a) enable HUD to make the applicable determinations described at 24 CFR 570.493; (b) make compliance determinations for activities carried out directly by the state; and (c) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

III.B.2.g. *Change of use of real property (state grantees only).* This alternative requirement conforms the change of use of real property rule to the waiver allowing a state to carry out activities directly. For purposes of these grants, all references to ''unit of general local government'' in 24 CFR 570.489(j), shall be read as ''state, local governments, or Indian tribes (either as subrecipients or through a method of distribution), or other state subrecipient.''

III.B.2.h. *Responsibility for review and handling of noncompliance (state grantees only).* This change is in conformance with the waiver allowing a state to carry out activities directly. 24 CFR 570.492 is waived, and the following alternative requirement applies for any state receiving a direct award: the state shall make reviews and audits, including on-site reviews of any local governments or Indian tribes (either as subrecipients or through a method of distribution) designated public agencies, and other subrecipients, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA, as amended, and as modified by the Consolidated Notice. In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The state shall establish remedies for noncompliance by any subrecipients, designated public agencies, or local governments.

III.B.2.i. *Consultation (state grantees only).* Currently, the HCDA and regulations require a state grantee to consult with affected local governments in nonentitlement areas of the state in determining the state's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b)(2), and 24 CFR 91.110, and imposing an alternative requirement that states receiving an allocation of CDBG–DR funds consult with all disaster-affected local governments (including any CDBG-entitlement grantees), Indian tribes, and any public housing authorities in determining the use of funds. This approach ensures that a state grantee sufficiently assesses the recovery needs of all areas affected by the disaster.

III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement

Requirements for CDBG actions plans, located at 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(a)(1), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 12705(a)(2), and 24 CFR 91.220 and 91.320, are waived for CDBG–DR grants. Instead, grantees must submit to HUD an action plan for disaster recovery which will describe programs and activities that conform to applicable requirements as specified in the Consolidated Notice and the applicable Allocation Announcement Notice. HUD will monitor the grantee's actions and use of funds for consistency with the plan, as well as meeting the performance and timeliness objectives therein. The Secretary will disapprove all action plans that are substantially incomplete if it is determined that the plan does not satisfy all of the required elements identified in the Consolidated Notice and the applicable Allocation Announcement Notice.

III.C.1. *Action plan.* The grantee's action plan must identify the use of all funds—including criteria for eligibility and how the uses address long-term recovery needs, restoration of infrastructure and housing, economic revitalization, and the incorporation of mitigation measures in the MID areas. HUD created the Public Action Plan in DRGR which is a function that allows grantees to develop and submit their action plans for disaster recovery directly into DRGR. Grantees must use HUD's Public Action Plan in DRGR to develop all CDBG–DR action plans and substantial amendments submitted to HUD for approval. The Public Action Plan is different from the DRGR Action Plan, which is a comprehensive description of projects and activities in DRGR.

The grantee must describe the steps it will follow to make the action plan, substantial amendments, performance reports, and other relevant program materials available in a form accessible to persons with disabilities and those with limited English proficiency (LEP). All grantees must include sufficient information in its action plan so that all interested parties will be able to understand and comment on the action plan. The action plan (and subsequent amendments) must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (*e.g.,* by program, subrecipient, grantee-administered activity, or other category). The grantee must certify, as required by section III.F.7., that activities to be undertaken with CDBG–DR funds are consistent with its action plan.

The action plan must contain:

III.C.1.a. *An impact and unmet needs assessment.* Each grantee must develop an impact and unmet needs assessment to understand the type and location of community needs and to target limited resources to those areas with the greatest need. CDBG–DR grantees must conduct an impact and unmet needs assessment to inform the use of the grant. Grantees must cite data sources in the impact and unmet needs assessment. At a minimum, the impact and unmet needs assessment must:

- Evaluate all aspects of recovery including housing (interim and permanent, owner and rental, single family and multifamily, affordable and market rate, and housing to meet the needs of persons who were experiencing homelessness pre-disaster), infrastructure, and economic revitalization needs, while also incorporating mitigation needs into activities that support recovery as required in section II.A.2.;
- Estimate unmet needs to ensure CDBG–DR funds meet needs that are not likely to be addressed by other sources of funds by accounting for the various forms of assistance available to, or likely to be available to, affected communities (*e.g.,* projected FEMA funds) and individuals (*e.g.,* estimated insurance) and, using the most recent available data, estimating the portion of need unlikely to be addressed by insurance proceeds, other Federal assistance, or any other funding sources;
- Assess whether public services (*e.g.,* housing counseling, legal advice and representation, job training, mental health, and general health services) are necessary to complement activities intended to address housing, infrastructure, and economic revitalization and how those services would need to be made accessible to individuals with disabilities including, but not limited to, mobility, sensory, developmental, emotional, cognitive, and other impairments;
- Describe the extent to which expenditures for planning activities, including the determination of land use goals and policies, will benefit the HUD-identified MID areas, as described in section II.A.3.;
- Describe disaster impacts geographically by type at the lowest level practicable (*e.g.,* county/parish level or lower if available for states, and neighborhood or census tract level for cities); and
- Take into account the costs and benefits of incorporating hazard mitigation measures to protect against the specific identified impacts of future extreme weather events and other natural hazards. This analysis should factor in historical and projected data on risk that incorporates best available science (*e.g.,* the most recent National Climate Assessment).

Disaster recovery needs evolve over time and grantees must amend the impact and unmet needs assessment and action plan as additional needs are identified and additional resources become available. At a minimum, grantees must revisit and update the impact and unmet needs assessment when moving funds from one program to another through a substantial amendment.

III.C.1.b. *Connection of programs and projects to unmet needs.* The grantee must describe the connection between identified unmet needs and the allocation of CDBG–DR resources. The plan must provide a clear connection between a grantee's impact and unmet needs assessment and its proposed programs and projects in the MID areas (or outside in connection to the MID areas as described in section II.A.3). Such description must demonstrate a reasonably proportionate allocation of resources relative to areas and categories (*i.e.,* housing, economic revitalization, and infrastructure) of greatest needs identified in the grantee's impact and unmet needs assessment or provide an acceptable justification for a disproportional allocation, while also incorporating hazard mitigation measures to reduce the impacts of recurring natural disasters and the long-term impacts of climate change. Grantee action plans may provide for the allocation of funds for administration and planning activities and for public service activities, subject to the caps on such activities as described in the Consolidated Notice.

III.C.1.c. *Public housing, affordable rental housing, and housing for vulnerable populations.* Each grantee must include a description of how it has analyzed, identified, and will address (with CDBG–DR or other sources) the disaster-related rehabilitation, reconstruction, and new construction needs in the MID-area of the types of housing described below. Specifically, a grantee must assess and describe how it will address unmet needs in the following types of housing, subject to the applicable HUD program requirements: public housing, affordable rental housing (including both subsidized and market rate affordable housing), and housing for vulnerable populations (See Section III.C.1.c.iii below), including emergency shelters and permanent housing for persons experiencing homelessness, in the areas affected by the disaster. Grantees must coordinate with local public housing authorities (PHA) in the MID areas to ensure that the grantee's representation in the action plan reflects the input of those entities as well as coordinating with State Housing Finance agencies to make sure that all funding sources that are available and opportunities for leverage are noted in the action plan.

(i) *Public housing:* Describe unmet public housing needs of each disaster-impacted PHA within its jurisdiction, if applicable. The grantee must work directly with impacted PHAs in identifying necessary and reasonable costs and ensuring that adequate funding from all available sources is dedicated to addressing the unmet needs of damaged public housing (*e.g.,* FEMA, insurance, and funds available from programs administered by HUD's Office of Public and Indian Housing).

(ii) *Affordable rental housing:* Describe unmet affordable rental housing needs for LMI households as a result of the disaster or exacerbated by the disaster, including private market units receiving project-based rental assistance or with tenants that participate in the Section 8 Housing Choice Voucher Program, and any other housing that is assisted under a HUD program in the MID areas. Identify funding to specifically address these unmet needs for affordable rental housing to LMI households. If a grantee is proposing an allocation of CDBG–DR funds for affordable rental housing needs, the action plan must, at a minimum, meet the requirements described in II.B.3.

(iii) *Housing for vulnerable populations:* Describe how CDBG–DR or other funding sources available will promote housing for vulnerable populations, as defined in section III.C.1.d., in the MID area, including how it plans to address: (1) transitional housing, including emergency shelters and housing for persons experiencing homelessness, permanent supportive housing, and permanent housing needs of individuals and families (including subpopulations) that are experiencing or at risk of experiencing homelessness; (2) the prevention of low-income individuals and families with children (especially those with incomes below thirty percent of the area median) from becoming homeless; (3) the special needs of persons who are not experiencing homelessness but require supportive housing (*i.e.,* elderly, frail elderly, persons with disabilities (mental, physical, developmental, etc.), victims of domestic violence, persons with alcohol or other substance-use disorder, persons with HIV/AIDS and their families, and public housing residents, as identified in 24 CFR 91.315(e)).

III.C.1.d. *Fair housing, civil rights data, and advancing equity.*

The grantee must use its CDBG–DR funds in a manner that complies with its fair housing and nondiscrimination obligations, including title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.,* the Fair Housing Act, 42 U.S.C. 3601–19, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 *et seq.,* and Section 109 of the HCDA, 42 U.S.C. 5309. To ensure that the activities performed in connection with the action plan will comply with these requirements, the grantee must provide an assessment of whether its planned use of CDBG–DR funds will have an unjustified discriminatory effect on or failure to benefit racial and ethnic minorities in proportion to their communities' needs, particularly in racially and ethnically concentrated areas of poverty, and how it will address the recovery needs of impacted individuals with disabilities.

Grantees should also consider the impact of their planned use of CDBG–DR funds on other protected class groups under fair housing and civil rights laws, vulnerable populations, and other historically underserved communities. For purposes of the Consolidated Notice, HUD defines vulnerable populations as a group or community whose circumstances present barriers to obtaining or understanding information or accessing resources. In the action plan, grantees should identify those populations (*i.e.,* which protected class, vulnerable population, and historically underserved groups were considered) and how those groups can be expected to benefit from the activities set forth in the plan consistent with the civil rights requirements set forth above.

To perform such an assessment, grantees must include data for the HUD-identified and grantee-identified MID areas that identifies the following information, as it is available:

• Racial and ethnic make-up of the population, including relevant sub-populations depending on activities and programs outlined in the plan (this would include renters and homeowners if eligibility is dependent on housing tenure) and the specific sub- geographies in the MID areas in which those programs and activities will be carried out;

• LEP populations, including number and percentage of each identified group;

• Number and percentage of persons with disabilities;

• Number and percentage of persons belonging to Federally protected classes under the Fair Housing Act (race, color, national origin, religion, sex—which includes sexual orientation and gender identity—familial status, and disability) and other vulnerable populations as determined by the grantee;

• Indigenous populations and tribal communities, including number and percentage of each identified group;

• Racially and ethnically concentrated areas and concentrated areas of poverty; and

• Historically distressed and underserved communities;

Grantees must explain how the use of funds will reduce barriers that individuals may face when enrolling in and accessing CDBG–DR assistance, for example, barriers imposed by a lack of outreach to their community or by the lack of information in non-English languages or accessible formats for individuals with different types of disabilities.

Grantees are strongly encouraged to include examples of how their proposed allocations, selection criteria, and other actions can be expected to advance equity for protected class groups. Grantees are strongly encouraged to explain and provide examples of how their actions can be expected to advance the following objectives:

• Equitably benefit protected class groups in the MID areas, including racial and ethnic minorities, and sub geographies in the MID areas in which residents belonging to such groups are concentrated;

• To the extent consistent with purposes and uses of CDBG–DR funds, overcome prior disinvestment in infrastructure and public services for protected class groups, and areas in which residents belonging to such groups are concentrated, when addressing unmet needs;

• Enhance for individuals with disabilities in the MID areas (a) the accessibility of disaster preparedness, resilience, or recovery services, including the accessibility of evacuation services and shelters; (b) the provision of critical disaster-related information in accessible formats; and/or (c) the availability of integrated, accessible housing and supportive services.

Grantees must identify the proximity of natural and environmental hazards (*e.g.,* industrial corridors, sewage treatment facilities, waterways, EPA superfund sites, brownfields, etc.) to affected populations in the MID area, including members of protected classes, vulnerable populations, and underserved communities and explore how CDBG–DR activities may mitigate environmental concerns and increase resilience among these populations to protect against the effects of extreme weather events and other natural hazards.

Grantees must also describe how their use of CDBG–DR funds is consistent with their obligation to affirmatively further fair housing. HUD regulations at 24 CFR 5.151 provide that affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

State and local government grantees must submit a certification to AFFH in accordance with 24 CFR 5.150, *et seq.* CDBG–DR grantees must also comply with the recordkeeping requirements of 24 CFR 570.506 and 570.490(b), as amended by the Consolidated Notice.

III.C.1.e. *Infrastructure.* In its action plan, each grantee must include a description of how it plans to meet the requirements of the Consolidated Notice, including how it will: promote sound, sustainable long-term recovery planning as described in this section; adhere to the elevation requirements established in section II.C.2.; and coordinate with local and regional planning efforts as described in section III.B.2.i and III.D.1.a. All infrastructure investments must be designed and constructed to withstand chronic stresses and extreme events by identifying and implementing resilience performance metrics as described in section II.A.2.c.

If a grantee is allocating funds for infrastructure, its description must include:

(1) How it will address the construction or rehabilitation of disaster-related systems (*e.g.,* storm water management systems) or other disaster-related community-based mitigation systems (*e.g.,* using FEMA's community lifelines). State grantees carrying out infrastructure activities must work with units of general local government and Indian tribes in the MID areas to identify the unmet needs and associated costs of needed disaster-related infrastructure improvements;

(2) How mitigation measures and strategies to reduce natural hazard risks, including climate-related risks, will be integrated into rebuilding activities;

(3) The extent to which CDBG–DR funded infrastructure activities will achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk to the jurisdiction;

(4) How the grantee will evaluate the costs and benefits in selecting infrastructure projects to assist with CDBG–DR funds;

(5) How the grantee will align infrastructure investments with other planned federal, state, or local capital improvements and infrastructure development efforts, and will work to foster the potential for additional infrastructure funding from multiple sources, including state and local capital improvement projects in planning, and the potential for private investment;

(6) How the grantee will employ adaptable and reliable technologies to prevent premature obsolescence of infrastructure; and

(7) How the grantee will invest in restoration of infrastructure and related long-term recovery needs within historically underserved communities that lacked adequate investments in housing, transportation, water, and wastewater infrastructure prior to the disaster.

III.C.1.f. *Minimize Displacement.* A description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced, and ensure accessibility needs of displaced persons with disabilities. Specifically, grantees must detail how they will meet the Residential Anti-displacement and Relocation Assistance Plan (RARAP) requirements in section IV.F.7. Grantees must indicate to HUD whether they will be amending an existing RARAP or creating a new RARAP specific to CDBG–DR. Grantees must meet the requirements related to the RARAP prior to implementing any activity with CDBG–DR grant funds, such as buyouts and other disaster recovery activities. Grantees must seek to minimize displacement or adverse impacts from displacement, consistent with the requirements of Section IV.F of the Consolidated Notice, Section 104(d) of the HCDA (42 U.S.C. 5304(d)) and implementing regulations at 24 CFR part 42, and 24 CFR 570.488 or 24 CFR 570.606, as applicable. Grantees must describe how they will plan and budget for relocation activities in the action plan.

III.C.1.g. *Allocation and award caps.* The grantee must provide a budget for the full amount of the allocation that is reasonably proportionate to its unmet needs (or provide an acceptable justification for disproportional allocation) and is consistent with the requirements to integrate hazard mitigation measures into all its programs and projects. The grantee shall provide a description of each disaster recovery program or activity to be funded, including the CDBG–DR eligible activities and national objectives associated with each program and the eligibility criteria for assistance. The grantee shall also describe the maximum amount of assistance (*i.e.,* award cap) available to a beneficiary under each of the grantee's disaster recovery programs. A grantee may find it necessary to provide exceptions on a case-by-case basis to the maximum amount of assistance and must describe the process it will use to make such exceptions in its action plan. At a minimum, each grantee must adopt policies and procedures that communicate how it will analyze the circumstances under which an exception is needed and how it will demonstrate that the amount of assistance is necessary and reasonable. Each grantee must also indicate in its action plan that it will make exceptions to the maximum award amounts when necessary, to comply with federal accessibility standards or to reasonably accommodate a person with disabilities.

III.C.1.h. *Cost controls and warranties.* The grantee must provide a description of the standards to be established for construction contractors performing work in the jurisdiction and the mechanisms to be used by the grantee to assist beneficiaries in responding to contractor fraud, poor quality work, and associated issues. Grantees must require a warranty period post-construction with a formal notification to beneficiaries on a periodic basis (*e.g.,* 6 months and one month before expiration date of the warranty). Each grantee must also describe its controls for assuring that construction costs are reasonable and consistent with market costs at the time and place of construction.

III.C.1.i. *Resilience planning.* Resilience is defined as a community's ability to minimize damage and recover quickly from extreme events and changing conditions, including natural hazard risks. At a minimum, the grantee's action plan must contain a description of how the grantee will: (a) emphasize high quality design, durability, energy efficiency, sustainability, and mold resistance; (b) support adoption and enforcement of modern and/or resilient building codes that mitigate against natural hazard risks, including climate-related risks (*e.g.,* sea level rise, high winds, storm surge, flooding, volcanic eruption, and wildfire risk, where appropriate and as may be identified in the jurisdiction's rating and identified weaknesses (if any) in building code adoption using FEMA's Nationwide Building Code Adoption Tracking (BCAT) portal), and provide for accessible building codes and standards, as applicable; (c) establish and support recovery efforts by funding feasible, cost-effective measures that will make communities more resilient against a future disaster; (d) make land-use decisions that reflect responsible and safe standards to reduce future natural hazard risks, *e.g.,* by adopting or amending an open space management plan that reflects responsible floodplain and wetland management and takes into account continued sea level rise, if applicable, and (e) increase awareness of the hazards in their communities (including for members of protected classes, vulnerable populations, and underserved communities) through outreach to the MID areas.

While the purpose of CDBG–DR funds is to recover from a Presidentially declared disaster, integrating hazard mitigation and resilience planning with recovery efforts will promote a more resilient and sustainable long-term recovery. The action plan must include a description of how the grantee will promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, including climate-related natural hazards and the creation of resilience performance metrics as described in paragraph II.A.2.c. of the Consolidated Notice. This information should be based on the history of FEMA and other federally-funded disaster mitigation efforts and, as appropriate, take into account projected increases in sea level, the frequency and intensity of extreme weather events, and worsening wildfires. Grantees must use the FEMA-approved Hazard Mitigation Plan (HMP), Community Wildfire Protection Plan (CWPP), or other resilience plans to inform the evaluation, and it should be referenced in the action plan.

III.C.2. *Additional action plan requirements for states.* For state grantees, the action plan must describe how the grantee will distribute grant funds, either through specific programs and projects the grantee will carry out directly (through employees, contractors, or through subrecipients), or through a method of distribution of funds to local governments and Indian tribes (as permitted by III.B.2.d.). The grantee shall describe how the method of distribution to local governments or Indian tribes, or programs/projects carried out directly, will result in long-term recovery from specific impacts of the disaster.

All states must include in their action plan the information outlined in (1) through (7) below (in addition to other information required by section III.C.). For states using a method of distribution, if some required information is unknown when the grantee is submitting its action plan to HUD (*e.g.,* the list of programs or activities required by III.C.1.g. or the projected use of CDBG–DR funds by responsible entity as required by subparagraph (5) below), the grantee must update the action plan through a substantial amendment once the information is known. If necessary to comply with a statutory requirement that a grantee shall submit a plan detailing the proposed use of all funds prior to HUD's obligation of grant funds, HUD may obligate only a portion of grant funds until the substantial amendment providing the required information is submitted and approved by HUD.

(1) How the impact and unmet needs assessment informs funding determinations, including the rationale behind the decision(s) to provide funds to most impacted and distressed areas.

(2) When funds are subgranted to local governments or Indian tribes (either as subrecipients or through a method of distribution), all criteria used to allocate and award the funds including the relative importance of each criterion (including any priorities). If the criteria are unknown when the grantee is submitting the initial action plan to HUD, the grantee must update the action plan through a substantial amendment once the information is known. The substantial amendment must be submitted and approved before distributing the funds to a local government or Indian tribe.

(3) How the distribution and selection criteria will address disaster-related unmet needs in a manner that does not have an unjustified discriminatory effect based on race or other protected class and ensure the participation of minority residents and those belonging to other protected class groups in the MID areas. Such description should include an assessment of who may be expected to benefit, the timing of who will be prioritized, and the amount or proportion of benefits expected to be received by different communities or groups (*e.g.,* the proportion of benefits going to different locations within the MID or to homeowners versus renters).

(4) The threshold factors and recipient or beneficiary grant size limits that are to be applied.

(5) The projected uses for the CDBG–DR funds, by responsible entity, activity, and geographic area.

(6) For each proposed program and/or activity, its respective CDBG activity eligibility category (or categories), national objective(s), and what disaster-related impact is addressed, as described in section II.A.1.

(7) When applications are solicited for programs carried out directly, all criteria used to select applications for funding, including the relative importance of each criterion, and any eligibility requirements. If the criteria are unknown when the grantee is submitting the initial action plan to HUD, the grantee must update the action plan through a substantial amendment once the information is known. The substantial amendment must be submitted and approved before selecting applications.

III.C.3. *Additional action plan requirements for local governments.* For local governments grantees, the action plan shall describe specific programs and/or activities they will carry out. The action plan must also describe:

(1) How the impact and unmet needs assessment informs funding determinations, including the rationale behind the decision(s) to provide funds to most impacted and distressed areas.

(2) All criteria used to select applications (including any priorities), including the relative importance of each criterion, and any eligibility requirements. If the criteria are unknown when the grantee is submitting the initial action plan to HUD, the grantee must update the action plan through a substantial amendment once the information is known. The substantial amendment must be submitted and approved before selecting applications.

(3) How the distribution and selection criteria will address disaster-related unmet needs in a manner that does not have an unjustified discriminatory effect and ensures the participation of minority residents and those belonging to other protected class groups in the MID areas, including with regards to who may benefit, the timing of who will be prioritized, and the amount or proportion of benefits expected to be received by different communities or groups (*e.g.,* the proportion of benefits going to different locations within the MID or to homeowners versus renters).

(4) The threshold factors and grant size limits that are to be applied.

(5) The projected uses for the CDBG–DR funds, by responsible entity, activity, and geographic area.

(6) For each proposed program and/or activity, its respective CDBG activity eligibility category (or categories), national objective(s), and what disaster-related impact is addressed, as described in section II.A.1. of the Consolidated Notice.

III.C.4. *Waiver of 45-day review period for CDBG–DR action plans to 60 days.* HUD may disapprove an action plan or substantial action plan amendment if it is incomplete. HUD works with grantees to resolve or provide additional information during the review period to avoid the need to disapprove an action plan or substantial action plan amendments. There are several issues related to the action plan as submitted that can be fully resolved via further discussion and revision during an extended review period, rather than through HUD disapproval of the plan, which in turn would require grantees to take additional time to revise and resubmit their respective plan. Therefore, the Secretary has determined that good cause exists and waives 24 CFR 91.500(a) to extend HUD's action plan review period from 45 days to 60 days.

The action plan (including SF–424 and certifications) must be submitted to HUD for review and approval using DRGR. By submitting required standard forms (that must be submitted with the action plan), the grantee is providing assurances that it will comply with statutory requirements, including, but not limited to civil rights requirements. Applicants and recipients are required to submit assurances of compliance with federal civil rights requirements. A grantee will use DRGR's upload function to include the SF 424 (including SF 424B and SF 424D, as applicable) and certifications with its action plan. Grantees receiving an allocation are required to submit an action plan within 120 days of the applicability date of the Allocation Announcement Notice, unless the grantee has requested, and HUD has approved an extension of the submission deadline. HUD will then review each action plan within 60 days from the date of receipt.

During its review, HUD typically provides grantees with comments on the submitted plan to avoid the need to disapprove an action plan and offers a grantee the opportunity to make updates to the action plan during the first forty-five days of HUD's initial sixty-day review period. If a grantee wants to make updates to the action plan, HUD will reject the Public Action Plan in DRGR to return the plan to the grantee. Then, once the grantee resubmits the plan, HUD reviews the revised plan within the initial sixty-day period. HUD is establishing an alternative process that offers a grantee the option to voluntarily provide a revised action plan, updated to respond to HUD's comments, no later than day forty-five in HUD's sixty-day review. A grantee is not required to participate in the revisions of the action plan during this time, but with the understanding that an action plan may be determined to be substantially incomplete. The Secretary may disapprove an action plan as substantially incomplete if HUD determines that the action plan does not meet the requirements of the Consolidated Notice and the applicable Allocation Announcement Notice.

III.C.5. *Obligation and expenditure of funds.* Once HUD approves the action plan and approves certifications if required by appropriations acts, it will then sign a grant agreement obligating allocated funds to the grantee. The grantee will continue the action plan process in DRGR to draw funds (see section V.C.1.).

The grantee must meet the applicable environmental requirements before the use or commitment of funds for each activity. After the Responsible Entity (1) completes environmental review(s) pursuant to 24 CFR part 58 and receives from HUD an approved Request for Release of Funds and certification (as applicable), or (2) adopts another Federal agency's environmental review, approval, or permit and receives from HUD (or the state) an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for an activity. The disbursement of grant funds must begin no later than 180 calendar days after HUD executes a grant agreement with the grantee. Failure to draw funds within this timeframe may result in HUD's review of the grantee's certification of its financial controls, procurement processes, and capacity, and may result in the imposition of any corrective actions deemed appropriate by HUD pursuant to 24 CFR 570.495, 24 CFR 570.910, or 24 CFR 1003.701.

III.C.6. *Amending the action plan.* The grantee must amend its action plan to update its needs assessment, modify or create new activities, or reprogram funds, as necessary, in the DRGR system. Each amendment must be published on the grantee's official website and describe the changes within the context of the entire action plan. A grantee's current version of its entire action plan must be accessible for viewing as a single document at any given point in time, rather than require the public or HUD to view and cross-reference changes among multiple amendments. HUD's DRGR system will include the capabilities necessary for a grantee to sufficiently identify the changes for each amendment. When a grantee has finished amending the content in the Public Action Plan, the grantee will click ''Submit Plan'' in the DRGR system. The DRGR system will prompt the grantee to select the ''Public Action Plan'' and identify the amendment type (substantial or nonsubstantial). The grantee will complete this cover page to describe each amendment. At a minimum, the grantee must: (1) identify exactly what content is being added, deleted, or changed; (2) clearly illustrate where funds are coming from and where they are moving to; and (3) include a revised budget allocation table that reflects the entirety of all funds, as amended.

III.C.6.a. *Substantial amendment.* In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: a change in program benefit or eligibility criteria; the addition or deletion of an activity; a proposed reduction in the overall benefit requirement, as outlined in III.F.2.; or the allocation or reallocation of a monetary threshold specified by the grantee in their action plan. For all substantial amendments, the grantee must follow the same procedures required for the preparation and submission of an action plan for disaster recovery, with the exception of the public hearing requirements described in section III.D.1.b. and the consultation requirements described in section III.D.1.a., which are not required for substantial amendments. A substantial action plan amendment shall require a 30-day public comment period.

III.C.6.b *Nonsubstantial amendment.* The grantee must notify HUD, but is not required to seek public comment, when it makes any plan amendment that is not substantial. Although nonsubstantial amendments do not require HUD's approval to become effective, the DRGR system must approve the amendment to change the status of the Public Action Plan to ''reviewed and approved.'' The DRGR system will automatically approve the amendment by the fifth day, if not completed by HUD sooner.

III.C.7. *Projection of expenditures and outcomes.* Each grantee must submit projected expenditures and outcomes with the action plan. The projections must be based on each quarter's expected performance—beginning with the first quarter funds are available to the grantee and continuing each quarter until all funds are expended. The grantee will use DRGR's upload feature to include projections and accomplishments for each program created.

III.D. Citizen Participation Requirements

III.D.1. *Citizen participation waiver and alternative requirement.* To permit a more streamlined process and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, 24 CFR 91.105(b) through (d), and 24 CFR 91.115(b) through (d), with respect to citizen participation requirements, are waived and replaced by the alternative requirements in this section. The streamlined requirements require the grantee to include public hearings on the proposed action plan and provide a reasonable opportunity (at least 30 days) for citizen comment.

The grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in notices providing waivers and alternative requirements). Each local government receiving assistance from a state grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements).

In addition to the requirements above, the streamlined citizen participation alternative requirements for CDBG–DR grants are as follows:

III.D.1.a. *Requirement for consultation during plan preparation.* All grantees must consult with states, Indian tribes, local governments, Federal partners, nongovernmental organizations, the private sector, and other stakeholders and affected parties in the surrounding geographic area, including organizations that advocate on behalf of members of protected classes, vulnerable populations, and underserved communities impacted by the disaster, to ensure consistency of the action plan with applicable regional redevelopment plans. A grantee must consult with other relevant government agencies, including state and local emergency management agencies that have primary responsibility for the administration of FEMA funds, if applicable.

III.D.1.b. *Publication of the action plan and opportunity for public comment.* Following the creation of the action plan or substantial amendment in DRGR and before the grantee submits the action plan or substantial amendment to HUD, the grantee must publish the proposed plan or amendment for public comment. The manner of publication must include prominent posting on the grantee's official disaster recovery website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to review the plan or substantial amendment. Grantees shall consider if there are potential barriers that may limit or prohibit vulnerable populations or underserved communities and individuals affected by the disaster from providing public comment on the grantee's action plan or substantial amendment. If the grantee identifies barriers that may limit or prohibit equitable participation, the grantee must take reasonable measures to increase coordination, communication, affirmative marketing, targeted outreach, and engagement with underserved communities and individuals, including persons with disabilities and persons with LEP.

At a minimum, the topic of disaster recovery on the grantee's website must be navigable by all interested parties from the grantee homepage and must link to the disaster recovery website required by section III.D.1.e. The grantee's records must demonstrate that it has notified affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

Additionally, the CDBG–DR grantee must convene at least one public hearing on the proposed action plan after it has published on its website to solicit public comment and before submittal of the action plan to HUD. If the grantee holds more than one public hearing, it must hold each hearing in a different location within the MID area in locations that the grantee determines will promote geographic balance and maximum accessibility. The minimum number of public hearings a grantee must convene on the action plan to obtain interested parties' views and to respond to comments and questions shall be determined by the amount of the grantee's CDBG–DR allocation: (1) CDBG–DR grantees with allocations under $500 million are required to hold at least one public hearing in a HUD-identified MID area; and (2) CDBG–DR grantees with allocations over $500 million or more shall convene at least two public hearings in HUD-identified MID areas.

Grantees may convene public hearings virtually (alone, or in concert with an in-person hearing). All in-person hearings must be held in facilities that are physically accessible to persons with disabilities. HUD's implementing regulations for Section 504 of the Rehabilitation Act (24 CFR part 8, subpart C) provide that where physical accessibility is not achievable, grantees must give priority to alternative methods of product or information delivery that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. When conducting a virtual hearing, the grantee must allow questions in real time, with answers coming directly from the grantee representatives to all ''attendees.''

For both virtual and in person hearings, grantees must update their citizen participation plans to provide that hearings be held at times and locations convenient to potential and actual beneficiaries, with accommodation for persons with disabilities and appropriate auxiliary aids and services to ensure effective communication, and specify how they will meet these requirements. See 24 CFR 8.6 for HUD's regulations about effective communication. Grantees must also provide meaningful access for individuals with LEP at both in-person and virtual hearings. In their citizen participation plan, state and local government grantees shall identify how the needs of non-English speaking residents will be met in the case of virtual and in-person public hearings where a significant number of non-English speaking residents can be reasonably expected to participate. In addition, for both virtual or in-person hearings, the grantee shall provide reasonable notification and access for citizens in accordance with the grantee's certifications at III.F.7.g., timely responses to all citizen questions and issues, and public access to all questions and responses.

III.D.1.c. *Consideration of public comments.* The grantee must provide a reasonable time frame (no less than 30 days) and method(s) (including electronic submission) for receiving comments on the action plan or substantial amendment. The grantee must consider all oral and written comments on the action plan or any substantial amendment. Any updates or changes made to the action plan in response to public comments should be clearly identified in the action plan. A summary of comments on the plan or amendment, and the grantee's response to each, must be included (*e.g.,* uploaded) in DRGR with the action plan or substantial amendment. Grantee responses shall address the substance of the comment rather than merely acknowledge that the comment was received.

III.D.1.d. *Availability and accessibility of documents.* The grantee must make the action plan, any substantial amendments, vital documents, and all performance reports available to the public on its website. See the following guidance for more information on vital documents: *https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.* In addition, the grantee must make these documents available in a form accessible to persons with disabilities and those with LEP. Grantees must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons, including members of protected classes, vulnerable populations, and individuals from underserved communities. In their citizen participation plan, state and local government grantees shall describe their procedures for assessing their language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require that the state or local government grantee take reasonable steps to provide language assistance to ensure meaningful access to participation by non-English-speaking residents of the grantee's jurisdiction.

III.D.1.e. *Public website.* The grantee must maintain a public website that permits individuals and entities awaiting assistance and the general public to see how all grant funds are used and administered. The website must include copies of all relevant procurement documents and, except as noted in the next paragraph, all grantee administrative contracts, details of ongoing procurement processes, and action plans and amendments. The public website must be accessible to persons with disabilities and individuals with LEP.

To meet this requirement, each grantee must make the following items available on its website: the action plan created using DRGR (including all amendments); each performance report (as created using the DRGR system); citizen participation plan; procurement policies and procedures; all contracts, as defined in 2 CFR 200.22, that will be paid with CDBG–DR funds (including, but not limited to, subrecipients' contracts); and a summary including the description and status of services or goods currently being procured by the grantee or the subrecipient (*e.g.,* phase of the procurement, requirements for proposals, etc.). Contracts and procurement actions that do not exceed the micro-purchase threshold, as defined in 2 CFR 200.1, are not required to be posted to a grantee's website.

III.D.1.f. *Application status.* The grantee must provide multiple methods of communication, such as websites, toll-free numbers, TTY and relay services, email address, fax number, or other means to provide applicants for recovery assistance with timely information to determine the status of their application.

III.D.1.g. *Citizen complaints.* The grantee will provide a timely written response to every citizen complaint. The grantee response must be provided within fifteen working days of the receipt of the complaint, or the grantee must document why additional time for the response was required. Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the HUD OIG Fraud Hotline (phone: 1–800–347–3735 or email: *hotline@hudoig.gov*).

III.D.1.h. *General requirements.* For plan publication, the comprehensive disaster recovery website and vital documents must ensure effective communication for individuals with disabilities, as required by 24 CFR 8.6 and the Americans with Disabilities Act, as applicable. In addition to ensuring the accessibility of the comprehensive disaster recovery website and vital documents, this obligation includes the requirement to provide auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities, which may take the form of the furnishing of the above referenced materials in alternative formats (24 CFR 8.6(a)(1)). When required by III.D.1.d., grantees must take reasonable steps to ensure meaningful access for individuals with LEP.

III.E. Program Income

III.E.1. *Program income waiver and alternative requirement.* For state and unit of general local government grantees, HUD is waiving all applicable program income rules at 42 U.S.C. 5304(j), 24 CFR 570.489(e), 24 CFR 570.500, and 24 CFR 570.504 and providing the alternative requirement described below. Program income earned by Indian tribes that receive an allocation from HUD will be governed by the regulations at 24 CFR 1003.503 until grant closeout and not by the waivers and alternative requirements in this Consolidated Notice. Program income earned by Indian tribes that are subrecipients of state grantees or local government grantees will be subject to the program income requirements for subrecipients of those grantees.

III.E.1.a. *Definition of program income.* ''Program income'' is defined as gross income generated from the use of CDBG–DR funds, except as provided in III.E.1.b., and received by a state, local government, Indian tribe receiving funds from a grantee, or their subrecipients. When income is generated by an activity that is only partially assisted with CDBG–DR funds, the income shall be prorated to reflect the percentage of CDBG–DR funds used (*e.g.,* a single loan supported by CDBG–DR funds and other funds, or a single parcel of land purchased with CDBG–DR funds and other funds). If CDBG funds are used with CDBG–DR funds on an activity, any income earned on the CDBG portion would not be subject to the waiver and alternative requirement in the Consolidated Notice.

Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG–DR funds.

(ii) Proceeds from the disposition of equipment purchased with CDBG–DR funds.

(iii) Gross income from the use or rental of real or personal property acquired by a state, local government, or subrecipient thereof with CDBG–DR funds, less costs incidental to generation of the income.

(iv) Gross income from the use or rental of real property owned by a state, local government, or subrecipient thereof, that was constructed or improved with CDBG–DR funds, less costs incidental to generation of the income.

(v) Payments of principal and interest on loans made using CDBG–DR funds.

(vi) Proceeds from the sale of loans made with CDBG–DR funds.

(vii) Proceeds from the sale of obligations secured by loans made with CDBG–DR funds.

(viii) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.

(ix) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by non-LMI households, where the special assessments are used to recover all or part of the CDBG–DR portion of a public improvement.

(x) Gross income paid to a state, local government, or subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG–DR assistance.

III.E.1.b. *Program income—does not include:*

(i) The total amount of funds that is less than $35,000 received in a single year and retained by a state, local government, or a subrecipient thereof.

(ii) Amounts generated by activities eligible under section 105(a)(15) of the HCDA and carried out by an entity under the authority of section 105(a)(15) of the HCDA.

III.E.1.c. *Retention of program income.* State grantees may permit a local government that receives or will receive program income to retain the program income but are not required to do so.

III.E.1.d. *Program income—use, close out, and transfer.*

(i) Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG–DR funds subject to the requirements of the Consolidated Notice and must be used in accordance with the grantee's action plan for disaster recovery. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in III.E.1.e. below.

(ii) In addition to the alternative requirements dealing with program income required above, the following rules apply:

(1) a state or local government grantee may transfer program income to its annual CDBG program before closeout of the grant that generated the program income. In addition, state grantees may transfer program income before closeout to any annual CDBG-funded activities carried out by a local government within the state.

(2) Program income received by a grantee, or received and retained by a subrecipient, after closeout of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award.

(3) In all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of the Consolidated Notice. Rather, those funds will be subject to the state or local government grantee's regular CDBG program rules. Any other transfer of program income not specifically addressed in the Consolidated Notice may be carried out if the grantee first seeks and then receives HUD's approval.

III.E.1.e. *Revolving funds.* State and local government grantees may establish revolving funds to carry out specific, identified activities. State grantees may also establish a revolving fund to distribute funds to local governments or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities must generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities. A revolving fund established by a CDBG–DR grantee shall not be directly funded or capitalized with CDBG–DR grant funds, pursuant to 24 CFR 570.489(f)(3).

III.F. Other General Waivers and Alternative Requirements

III.F.1. *Consolidated Plan waiver.* HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.225(a)(5), and 24 CFR 91.325(a)(5)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e) is also waived, to the extent that it would require HUD to annually review grantee performance under the consistency criteria. These waivers apply only for 24 months after the applicability date of the grantee's applicable Allocation Announcement Notice. If the grantee is not scheduled to submit a new three-to five-year consolidated plan within the next two years, the grantee must update its existing three-to five-year consolidated plan to reflect disaster-related needs no later than 24 months after the applicability date of the grantee's applicable Allocation Announcement Notice.

III.F.2. *Overall benefit requirement.* The primary objective of the HCDA is the ''development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income'' (42 U.S.C. 5301(c)). Consistent with the HCDA, this notice requires grantees to comply with the overall benefit requirements in the HCDA and 24 CFR 570.484, 570.200(a)(3), and 1003.208, which require that 70 percent of funds be used for activities that benefit LMI persons. For purposes of a CDBG–DR grant, HUD is establishing an alternative requirement that the overall benefit test shall apply only to the grant of CDBG–DR funds described in the Allocation Announcement Notice and related program income.

A grantee may seek to reduce the overall benefit requirement below 70 percent of the total grant, but must submit a substantial amendment as provided in section III.C.6.a. in the Consolidated Notice, and provide a justification that, at a minimum: (a) identifies the planned activities that meet the needs of its LMI population; (b) describes proposed activities and programs that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 70 percent requirement; (d) demonstrates that LMI persons' disaster-related needs have been sufficiently met and that the needs of non-LMI persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve non-LMI persons; and (e) demonstrates a compelling need for HUD to lower the percentage of the grant that must benefit low- and moderate-income persons.

III.F.3. *Use of the urgent need national objective.* Because HUD provides CDBG–DR funds only to grantees with documented disaster-related impacts and each grantee is limited to spending funds only for the benefit of areas that received a Presidential disaster declaration, the Secretary finds good cause to waive the urgent need national objective criteria in section 104(b)(3) of the HCDA and to establish the following alternative requirement for any CDBG–DR grantee using the urgent need national objective for a period of 36 months after the applicability date of the grantee's Allocation Announcement Notice.

Pursuant to this alternative requirement, grantees that use the urgent need national objective must: (1) describe in the impact and unmet needs assessment why specific needs have a particular urgency, including how the existing conditions pose a serious and immediate threat to the health or welfare of the community; (2) identify each program or activity in the action plan that will use the urgent need national objective—either through its initial action plan submission or through a substantial amendment submitted by the grantee within 36 months of the applicability date of the grantee's Allocation Announcement Notice; and (3) document how each program and/or activity funded under the urgent need national objective in the action plan responds to the urgency, type, scale, and location of the disaster-related impact as described in the grantee's impact and unmet needs assessment.

The grantee's action plan must address all three criteria described above to use the alternative urgent need national objective for the program and/or activity. This alternative urgent need national objective is in effect for a period of 36 months following the applicability date of the grantee's Allocation Announcement Notice. After 36 months, the grantee will be required to follow the criteria established in section 104(b)(3) of the HCDA and its implementing regulations in 24 CFR part 570 when using the urgent need national objective for any new programs and/or activities added to an action plan.

III.F.4. *Reimbursement of disaster recovery expenses by a grantee or subrecipient.* The provisions of 24 CFR 570.489(b) are applied to permit a state grantee to charge to the grant otherwise allowable costs incurred by the grantee, its recipients or subrecipients (including Indian tribes and PHAs) on or after the incident date of the covered disaster. A local government grantee is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable costs incurred on or after the incident date of the covered disaster. Section 570.200(h)(1)(i) is waived to the extent that it requires pre-agreement activities to be included in the local government's consolidated plan. As an alternative requirement, grantees must include any pre-agreement activities in their action plans, including any costs of eligible activities that were funded with short-term loans (*e.g.,* bridge loans) and that the grantee intends to reimburse or otherwise charge to the grant, consistent with applicable program requirements.

III.F.5. *Reimbursement of pre-application costs of homeowners, renters, businesses, and other qualifying* entities. Grantees are permitted to charge to grants the pre-award and pre-application costs of homeowners, renters, businesses, and other qualifying entities for eligible costs these applicants have incurred in response to an eligible disaster covered under a grantees' applicable Allocation Announcement Notice. For purposes of the Consolidated Notice, pre-application costs are costs incurred by an applicant to CDBG–DR funded programs before the time of application to a grantee or subrecipient, which may be before (pre-award) or after the grantee signs its CDBG–DR grant agreement. In addition to the terms described in the remainder of the Consolidated Notice, grantees may only charge costs to the grant that meet the following requirements:

- Grantees may only charge the costs for rehabilitation, demolition, and reconstruction of single family, multifamily, and nonresidential buildings, including commercial properties, owned by private individuals and entities, incurred before the owner applies to a CDBG–DR grantee, recipient, or subrecipient for CDBG–DR assistance;
- For rehabilitation and reconstruction costs, grantees may only charge costs for activities completed within the same footprint of the damaged structure, sidewalk, driveway, parking lot, or other developed area;
- As required by 2 CFR 200.403(g), costs must be adequately documented; and
- Grantees must complete a duplication of benefits check before providing assistance pursuant to section IV.A. in the Consolidated Notice.

Grantees are required to ensure that all costs charged to a CDBG–DR grant are necessary expenses related to authorized recovery purposes. Grantees may charge to CDBG–DR grants the eligible pre-application costs of individuals and private entities related to single family, multifamily, and nonresidential buildings, only if: 1) the person or private entity incurred the expenses within one year after the applicability date of the grantee's Allocation Announcement Notice (or within one year after the date of the disaster, whichever is later); and 2) the person or entity pays for the cost before the date on which the person or entity applies for CDBG–DR assistance. Exempt activities as defined at 24 CFR 58.34, but not including 24 CFR 58.34(a)(12), and categorical exclusions as defined at 24 CFR 58.35(b) are not subject to the time limit on pre-application costs outlined above. Actions that convert or potentially convert to exempt under 24 CFR 58.34(a)(12) remain subject to the reimbursement requirements provided herein. If a grantee cannot meet all requirements at 24 CFR part 58, the pre-application costs cannot be reimbursed with CDBG–DR or other HUD funds.

Grantees must comply with the necessary and reasonable cost principles for state, local, and Indian tribal governments (described at 2 CFR 200.403). Grantees must incorporate into their policies and procedures the basis for determining that the assistance provided under the terms of this provision is necessary and reasonable.

A grantee may not charge such pre-award or pre-application costs to grants if the grantee cannot meet all requirements at 24 CFR part 58. Under CDBG–DR authorizing legislation and HUD's environmental regulations in 24 CFR part 58, the CDBG–DR ''recipient'' (as defined in 24 CFR part 58.2(a)(5), which differs from the definition in 2 CFR part 200) is the responsible entity that assumes the responsibility for completing environmental reviews under Federal laws and authorities. The responsible entity assumes all legal liability for the application, compliance, and enforcement of these requirements. Pre-award costs are also allowable when CDBG–DR assistance is provided for the rehabilitation, demolition, or reconstruction of government buildings, public facilities, and infrastructure. However, in such instances, the environmental review must occur before the underlying activity (*e.g.,* rehabilitation of a government building) begins.

Grantees are also required to consult with the State Historic Preservation Officer, Fish and Wildlife Service, and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) when designing a reimbursement program.

All grantees must follow all cross-cutting requirements, as applicable, for all CDBG–DR funded activities including but not limited to the environmental requirements above, the Davis Bacon Act, Civil Rights Requirements, HUD's Lead Safe Housing Rule, and the URA.

III.F.6. *Alternative requirement for the elevation of structures when using CDBG–DR funds as the non-Federal match in a FEMA-funded project.* Currently, CDBG–DR grantees using FEMA and CDBG–DR funds on the same activity have encountered challenges in certain circumstances in reconciling CDBG–DR elevation requirements and those established by FEMA. FEMA regulations at 44 CFR 9.11(d)(3)(i) and (ii) prohibit new construction or substantial improvements to a structure unless the lowest floor of the structure is at or above the level of the base flood and, for Critical Actions, at or above the level of the 500-year flood. However, 44 CFR 9.11(d)(3)(iii) allows for an alternative to elevation to the 100- or 500-year flood level, subject to FEMA approval, which would provide for improvements that would ensure the substantial impermeability of the structure below flood level. While FEMA may change its standards for elevation in the future, as long as the CDBG–DR grantee is following a FEMA-approved flood standard this waiver and alternative requirement will continue to apply.

FEMA funded projects generally commence well in advance of the availability of CDBG–DR funds and when CDBG–DR funds are used as match for a FEMA project that is underway, the alignment of HUD's elevation standards with any alternative standard allowed by FEMA may not be feasible and may not be cost reasonable. For these reasons, the Secretary finds good cause to establish an alternative requirement for the use of an alternative, FEMA-approved flood standard instead of the elevation requirements established in section II.B.2.c. and II.C.2. of the Consolidated Notice.

The alternative requirements apply when: (a) CDBG–DR funds are used as the non-Federal match for FEMA assistance; (b) the FEMA-assisted activity, for which CDBG–DR funds will be used as match, commenced before HUD's obligation of CDBG–DR funds to the grantee; and (c) the grantee has determined and demonstrated with records in the activity file that implementation costs of the required CDBG–DR elevation or flood proofing requirements are not reasonable costs, as that term is defined in the applicable cost principles at 2 CFR 200.404.

III.F.7. *Certifications waiver and alternative requirement.* Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c) & (m)), sections 106(d)(2)(C) & (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) & (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the following alternative. Each grantee receiving an allocation under an Allocation Announcement Notice must make the following certifications with its action plan:

a. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan (RARAP) in connection with any activity assisted with CDBG–DR grant funds that fulfills the requirements of Section 104(d), 24 CFR part 42, and 24 CFR part 570, as amended by waivers and alternative requirements.

b. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

c. The grantee certifies that the action plan for disaster recovery is authorized under state and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations as modified by waivers and alternative requirements.

d. The grantee certifies that activities to be undertaken with CDBG–DR funds are consistent with its action plan.

e. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, as such requirements may be modified by waivers or alternative requirements.

f. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 75.

g. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in waivers and alternative requirements). Also, each local government receiving assistance from a state grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in waivers and alternative requirements).

h. State grantee certifies that it has consulted with all disaster-affected local governments (including any CDBG-entitlement grantees), Indian tribes, and any local public housing authorities in determining the use of funds, including the method of distribution of funding, or activities carried out directly by the state.

i. The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed areas for which the President declared a major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

(2) With respect to activities expected to be assisted with CDBG–DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG–DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG–DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

j. State and local government grantees certify that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations, and that it will affirmatively further fair housing. An Indian tribe grantee certifies that the grant will be conducted and administered in conformity with the Indian Civil Rights Act.

k. The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, state grantees must certify that they will require local governments that receive their grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

l. The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and that the grantee has reviewed the requirements applicable to the use of grant funds.

m. The grantee certifies to the accuracy of its Financial Management and Grant Compliance Certification Requirements, or other recent certification submission, if approved by HUD, and related supporting documentation as provided in section III.A.1. of the Consolidated Notice and the grantee's implementation plan and related submissions to HUD as provided in section III.A.2. of the Consolidated Notice.

n. The grantee certifies that it will not use CDBG–DR funds for any activity in an area identified as flood prone for land use or hazard mitigation planning purposes by the state, local, or tribal government or delineated as a Special Flood Hazard Area (or 100-year floodplain) in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the state, local, and tribal government land use regulations and hazard mitigation plans and the latest-issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

o. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

p. The grantee certifies that it will comply with environmental requirements at 24 CFR part 58.

q. The grantee certifies that it will comply with the provisions of title I of the HCDA and with other applicable laws.

Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001, and 31 U.S.C. 3729.

III.G. Ineligible Activities in CDBG–DR

Any activity that is not authorized under Section 105(a) of the HCDA is ineligible to be assisted with CDBG–DR funds, unless explicitly allowed by waiver and alternative requirement in the Consolidated Notice. Additionally, the uses described below are explicitly prohibited.

III.G.1. *Prohibition on compensation.* Grantees shall not use CDBG–DR funds to provide compensation to beneficiaries for losses stemming from disaster related impacts. Grantees may, however, reimburse disaster-impacted beneficiaries based on the pre-application costs incurred by the beneficiary to complete an eligible activity. Reimbursement of beneficiaries for eligible activity costs are subject to the requirements established in section III.F.5. of the Consolidated Notice.

III.G.2. *Prohibition on forced mortgage payoff.* A forced mortgage payoff occurs when homeowners with an outstanding mortgage balance are required, under the terms of their loan agreement, to repay the balance of the mortgage loan before using assistance to rehabilitate or reconstruct their homes. CDBG–DR funds, however, shall not be used for a forced mortgage payoff. The ineligibility of a forced mortgage payoff with CDBG–DR funds does not affect HUD's longstanding guidance that when other non-CDBG disaster assistance is taken by lenders for a forced mortgage payoff, those funds are not considered to be available to the homeowner and do not constitute a duplication of benefits for the purpose of housing rehabilitation or reconstruction.

III.G.3. *Prohibiting assistance to private utilities.* HUD is adopting the following alternative requirement to section 105(a) and prohibiting the use of CDBG–DR funds to assist a privately-owned utility for any purpose.

IV. Other Program Requirements

IV.A. Duplication of Benefits

The grantee must comply with section 312 of the Stafford Act, as amended, which prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other source. To comply with section 312, a person or entity may receive financial assistance only to the extent that the person or entity has a disaster recovery need that has not been fully met. Grantees must also establish policies and procedures to provide for the repayment of a CDBG–DR award when assistance is subsequently provided for that same purpose from any other source. Grantees may be subject to additional DOB requirements described in a separate notice. The applicable Allocation Announcement Notice will describe any additional requirements, as applicable.

Subsidized loans are financial assistance and therefore can duplicate financial assistance provided from another source unless an exception in IV.A.1. applies.

IV.A.1. *Exceptions when subsidized loans are not a duplication.* When an exception described in paragraphs IV.A.1.a. or IV.A.1.b. applies, documentation required by those paragraphs must be maintained by the grantee. Without this documentation, any approved but undisbursed portion of a subsidized loan must be included in the grantee's calculation of the total assistance amount unless another exception applies. For cancelled SBA loans, the grantee must notify the SBA that the applicant has agreed to not take any actions to reinstate the cancelled loan or draw any additional undisbursed loan amounts.

IV.A.1.a. *Short-term subsidized loans for costs later reimbursed with CDBG–DR.* CDBG–DR funds may be used to reimburse pre-award costs of the grantee or subrecipient for eligible activities on or after the date of the disaster. If the grantee or subrecipient obtained a subsidized short-term loan to pay for eligible costs before CDBG–DR funds became available (for example, a low-interest loan from a local tax increment financing fund), the reimbursement of the costs paid by the loan does not create a duplication.

IV.A.1.b. *Declined or cancelled subsidized loans.* The amount of a subsidized loan that is declined or cancelled is not a DOB. To exclude declined or cancelled loan amounts from the DOB calculation, the grantee must document that all or a portion of the subsidized loan is cancelled or declined.

(i) *Declined SBA Loans:* Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but were turned down by the applicant, meaning the applicant never signed loan documents to receive the loan proceeds.

CDBG–DR grantees shall not treat declined subsidized loans, including declined SBA loans, as a DOB (but are not prohibited from considering declined subsidized loans for other reasons, such as underwriting). A grantee is only required to document declined loans if information available to the grantee (*e.g.,* the data the grantee receives from FEMA, SBA, or other sources) indicates that the applicant received an offer for subsidized loan assistance, and the grantee is unable to determine from that available information that the applicant declined the loan. If the grantee is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, the grantee must obtain a written certification from the applicant that the applicant did not accept the subsidized loan by signing loan documents and did not receive the loan.

(ii) *Cancelled Loans:* Cancelled loans are loans (or portions of loans) that were initially accepted, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the applicant.

The cancelled loan amount is the amount that is no longer available. The loan cancellation may be due to default of the borrower, agreement by both parties to cancel the undisbursed portion of the loan, or expiration of the term for which the loan was available for disbursement. The following documentation is sufficient to demonstrate that any undisbursed portion of an accepted subsidized loan is cancelled and no longer available: (a) A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or (b) a legally binding agreement between the CDBG–DR grantee (or local government, Indian tribe, or subrecipient administering the CDBG–DR assistance) and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts.

IV.B. Procurement

For a grantee to have proficient procurement processes, a grantee must: indicate the procurement standards that apply to its use of CDBG–DR funds; indicate the procurement standards for subrecipients or local governments as applicable; comply with the standards it certified to HUD that it follows (and update the certification submissions when substantial changes are made); post the required documentation to the official website as described below; and include periods of performance and date of completion in all CDBG–DR contracts.

State grantees must comply with the procurement requirements at 24 CFR 570.489(g) and the following alternative requirements: The grantee must evaluate the cost or price of the product or service being procured. State grantees shall establish requirements for procurement processes for local governments and subrecipients based on full and open competition consistent with the requirements of 24 CFR 570.489(g), and shall require a local government or subrecipient to evaluate the cost or price of the product or service being procured with CDBG–DR funds. Additionally, if the state agency designated as the administering agency chooses to provide funding to another state agency, the administering agency must specify in its procurement processes whether the agency implementing the CDBG–DR activity must follow the procurement processes that the administering agency is subject to, or whether the agency must follow the same processes to which other local governments and subrecipients are subject, or its own procurement processes.

A grantee shall administer CDBG–DR grant funds in accordance with all applicable laws and regulations. As an alternative requirement, grantees may not delegate, by contract, or otherwise, the responsibility for administering such grant funds.

HUD is establishing an additional alternative requirement for all contracts with contractors used to provide goods and services, as follows:

1. The grantee (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;

2. The grantee (or procuring entity) must incorporate performance requirements and liquidated damages into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to the requirement on liquidated damages but must incorporate performance requirements; and

3. The grantee (or procuring entity) may contract for administrative support, in compliance with 2 CFR 200.459, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management.

IV.C. Use of the ''Upper Quartile'' or ''Exception Criteria''

The LMA benefit requirement is modified when fewer than one quarter of the populated-block groups in its jurisdictions contain 51 percent or more LMI persons. In such a community, activities must serve an area that contains a percentage of LMI residents that is within the upper quartile of all census-block groups within its jurisdiction in terms of the degree of concentration of LMI residents. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee, accordingly. The ''exception criteria'' applies to CDBG–DR funded activities in jurisdictions covered by such criteria, including jurisdictions that receive disaster recovery funds from a state. Disaster recovery grantees are required to use the most recent data available in implementing the exception criteria (*https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees/*).

IV.D. Environmental Requirements

IV.D.1. *Clarifying note on the process for environmental release of funds when a state carries out activities directly.* For CDBG–DR grants, HUD allows state grantees to carry out activities directly and to distribute funds to subrecipients. Per 24 CFR 58.4(b)(1), when a state carries out activities directly (including through subrecipients that are not units of general local government), the state must submit the Certification and Request for Release of Funds to HUD for approval.

IV.D.2. *Adoption of another agency's environmental review.* Appropriations acts allow recipients of funds that use such funds to supplement Federal assistance provided under section 402, 403, 404, 406, 407, 408(c)(4), or 502 of the Stafford Act to adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency. Such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit.

This provision allows the recipient of supplemental assistance to adopt another Federal agency's review where the HUD assistance supplements the Stafford Act, and the other Federal agency performed an environmental review for assistance under section 402, 403, 404, 406, 407, or 502 of the Stafford Act.

The other agency's environmental review must cover all project activities funded by the HUD recipient for each project. The grantee is only required to supplement the other agency's environmental review to comply with HUD regulations (*e.g.,* publication or posting requirements for Notice of Finding of No Significant Impact (FONSI), Notice of Intent to Request Release of Funds (NOI–RROF), concurrent or combined notices, or HUD approval period for objections) if the activity is modified so the other agency's environmental review no longer covers the activity. The recipient's environmental review obligations are considered complete when adopting another agency's environmental review. To be adequate:

1. The grantee must obtain a completed electronic or paper copy of the Federal agency's review and retain a copy in its environmental records.

2. The grantee must notify HUD on the Request for Release of Funds (RROF) Form 7015.15 (or the state, if the state is acting as HUD under 24 CFR 58.18) that another agency review is being used. The grantee must include the name of the other Federal agency, the name of the project, and the date of the project's review as prepared by the other Federal agency.

When permitted by the applicable appropriations acts, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary or a state may, upon receipt of a Request for Release of Funds and Certification, immediately approve the release of funds for an activity or project assisted with CDBG–DR funds if the recipient has adopted an environmental review, approval, or permit under this section, or if the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA).

IV.D.3. *Historic preservation reviews.* The responsible entity must comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108). Early coordination under section 106 is important to the recovery process and required by 24 CFR 58.5(a).

IV.D.4. *Tiered environmental reviews.* Tiering, as described at 40 CFR 1508.1(ff) and 24 CFR 58.15, is a means of making the environmental review process more efficient by allowing parties to ''eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review'' (40 CFR 1501.11(a)). Tiering is appropriate when a responsible entity is evaluating a single-family housing program with similar activities within a defined local geographic area and timeframe (*e.g.,* rehabilitating single-family homes within a city district or county over the course of one to five years) but where the specific sites and activities are not yet known. Public notice and the Request for Release of Funds (HUD-Form 7015.15) are processed at a broad-level, eliminating the need for publication at the site-specific level. However, funds cannot be spent or committed on a specific site or activity until the site-specific review has been completed and approved.

IV.E. Flood Insurance Requirements

Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, before providing assistance.

IV.E.1. *Flood insurance purchase requirements.* When grantees use CDBG–DR funds to rehabilitate or reconstruct existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain), the grantee must comply with applicable Federal, state, local, and tribal laws and regulations related to both flood insurance and floodplain management. The grantee must comply with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) which mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area. Therefore, a HUD-assisted homeowner for a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program.

IV.E.2. *Federal assistance to owners remaining in a floodplain.*

IV.E.2.a. *Prohibition on flood disaster assistance for failure to obtain and maintain flood insurance.* Grantees must comply with section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which prohibits flood disaster assistance in certain circumstances. No Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for ''repair, replacement, or restoration'' for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

A grantee may not provide disaster assistance for the repair, replacement, or restoration of a property to a person who has failed to satisfy the Federal requirement to obtain and maintain flood insurance and must implement a process to verify and monitor for compliance with section 582 and the requirement to obtain and maintain flood insurance. Grantees are reminded that CDBG–DR funds may be used to assist beneficiaries in the purchase of flood insurance to comply with this requirement, subject to the requirements of cost reasonableness and other federal cost principles.

IV.E.2.b. *Prohibition on flood disaster assistance for households above 120 percent of AMI for failure to obtain flood insurance.* When a homeowner located in the floodplain allows their flood insurance policy to lapse, it is assumed that the homeowner is unable to afford insurance and/or is accepting responsibility for future flood damage to the home. Higher income homeowners who reside in a floodplain, but who failed to secure or decided to not maintain their flood insurance, should not be assisted at the expense of lower income households. To ensure that adequate recovery resources are available to assist lower income homeowners who reside in a floodplain but who are unlikely to be able to afford flood insurance, the Secretary finds good cause to establish an alternative requirement.

The alternative requirement to 42 U.S.C. 5305(a)(4) is as follows: Grantees receiving CDBG–DR funds are prohibited from providing CDBG–DR assistance for the rehabilitation/reconstruction of a house, if (i) the combined household income is greater than either 120 percent of AMI or the national median, (ii) the property was located in a floodplain at the time of the disaster, and (iii) the property owner did not obtain flood insurance on the damaged property, even when the property owner was not required to obtain and maintain such insurance.

IV.E.2.c. *Responsibility to inform property owners to obtain and maintain flood insurance.* Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) is a statutory requirement that property owners receiving disaster assistance that triggers the flood insurance purchase requirement have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance and to maintain such written notification in the documents evidencing the transfer of the property, and that the transferring owner may be liable if he or she fails to do so. A grantee or subrecipient receiving CDBG–DR funds must notify property owners of their responsibilities under section 582.

IV.F. URA, Section 104(d), and Related CDBG Program Requirements

Activities and projects undertaken with CDBG–DR funds may be subject to the URA, section 104(d) of the HCDA (42 U.S.C. 5304(d)), and CDBG program requirements related to displacement, relocation, acquisition, and replacement of housing, except as modified by waivers and alternative requirements provided in this notice. The implementing regulations for the URA are at 49 CFR part 24. The regulations implementing section 104(d) are at 24 CFR part 42. The regulations for applicable CDBG program requirements are at 24 CFR 570.488 and 24 CFR 570.606. HUD is waiving or providing alternative requirements in this section for the purpose of promoting the availability of decent, safe, and sanitary housing with respect to the use of CDBG–DR funds allocated under the Consolidated Notice.

IV.F.1. *Section 104(d) one-for-one replacement of lower-income dwelling units.* One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and 104(d)(3) of the HCDA and 24 CFR 42.375 are waived for owner-occupied lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The section 104(d) one-for-one replacement housing requirements apply to occupied and vacant occupiable lower-income dwelling units demolished or converted in connection with a CDBG assisted activity. This waiver exempts all disaster-damaged owner-occupied lower-income dwelling units that meet the grantee's definition of "not suitable for rehabilitation," from the one-for-one replacement housing requirements of 24 CFR 42.375. Before carrying out activities that may be subject to the one-for-one replacement housing requirements, the grantee must define "not suitable for rehabilitation" in its action plan or in policies/procedures governing these activities. Grantees are reminded that tenant-occupied and vacant occupiable lower-income dwelling units demolished or converted to another use other than lower-income housing in connection with a CDBG–DR assisted activity are generally subject to one-for-one replacement requirements at 24 CFR 42.375 and that these provisions are not waived.

HUD is waiving the section 104(d) one-for-one replacement requirement for owner-occupied lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation because the one-for-one replacement requirements do not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and to economic revitalization. Prior to the implementation of this waiver and alternative requirement, grantees must reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units (both rental and owner-occupied units) to rehabilitate and/or reconstruct. Grantees should note that the demolition and/or disposition of public housing units continue to be subject to section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

IV.F.2. *Section 104(d) relocation assistance.* The relocation assistance requirements at section 104(d)(2)(A)(iii) and (B) of the HCDA and 24 CFR 42.350, are waived to the extent that an eligible displaced person, as defined under 24 CFR 42.305 of the section 104(d) implementing regulations, may choose to receive either assistance under the URA and implementing regulations at 49 CFR part 24, or assistance under section 104(d) and implementing regulations at 24 CFR 42.350. This waiver does not impact a person's eligibility as a displaced person under section 104(d), it merely limits the amounts and types of relocation assistance that a section 104(d) eligible displaced person is eligible to receive. A section 104(d) eligible displaced person is eligible to receive the amounts and types of assistance for displaced persons under the URA, as may be modified by the waivers and alternative requirements in this notice for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (*e.g.,* buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to section 104(d), while FEMA funds are not. This limited waiver of the section 104(d) relocation assistance requirements assures uniform and equitable treatment for individuals eligible to receive benefits under Section 104(d) by establishing that all forms of relocation assistance to those individuals must be in the amounts and for the types of assistance provided to displaced persons under URA requirements.

IV.F.3. *URA replacement housing payments for tenants.* The requirements of sections 204 and 205 of the URA (42 U.S.C. 4624 and 42 U.S.C. 4625), and 49 CFR 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing payment obligation to a displaced tenant by offering rental housing through a rental housing program subsidy (to include, but not limited to, a housing choice voucher), provided that comparable replacement dwellings are made available to the tenant in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the program and the period of authorized assistance is at least 42 months. This waiver and alternative requirement is subject to the following: if assistance is provided through a HUD program, it is subject to the applicable HUD program requirements, including the requirement that the tenant must be eligible for the rental housing program. Failure to grant this waiver would impede disaster recovery whenever rental program subsidies are available but funds for cash replacement housing payments are limited and such payments are required by the URA to be based on a 42-month term.

IV.F.4. *URA voluntary acquisition—homebuyer primary residence purchase.* Grantees may implement disaster recovery program activities that provide financial assistance to eligible homebuyers to purchase and occupy residential properties as their primary residence. Such purchases are generally considered voluntary acquisitions under the URA and subject to the URA regulatory requirements at 49 CFR 24.101(b)(2). For CDBG–DR, 49 CFR 24.101(b)(2) is waived to the extent that it applies to a homebuyer, who does not have the power of eminent domain, and uses CDBG–DR funds in connection with the voluntary purchase and occupancy of a home the homebuyer intends to make their primary residence. This waiver is necessary to reduce burdensome administrative requirements for homebuyers following a disaster. Tenants displaced by these voluntary acquisitions may be eligible for relocation assistance.

IV.F.5. *CDBG displacement, relocation, acquisition, and replacement housing program regulations—Optional relocation assistance.* The regulations at 24 CFR 570.606(d) are waived to the extent that they require optional relocation policies to be established at the grantee level. Unlike with the regular CDBG program, states may carry out disaster recovery activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG–DR funds may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. The written policy must: be available to the public, describe the relocation assistance that the grantee, state recipient (*i.e.,* a local government receiving a subgrant from the state through a method of distribution), or subrecipient (as applicable) has elected to provide, and provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d). This waiver is intended to provide states with maximum flexibility in developing optional relocation policies with CDBG–DR funds.

IV.F.6. *Waiver of Section 414 of the Stafford Act.* Section 414 of the Stafford Act (42 U.S.C. 5181) provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) [42 U.S.C. 4601 *et seq.*] ["URA"] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA]." Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disasters and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA. Section 414 of the Stafford Act and its implementing regulation at 49 CFR 24.403(d)(1) are waived to the extent that they would apply to real property acquisition, rehabilitation, or demolition of real property for a CDBG–DR funded project commencing more than one year after the date of the latest applicable Presidentially declared disaster undertaken by the grantees, or subrecipients, provided that the project was not planned, approved, or otherwise underway before the disaster.

For purposes of this waiver, a CDBG–DR funded project shall be determined to have commenced on the earliest of: (1) the date of an approved Request for Release of Funds and certification; (2) the date of completion of the site-specific review when a program utilizes Tiering; or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12).

The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster considering most of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence.

This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

IV.F.7. *RARAP Section 104(d).* CDBG–DR grantees must certify that they have in effect and are following a RARAP as required by section 104(d)(1) and (2) of the HCDA and 24 CFR 42.325. In addition to the requirements in 24 CFR 42.325 and 24 CFR 570.488 or 24 CFR 570.606(c), as applicable, HUD is specifying the following alternative requirements:

Grantees who are following an existing RARAP for CDBG purposes must either: (1) amend their existing RARAP; or (2) create a separate RARAP for CDBG–DR purposes, to reflect the following requirements and applicable waivers and alternative requirements as modified by the Consolidated Notice.

Grantees who do not have an existing RARAP in place because they do not manage CDBG programs must create a separate RARAP for CDBG–DR purposes, to reflect the following CDBG–DR requirements and applicable waivers and alternative requirements as modified by the Consolidated Notice.

(1) RARAP requirements for CDBG–DR. As each grantee establishes and supports feasible and cost-effective recovery efforts to make communities more resilient against future disasters, the CDBG–DR RARAP must describe how the grantee plans to minimize displacement of members of families and individuals from their homes and neighborhoods as a result of any CDBG–DR assisted activities, including disaster recovery activities where displacement can be prevented (*e.g.,* housing rehabilitation programs). Across disaster recovery activities—such as buyouts and other eligible acquisition activities, where minimizing displacement is not reasonable, feasible, or cost-efficient and would not help prevent future or repetitive loss—the grantee must describe how it plans to minimize the adverse impacts of displacement.

The description shall focus on proposed disaster recovery activities that may directly or indirectly result in displacement and the assistance that shall be required for those displaced. This description must focus on relocation assistance under the URA and its implementing regulations at 49 CFR part 24.104(d) and implementing regulations at 24 CFR part 42 (to the extent applicable), 24 CFR 570.488 and/or 24 CFR 570.606, and relocation assistance pursuant to this section of the Consolidated Notice, as well as any other assistance being made available to displaced persons. The CDBG–DR RARAP must include a description of how the grantee will plan programs or projects in such a manner that recognizes the substantial challenges experienced by displaced individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize displacement or the adverse impacts of displacement especially among vulnerable populations. The description must be scoped to the complexity and nature of the anticipated displacing activities, including the evaluation of the grantee's available resources to carry out timely and orderly relocations in compliance with all applicable relocation requirements.

V. Performance Reviews

Under 42 U.S.C. 5304(e) and 24 CFR 1003.506(a), the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner (consistent process to meet its expenditure requirement), whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCDA and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

V.A. Timely Distribution and Expenditure of Funds

HUD waives the provisions at 24 CFR 570.494 and 570.902 regarding timely distribution and expenditure of funds, and establishes an alternative requirement providing that each grantee must expend 100 percent of its allocation within six years of the date HUD signs the grant agreement. HUD may extend the period of performance administratively, if good cause for such an extension exists at that time, as requested by the grantee, and approved by HUD. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

V.B. Review of Continuing Capacity

Upon a determination by HUD that the grantee has not carried out its CDBG–DR activities and certifications in accordance with the requirements in the Consolidated Notice, HUD will undertake a further review to determine if the grantee has the continuing capacity to carry out its activities in a timely manner. In making this determination, HUD will consider the nature and extent of the recipient's performance deficiencies, the actions taken by the recipient to address the deficiencies, and the success or likely success of such actions. HUD may then apply the following corrective and remedial actions as appropriate:

V.B.1. *Corrective and remedial actions.* To effectively administer the CDBG–DR program in a manner that facilitates recovery, particularly the alternative requirements permitting states to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for states in accordance with the authorities for CDBG Entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. In response to a deficiency, HUD may issue a warning letter followed by a corrective action plan that may include a management plan which assigns responsibility for further administration of the grant to specific entities or persons. Failure to comply with a corrective action may result in the termination, reduction, or limitation of payments to grantees receiving CDBG–DR funds.

V.B.2. *Reduction, withdrawal, or adjustment of a grant, or other appropriate action.* Before a reduction, withdrawal, or adjustment of a CDBG–DR grant, or other actions taken pursuant to this section, the recipient shall be notified of the proposed action and be given an opportunity for an informal consultation. Consistent with the procedures described in the Consolidated Notice, HUD may adjust, reduce, or withdraw the CDBG–DR grant (except funds that have been expended for eligible, approved activities) or take other actions as appropriate.

V.B.3. *Additional criteria and specific conditions to mitigate risk.* To ensure effective grantee implementation of the financial controls, procurement processes, and other procedures that are the subject of the certification by the Secretary, HUD has and may continue to establish specific criteria and conditions for each grant award as provided for at 2 CFR 200.206 and 200.208, respectively, to mitigate the risk of the grant. The Secretary shall specify any such criteria and the resulting conditions in the grant conditions governing the award. These criteria may include, but need not be limited to, a consideration of the internal control framework established by the grantee to ensure compliant implementation of its financial controls, procurement processes and payment of funds to eligible entities, as well as the grantee's risk management strategy for information technology systems established to implement CDBG–DR funded programs. Additionally, the Secretary may amend the grant conditions to mitigate risk of a grant award at any point at which the Secretary determines a condition to be required to protect the Federal financial interest or to advance recovery.

V.C. Grantee Reporting Requirements in the DRGR System

V.C.1. *DRGR-related waivers and alternative requirements.* The Consolidated Notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and annual status and evaluation reports that are due each fiscal year under 24 CFR 1003.506(a). Alternatively, HUD is requiring that grantees enter information in the DRGR system on a quarterly basis through the performance reports. The information in DRGR and the performance reports must contain sufficient detail to permit HUD's review of grantee performance and to enable remote review of grantee data to allow HUD to assess compliance and risk.

At a minimum, each grantee must:

a. Enter its action plan and amendments as described in III.C.1, including performance measures, into the Public Action Plan in DRGR;

b. Enter activities into the DRGR Action Plan at a level of detail sufficient to allow HUD to determine grantee compliance (when the activity type, national objective, and the organization that will be responsible for the activity is known);

c. Categorize activities in DRGR under a "project";

d. Enter into the DRGR system summary information on grantees' monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its disaster recovery programs;

e. Use the DRGR system to draw grant funds for each activity;

f. Use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable);

g. Submit a performance report through the DRGR system no later than 30 days following the end of each calendar quarter. For all activities, the address of each CDBG–DR assisted property must be recorded in the performance report; and

h. Publish a version of the performance report that omits personally identifiable information reported in the performance reports submitted to HUD on the grantee's official website within three days of submission to HUD, or in the event a performance report is rejected by HUD, publish the revised version, as approved by HUD, within three days of HUD approval.

The grantee's first performance report is due after the first full quarter after HUD signs the grant agreement. Performance reports must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG–DR funds until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report.

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